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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Federal Register

Vol. 80, No. 209

Thursday, October 29, 2015

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD; Amendment; 39–18308; AD 2015–06–02 R2]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: We are adopting a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes. This AD revises AD 2015–06–02 R1, which required inspection to detect and correct the omission of steel washers at each isolator mount location. This AD retains the actions of AD 2014–06–02 R1 but corrects the AD number in the parenthetical of the compliance time in paragraph (f)(1) of the AD. This AD was prompted by reports of missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective December 3, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 24, 2015 (80 FR 14810, March 20, 2015).

We must receive comments on this AD by December 14, 2015.

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

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

For service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2014–1123.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 7, 2015, we issued AD 2015–06–02 R1, Amendment 39–18209 (80 FR 42010; July 16, 2015). That AD required actions intended to address an unsafe condition on GA 8 Airvan (Pty) Ltd Model GA8–TC320 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by the Civil Aviation Safety Authority (CASA), which is the aviation authority for Australia. The MCAI (AD No. AD/GA8/8, Amdt 1, dated March 26, 2015) states:

> A recent review of the engine mount installation on the GA8–TC 320 aircraft has highlighted the omission of engine mount fire seal washers during the assembly process.
>
> The current engine mount configuration does not meet the certification basis for the aircraft, specifically regulation 23.865 of the Federal Aviation Regulations of the United States of America, where engine mounts located in designated fire zones are required to be suitably shielded so that they are capable of withstanding the effects of a fire.
>
> The Gippsland Aeronautics GA8–TC 320 aircraft require the installation of an approved steel washer at each of the engine mount locations to address a potential risk of reduced engine retention capability in the event of a fire.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2011–0127.

Since we issued AD 2015–06–02 R1, it was determined that the incorrect retained AD number was referenced in the parenthetical of the compliance time in paragraph (f)(1) of the AD. To avoid any confusion, this AD revises AD 2015–06–02 R1 to correct this reference.

Related Service Information Under 1 CFR Part 51

We reviewed GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014. The service bulletin describes procedures for inspecting the orientation of the engine isolator mounts to verify proper installation, re-installing if necessary, and installing steel washers on the forward side of each side of the engine isolator mounts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that allows for the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the change does not affect compliance and the actions have already been proposed in prior rulemaking actions. Therefore, we determine that notice and opportunity for public comment before issuing this AD are impraticable.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 13 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2015–06–02 R1 (80 FR 42010, July 16, 2015) and adding the following new AD:

2015–06–02 R2 GA 8 Airvan (Pty) Ltd: Amendment 39–18308; Docket No. FAA–2014–1123; Directorate Identifier 2014–CE–037–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 3, 2015.

(b) Affected ADs

This AD replaces AD 2015–06–02 R1, Amendment 39–18209 (80 FR 42010, July 16, 2015) (''AD 2015–06–02 R1'').

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd GA8–TC320 airplanes, all serial numbers up to and including GA8–TC 320–14–205, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Power Plant.

(e) Reason

AD 2015–06–02, Amendment 39–18120 (80 FR 14810, March 20, 2015) (''AD 2015–06–02'') was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as missing required engine mount fire seal washers, which could reduce the engine retention capability in the event of a fire. We issued AD 2015–06–02 R1, Amendment 39–18209 to retain the actions of AD 2015–06–02 and to revise the applicable airplane serial numbers. We are issuing this AD to correct the AD number in the parenthetical of the compliance time in paragraph (f)(1) of the AD and to detect and correct the omission of steel washers at each isolator mount location, which, if not corrected, could result in reduced engine retention capability in the event of a fire.

(f) Actions and Compliance

Unless already done, comply with this AD within the compliance times specified in paragraphs (f)(1) through (f)(3) of this AD:

(1) Within the next 300 hours time-in-service after April 24, 2015 (the effective date retained from AD 2015–06–02 and AD 2015–06–02 R1) or within the next 12 months after April 24, 2015 (the effective date retained from AD 2015–06–02 and AD 2015–06–02 R1), whichever occurs first, inspect the orientation of the engine isolator mounts to verify that the mounts have been installed properly following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(2) Before reinstalling the engine isolator mounts following the inspection required in paragraph (f)(1) of this AD, before further flight, install a part number J–2218–61 steel washer on the forward side of each of the four engine isolator mounts, following the Accomplishment Instructions in GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(3) If during the inspection required in paragraph (f)(1) of this AD, any of the engine isolator mounts are found to not comply with

the specifications found in the Accomplishment Instructions of GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014, before further flight, re-install the isolators to the correct orientation, or if damage is found, replace with airworthy parts.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority (CASA) AD No. AD/GA8/8, Amdt 1, dated March 26, 2015. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1123-0007.*

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on April 24, 2015 (80 FR 14810, March 20, 2015).

(i) GippsAero Mandatory Service Bulletin SB–GA8–2014–115, Issue 1, dated October 6, 2014.

(ii) Reserved.

(4) For GippsAero service information identified in this AD, contact GA 8 Airvan (Pty) Ltd, c/o GippsAero Pty Ltd, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: +61 03 5172 1201; email: *techpubs@gippsaero.com;* Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.*

(5) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1123.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on theavailability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on October 22, 2015.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27438 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2014–C–1552]

Listing of Color Additives Exempt From Certification; Spirulina Extract; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA or we) is confirming the effective date of September 22, 2015, for the final rule that appeared in the **Federal Register** of August 21, 2015, and that amended the color additive regulations to expand the permitted use of spirulina extract as a color additive to include use in coating formulations applied to dietary supplement and drug tablets and capsules.

DATES: Effective date of final rule published in the **Federal Register** of August 21, 2015 (80 FR 50762), confirmed: September 22, 2015.

FOR FURTHER INFORMATION CONTACT: Molly A. Harry, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1075.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 21, 2015 (80 FR 50762), we amended the color additive regulations in § 73.530 Spirulina extract (21 CFR 73.530) to expand the permitted use of spirulina extract as a color additive to include use in coating formulations applied to dietary supplement tablets and capsules. We also amended the color additive regulations to add § 73.1530 Spirulina extract (21 CFR 73.1530) to provide for the safe use of spirulina extract as a color additive in coating formulations applied to drug tablets and capsules.

We gave interested persons until September 21, 2015, to file objections or requests for a hearing. We received no objections or requests for a hearing on the final rule. Therefore, we find that the effective date of the final rule that published in the **Federal Register** of August 21, 2015, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Foods, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, we are giving notice that no objections or requests for a hearing were filed in response to the August 21, 2015, final rule. Accordingly, the amendments issued thereby became effective September 22, 2015.

Dated: October 21, 2015.

Susan Bernard,

Director, Office of Regulations, Policy and Social Sciences, Center for Food Safety and Applied Nutrition.

[FR Doc. 2015–27369 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9733]

RIN 1545–BJ49

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9733) that were published in the **Federal Register** on September 2, 2015 (80 FR 52976). The temporary regulations are regarding the treatment as United States property of

property held by a controlled foreign corporation in connection with certain transactions involving partnerships.

DATES: This correction is effective on October 29, 2015 and applicable beginning September 2, 2015.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins at (202) 317–6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9733) that are the subject of this correction are under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9733) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.954–2T is amended by revising paragraph (a)(1) through (c)(1) introductory text, paragraph (c)(2)(iii) introductory text through (c)(2)(iii)(D), paragraph (c)(3) and (d)(1) introductory text, (d)(2)(iii) introductory text through (d)(2)(iii)(D), and the last sentence of paragraph (j) to read as follows:

§ 1.954–3T Foreign personal holding company income (temporary).

(a)(1) through (c)(1) introductory text [Reserved]. For further guidance, see § 1.954–2(a)(1) through (c)(1) introductory text.

* * * * *

(c)(2)(iii) introductory text through (c)(2)(iii)(D) [Reserved]. For further guidance, see § 1.954–2(c)(2)(iii) introductory text through (c)(2)(iii)(D).

* * * * *

(c)(3) and (d)(1) introductory text [Reserved]. For further guidance, see § 1.954–2(c)(3) and (d)(1) introductory text.

* * * * *

(d)(2)(iii) introductory text through (d)(2)(iii)(D) [Reserved]. For further guidance, see § 1.954–2(d)(2)(iii) introductory text through (d)(2)(iii)(D).

* * * * *

(j) * * * See § 1.954–2(c)(1)(i), (c)(1)(iv), (c)(2)(ii), (c)(2)(iii), (d)(1)(i), (d)(1)(ii), (d)(2)(ii), and (d)(2)(iii), as contained in 26 CFR part 1 revised as of April 1, 2015, for rules applicable to rents or royalties, as applicable, received or accrued before September 1, 2015.

* * * * *

■ **Par. 3.** Section 1.956–1 is amended by revising paragraph (g) introductory text through (g)(3) to read as follows:

§ 1.956–1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

* * * * *

(g) introductory text through (g)(3) [Reserved]. For further guidance, see § 1.956–1T(g) introductory text through (g)(3).

* * * * *

■ **Par. 4.** Section 1.956–1T is amended by revising paragraph (b)(4)(ii), the third sentence of paragraph (b)(4)(iv) *Example 1.* (i), the first sentence of paragraph (b)(4)(iv) *Example 3.* (i), and paragraph (g)(1) to read as follows:

§ 1.956–1T Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property (temporary).

* * * * *

(b) * * *

(4) * * *

(ii) *Control.* For purposes of paragraphs (b)(4)(i)(B) and (C) of this section, a controlled foreign corporation controls a foreign corporation or partnership if the controlled foreign corporation and the other foreign corporation or partnership are related within the meaning of section 267(b) or section 707(b). For this purpose, in determining whether two corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned for the purposes of section 1563(e)(1), and stock owned with the application of section 267(c).

* * * * *

(iv) * * *

Example 1. (i) * * * FS2 has no earnings and profits, and FS1 has substantial accumulated earnings and profits. * * *

* * * * *

Example 3. (i) * * * FS1 has $100x of post-1986 undisturbed earnings and profits and $100x post-1986 foreign income taxes, but does not have any cash. * * *

* * * * *

(g) * * * (1) Paragraph (b)(4) of this section applies to taxable years of controlled foreign corporations ending on or after September 1, 2015, and to taxable years of United States shareholders in which or with which such taxable years end, with respect to property acquired on or after September 1, 2015. See paragraph (b)(4) of § 1.956–1T, as contained in 26 CFR part 1 revised as of April 1, 2015, for the rules applicable to taxable years of controlled foreign corporations ending before September 1, 2015, and property acquired before September 1, 2015. For purposes of this paragraph (g)(1), a deemed exchange of property pursuant to section 1001 on or after September 1, 2015, constitutes an acquisition of the property on or after that date.

* * * * *

Martin V. Franks,

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

[FR Doc. 2015–27603 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9733]

RIN 1545–BJ49

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9733) that were published in the **Federal Register** on September 2, 2015 (80 FR 52976). The temporary regulations are regarding the treatment as United States property of property held by a controlled foreign corporation in connection with certain transactions involving partnerships.

DATES: This correction is effective on October 29, 2015 and applicable beginning September 2, 2015.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins at (202) 317–6934 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9733) that are the subject of this correction are under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9733) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final and temporary regulations (TD 9733), that are the subject of FR Doc. 2015–21574, are corrected as follows:

1. On page 52977, in the preamble, the first column, under the paragraph heading ''Background'', the second line of the paragraph, the language ''to 26 CFR part 1 under of the Internal'' is corrected to read ''to 26 CFR part 1 under section 956 of the Internal''.

2. On page 52979, in the preamble, the second column, the first line of the column, the language ''the active development test in §§ 1.954–'' is corrected to read ''the active development test in § 1.954–''.

3. On page 52979, in the preamble, the second column, the twentieth line of the column, the language ''§§ 1.954–2T(c)(2)(iii)(E), (c)(2)(viii),'' is corrected to read ''§ 1.954–2T(c)(2)(iii)(E), (c)(2)(viii),''.

4. On page 52979, in the preamble, the second column, the twelfth line from the bottom of the column, the language ''that such rents or royalties that are'' is corrected to read that such rents or royalties are''.

Martin V. Franks,

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

[FR Doc. 2015–27604 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206 and 1210

[Docket No. ONRR–2015–0002; DS63610000 DR2PS0000.CH7000 156D0102R2]

Technical Conference

AGENCY: Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notification of technical conference.

SUMMARY: ONRR will convene a technical conference on November 20, 2015, to discuss two issues: (1) The appropriate boundary line between the North Fort Berthold and South Fort Berthold Designated Areas and adding additional counties to one or both of the two Designated Areas in the Uintah and Ouray Reservation.

Date And Address: ONRR will hold two sessions for the technical conference. The first session will be held in person on November 20, 2015, at 9:00 a.m. Mountain Time in Denver, Colorado. The location will be at the Office of Natural Resources Revenue, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado 80226.

The second session will be a teleconference on November 20, 2015, at 2:00 p.m. Mountain Time. To call into the second session please call 1–866–778–1299, and use participant code 5826518.

To RSVP for either one of these two sessions, please email Elizabeth Dawson at *lisa.dawson@onrr.gov* or call (303) 231–3653.

If you cannot participate in either session and would like to provide comments, please email us at *ONRRIndianOilRuleQuestions@onrr.gov* by November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dawson, ONRR, telephone (303) 231–3653, or email at *lisa.dawson@onrr.gov.*

SUPPLEMENTARY INFORMATION: Under the new Indian oil valuation amendments (80 FR 24794—May 1, 2015), ONRR uses designated areas to calculate index-based major portion prices for lessees to comply with the major portion provisions in their leases. Designated areas are those areas ONRR identifies as unique based on their location and crude type produced from Indian lands. When ONRR proposed the new Indian oil valuation amendments (79 FR 35102—June 19, 2014), we proposed sixteen initial Designated Areas. Generally, these Designated Areas were the Indian reservation boundaries. However, there are five Designated Areas that are not the reservation boundaries: Oklahoma; North Fort Berthold; South Fort Berthold; Uintah & Ouray: Uintah and Grand Counties; and Uintah and Ouray: Duschene County.

Under the new Indian Oil Valuation Amendments—and in order to modify or change an existing Designated Area—ONRR must convene a technical conference. *See 30 CFR 1206.51.* In implementing the rule, ONRR discovered two potential issues: (1) The preamble describes the dividing line between the North Fort Berthold Designated Area and the South Fort Berthold Designated Area as the ''Little Missouri River;'' at the technical conference, ONRR would like to discuss whether the Little Missouri River or the county lines that follow the Missouri River is the appropriate boundary between the North Fort Berthold and South Fort Berthold Designated Areas. (2) ONRR found at least one Indian lease that is in Wasatch County in the Uintah and Ouray Reservation. In addition, ONRR identified two other counties in the Uintah and Ouray Reservation that do not currently have Indian leases: Carbon and Emery Counties. However these Counties could have Indian leases in the future. Because the current designated areas list only includes Uintah, Duchesne, and Grand Counties on the Uintah and Ouray Reservation, ONRR would like to discuss adding Wasatch County to the Uintah and Ouray—Duchesne County Designated Area. ONRR would also like to discuss whether to include Carbon and Emery Counties in either the Uintah and Ouray—Uintah and Grand Counties or Uintah and Ouray—Duchesne County Designated Areas.

ONRR will not consider or discuss other issues associated with these or other designated areas at the technical conference.

We encourage stakeholders and members of the public to participate in one of the two conference sessions. The conference sessions will be open to the public without advance registration. However, attendance may be limited to the space available. Each attendee will be required to present a valid picture ID in order to gain entry into the Denver Federal Center and Building 85.

Dated: October 14, 2015.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2015–27250 Filed 10–28–15; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS–KLGO–19374; PPAKKLGOL0, PPMPRLE1Z.L00000]

RIN 1024–AE27

Special Regulations, Areas of the National Park System, Klondike Gold Rush National Historical Park, Horse Management

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service is revising the special regulations for Klondike Gold Rush National Historical Park to close the core Dyea Historic Townsite to the use of horses except by special use permit issued by the superintendent.

DATES: This rule is effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644–3410. Email: *AKR_Regulations@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background and Significance of Klondike Gold Rush National Historical Park

Klondike Gold Rush National Historical Park (KLGO or park) was established in 1976. The park includes 13,191 acres and is the only NPS area authorized and established solely to commemorate an American gold rush. The purpose of the park is to preserve for the benefit and inspiration of the people of the United States, the historic structures, trails, artifacts and landscapes and stories associated with the Klondike Gold Rush of 1898.

Part of the park is the Dyea Historic Townsite, which served as the gateway community to the Chilkoot Trail. At the time of the Gold Rush, approximately 10,000 people lived in Dyea. Dyea is rich in surface artifacts and other remnants from the Klondike Gold Rush of 1898. Horses were a very important and visible component of the 1898 Klondike Gold Rush and the Dyea Historic Townsite from 1897 and for several decades afterward. Thousands of unique and irreplaceable cultural landscape features and artifacts remain within and above the top layers of soil, and as such are highly susceptible to damage from ground disturbance, including disturbance caused by unregulated horseback traffic.

Authority To Promulgate Regulations

The National Park Service (NPS) manages KLGO under a statute commonly known as the NPS Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through NPS, to ‘‘prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.’’ 54 U.S.C. 100751(a).

Management of the park is also governed by the Alaska National Interest Lands Conservation Act (ANILCA). Horses at KLGO are a form of non-motorized surface transportation for traditional activities which is subject to Section 1110(a) of ANILCA. Under this section of ANILCA, such use is subject to reasonable regulations to protect the natural and other values of KLGO. Under the Department's regulations implementing this statutory provision at 43 CFR 36.11(h), NPS may permanently close an area to this form of transportation by regulation upon a finding by the NPS that the activity would be detrimental to the resource values of the area. Based upon the analysis in the Dyea Area Plan and Environmental Assessment (EA) and the associated Finding of No Significant Impact (FONSI), NPS finds that unregulated horse traffic in the Dyea Historic Townsite would be detrimental to the resource values of the area, namely the thousands of unique and irreplaceable cultural landscape features and artifacts that remain within and above the top layers of soil in the area.

Dyea Area Plan and Environmental Assessment and Final Rule

In January 2014, the NPS completed the EA after providing an opportunity for public comment. The proposed action in the EA calls for eliminating horse traffic from the Dyea Historic Townsite except for limited and infrequent use on an established route by private, non-commercial parties pursuant to a special use permit issued by the superintendent. In March 2014, the NPS held a public hearing in Skagway, AK for the proposed restrictions on horse use in the Dyea Historic Townsite in compliance with regulations at 43 CFR 36.11(h)(3). In September 2014, the Regional Director for the Alaska Region signed the FONSI identifying the proposed action in the EA as the selected action. The rule implements the selected action by closing the Dyea Historic Townsite to the use of horses except under a special use permit issued by the superintendent under 36 CFR 1.6 (Permits), the provisions of which apply to the permits issued by the superintendent. If, after observation, the superintendent determines that the desired condition, as defined in the EA, has deteriorated, the superintendent may include permit conditions to protect natural and cultural resources and, if necessary, cease issuing permits until impacts from prior uses of horses are mitigated. The superintendent may also adopt permit conditions to limit impacts from the use of horses on other user experiences.

The closure area is a small 80 acre parcel encompassing the core Dyea Historic Townsite. Alternate routes have already been designated for commercial horse use outside the core Dyea Historic Townsite and noncommercial horse use will continue to be unrestricted outside the Historic Townsite.

Summary of Public Comments

The NPS published the proposed rule at 80 FR 39988 (July 13, 2015). The NPS accepted comments through the mail, hand delivery, and through the Federal eRulemaking Portal at *http://www.regulations.gov.* The comment period was open through September 11, 2015. The NPS did not receive any comments on the proposed rule. The NPS did not make any substantive changes to the proposed rule, although the final rule clarifies that the superintendent will issue permits under 36 CFR 1.6.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 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 executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 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.

Regulatory Flexibility Act

This rule 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.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the reports entitled ‘‘Regulatory Flexibility Threshold

Analysis: Special Regulations for Klondike Gold Rush National Historical Park'' and ''Preliminary Cost/Benefit Analysis: Special Regulations for Klondike Gold Rush National Historical Park in Alaska which can be viewed online at *http://www.nps.gov/klgo/learn/management/documents.htm.*

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. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions

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

Unfunded Mandates Reform Act

This 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 therefore not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The rule is limited in effect to federal lands managed by the NPS in Alaska and will not have a substantial direct effect on state and local government in Alaska. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

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

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

Consultation With Indian tribes (E.O. 13175 and Department Policy) and ANCSA Corporations.

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and Alaska Native Claims Settlement Act (ANCSA) Corporations policy and have determined that tribal consultation is not required because the rulemaking will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources. Nevertheless, the NPS sent copies of the draft plan and letters requesting government-to-government consultation to four nearby Native tribal governments, one of which is the Carcross/Tagish First Nations tribe in Carcross, Canada. Several meetings were held between 2012 and 2013 with tribal governments in Skagway and Haines to discuss key components of the Dyea Area Plan and EA that were of interest to the local federally recognized tribes.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024–0026 (expires 08/31/16). 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.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact. The EA and FONSI are available online at *http://www.nps.gov/klgo/learn/management/documents.htm.*

Effects on the Energy Supply (Executive Order 13211)

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

Drafting Information

The primary authors of this regulation are Jay Calhoun, Regulations Program Specialist, National Park Service, Jenna Giddens of Kenai Fjords National Park, Andee Sears of the Alaska Regional Office, National Park Service, and Tim Steidel of Klondike Gold Rush National Historical Park.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

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

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

■ 2. Add § 13.1408 to subpart Q to read as follows:

§ 13.1408 Dyea.

The Dyea Historic Townsite is closed to the use of horses by members of the public except by special use permit issued by the Superintendent under § 1.6 of this chapter. A map showing the boundaries of the Dyea Historic Townsite is available on the park Web site and at the park visitor center.

Dated: October 21, 2015.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–27522 Filed 10–28–15; 8:45 am]

BILLING CODE 4310–EJ–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AP24

Expanded Access to Non-VA Care Through the Veterans Choice Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations implementing section 101 of the Veterans Access, Choice, and Accountability Act of 2014, which directed VA to establish a program to furnish hospital care and medical services through eligible non-VA health care providers to eligible veterans who either cannot be seen within the wait-time goals of the Veterans Health Administration or who qualify based on their place of residence (hereafter referred to as the ''Veterans Choice Program'', or the ''Program''). VA published an interim final rule implementing the Veterans Choice Program on November 5, 2014, and published a subsequent interim final rule making further amendments on April 24, 2015. This final rule responds to public comments received from both interim final rules and amends the regulations to modify payment rates under the Program.

DATES: *Effective Date:* This rule is effective on October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 382–2508. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 7, 2014, the President signed into law the Veterans Access, Choice, and Accountability Act of 2014 (''the Act,'' Pub. L. 113–146, 128 Stat. 1754). Further technical revisions to the Act were made on September 26, 2014, when the President signed into law the Department of Veterans Affairs Expiring Authorities Act of 2014 (Pub. L. 113–175, 128 Stat. 1901, 1906), on December 16, 2014, when the President signed into law the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, 128 Stat. 2130, 2568), on May 22, 2015, when the President signed into law the Construction Authorization and Choice Improvement Act (Pub. L. 114–19, 129 Stat. 215), and on July 31, 2015, when the President signed into law the Surface Transportation and Veterans Health Care Choice Improvement Act (Pub. L. 114–41, 129 Stat. 443). Section 101 of the Act creates the Veterans Choice Program and requires the Secretary to enter into agreements with identified eligible non-Department of Veterans Affairs (VA) entities or providers to furnish hospital care and medical services to eligible veterans who elect to receive care under the Program. Sec. 101(a)(1)(A), Public Law 113–146, 128 Stat. 1754. Congress directed VA to publish interim final regulations concerning this Program within 90 days of enactment. Sec. 101(n), Public Law 113–146, 128 Stat. 1754. On November 5, 2014, VA published an interim final rulemaking implementing the Program by creating new regulations at 38 CFR 17.1500–17.1540. 79 FR 65571 (hereinafter referred to as ''the November interim final rule''). VA published another interim final rulemaking on April 24, 2015, modifying § 17.1510(e) to revise the methodology for calculating distances under that section from geodesic (or ''straight-line'') distance to the actual driving distance. 80 FR 22906 (hereinafter referred to as ''the April interim final rule'').

In response to the November interim final rule, VA received 39 comments, and in response to the April interim final rule, VA received 12 comments. Several commenters expressed support for the Program, in whole or in part, and we appreciate their support. This final rule amends 38 CFR part 17 as discussed below.

VA Copayments

The November interim final rule modified 38 CFR 17.108, 17.110, and 17.111 to establish a VA copayment of $0 at the time of service for veterans receiving non-VA care under the Program who would have been required to make a copayment for the receipt of hospital care or medical services at a VA medical facility. We received several comments recommending that VA require veterans to make their VA copayment at the time services are rendered.

As we explained in detail in the November interim final rule, there are administrative difficulties in determining the proper copayment amount for a visit scheduled through the Program that make it inefficient to attempt to charge a copayment amount at the time of visit. In addition, not charging a copayment at the time of the visit was intended to ensure that veterans' experiences under the Program would be as similar as possible to their experiences when provided with non-VA care through other VA programs, where copayments are not due at the time of appointment. These reasons have not changed since November. Therefore, in the interests of administrative efficiency and to avoid the appearance of inconsistency between non-VA care provided through the Program and under other authorities, we are not making a change as a result of these comments.

Duration and Scope of the Program

The Program is funded with $10 billion in appropriated resources in the Veterans Choice Fund through section 802 of the Act. The Program is authorized to continue until the date the Veterans Choice Fund is exhausted or August 7, 2017, whichever occurs first. Sec. 101(p), Public Law 113–146, 128 Stat. 1754. One commenter asked what happens when the Program ends. Section 101 of the Act only authorizes the Program to operate within the parameters described above, so when VA has exhausted the Veterans Choice Fund or on August 7, 2017 (whichever occurs first), the Program will end absent further appropriations, if funds are exhausted, or statutory authority. VA will still be able to refer veterans to community providers under other non-VA care authorities, but such referrals will be subject to the provisions of those statutes and contingent upon the availability of resources. VA is not making a change based on this comment.

VA received several comments suggesting that non-VA providers under the Program should be able to make referrals back to VA for specific care, services, or tests. The Act authorizes VA to furnish hospital care and medical services for eligible veterans through agreements with eligible entities, including any health care provider participating in the Medicare program, any Federally-qualified health center, the Department of Defense, and the Indian Health Service. Sec. 101(a)(1), Public Law 113–146, 128 Stat. 1754. As we explained in the November interim final rule, the Act specifically envisions that care under the Program is provided by non-VA resources, as demonstrated by section 101(a)(3) of the Act, which requires VA to coordinate through the Non-VA Care Coordination Program the furnishing of care and services under this Program. For these reasons, we are not making any changes to the rule as a result of this comment. However, we note that veterans who receive non-VA care through the Program are still in the VA health care system, and can at any time return to VA for care. A veteran's election to participate in the Program does not foreclose returning to VA for care.

We received comments indicating that the Program should be used to provide unscheduled or emergency care, particularly under extraordinarily dangerous circumstances. We note that under the contract VA has signed with the vendors administering the Program, VA will cover the cost of emergency care in limited circumstances, namely when the vendor notifies VA within 72 hours of the veteran presenting to an emergency department for care. We believe this is consistent with the position taken in the November interim final rule, as VA can currently furnish emergency services under 38 CFR 17.54. This regulation permits VA to consider emergency care pre-authorized when VA is notified within 72 hours of admission to an emergency care facility. 38 CFR 17.54(a)(1). For veterans residing in Alaska, Hawaii, and the U.S. territories other than Puerto Rico, if there are no means of communicating with VA at the time of admission, the 72 hour period begins when such means of communication become available. 38 CFR 17.54(a)(2). We are not making a change based on these comments.

VA received comments that the Program was implemented too quickly, that staff were not adequately trained, and that there are operational issues that need to be resolved. The Act directed VA to begin the Program and publish implementing regulations within 90 days of enactment (August 7, 2014). Sec. 101(n), Public Law 113–146, 128 Stat. 1754. We continue to refine the Program and improve the quality of services we offer through the Program, but we are not making any changes to the rule as a result of this comment.

VA received a comment stating that we should not have sent Choice Cards to veterans who are not eligible to participate in the Program. While this comment is somewhat outside the scope of this rulemaking, which did not address the distribution of Choice Cards because it was not necessary to do so to establish the Program, VA was directed by law to send a Choice Card to every enrolled veteran and every separating servicemember. Sec. 101(f), Public Law 113–146, 128 Stat. 1754. Additionally, just because a veteran was not eligible at the time he or she received the Choice Card does not mean the veteran would never be eligible to participate in the Program. For example, if the veteran was unable to schedule an appointment within the wait-time goals of the Veterans Health Administration, he or she would be eligible under § 17.1510(b)(1), or if the veteran moved to a new residence that qualified him or her under § 17.1510(b)(2)–(4), the veteran could be eligible as well. VA is not making a change to the rule as a result of this comment.

Definition of Episode of Care

VA received several comments recommending we adopt different definitions for terms in the rule. Some commenters recommended that VA authorize an episode of care for a period beyond 60 days. As we explained in the November interim final rule, section 101(h) of the Act at that time stated that VA must ensure that an eligible veteran receives hospital care or medical services, including follow up care, ''for a period not exceeding 60 days.'' Based on this provision of law, we defined the term ''episode of care'' to mean a necessary course of treatment, including follow-up appointments and ancillary and specialty services, that lasts no longer than 60 days from the date of the first appointment with a non-VA health care provider under the Program. Since the close of the comment periods for both the November 2014 and April 2015 interim final rules, section 4005(a) of Public Law 114–41 amended section 101(h) of the Choice Act by removing the 60-day limitation on an ''episode of care.'' Sec. 4005(a), Public Law 114–41, 129 Stat. 443. As a result of this amendment to the Choice Act, VA will be publishing a separate rulemaking announcing the removal of the 60-day limitation.

Section 17.1510 Eligible Veterans

We received a number of comments regarding the eligibility criteria for the Program. At the time that the comment periods for both the November and April interim final rules closed, to be eligible to participate in the Program, the veteran must have enrolled in the VA health care system under 38 CFR 17.36 on or before August 1, 2014, or the veteran must have been eligible for hospital care and medical services under 38 U.S.C. 1710(e)(1)(D) and be a veteran described in 38 U.S.C. 1710(e)(3), and the veteran must also have then met at least one of the criteria described in § 17.1510(b). These criteria can be summarized broadly as follows: Wait-time eligibility; eligibility based on distance from a VA medical facility; and travel burden eligibility. Since the close of the comment periods for both the November and April interim final rules, section 4005(b) of Public Law 114–41 amended section 101(b)(1)(A) of the Choice Act to cover all enrolled veterans. Sec. 4005(b), Public Law 114–41, 129 Stat. 443. As a result of this amendment to the Choice Act, VA will be publishing a separate rulemaking announcing this expanded eligibility. We will now address the comments received on the other eligibility factors described in § 17.1510(b).

Wait-Time Eligibility

Under § 17.1510(b)(1), a veteran is eligible if the veteran attempts, or has attempted, to schedule an appointment with a VA health care provider, but VA has been unable to schedule an appointment for the veteran within the wait-time goals of the Veterans Health Administration (VHA). VA received comments that the rule does not describe what is or is not a reasonable amount of time, or who decides whether such a period of time is reasonable; however, the wait-time determination is set forth clearly in § 17.1510(b)(1), which defines the wait-time eligibility criterion as meaning that VA is unable to schedule an appointment within 30 days after the date that the appointment was deemed clinically necessary by a VA health care provider, or, if no such clinical determination has been made, the date that a veteran prefers to be seen by a health care provider capable of furnishing the hospital care or medical services required by the veteran. At the time that the November interim final rule published, this was consistent with the requirements in the Act at section 101(b)(2)(A). Since the close of the comment periods for both the November and April interim final rules, section 4005(d) of Public Law 114–41 amended section 101(b)(2)(A) of the Choice Act to create eligibility for veterans that are unable to be scheduled for an appointment within, ''with respect to such care or services that are clinically necessary, the period determined necessary for such care or services if such period is shorter than'' VHA's wait-time goals. Sec. 4005(d), Public Law 114–41, 129 Stat. 443. This new criterion creates eligibility when VA clinically determines that a veteran requires care within a period of time that is shorter than 30 days from the date an appointment is deemed clinically necessary by a VA health care provider, or shorter than 30 days from the date that a veteran prefers to be seen. As a result of this amendment to the Choice Act, VA will be publishing a separate rulemaking announcing this additional eligibility criterion. We continue to address other comments related to wait times below.

A commenter suggested that the term ''wait-time goals of the Veterans Health Administration'' should provide greater flexibility, as there are some times when a patient cannot wait 30 days for an appointment. VA agrees with this commenter that some care is urgent and should be furnished as soon as possible, or at least sooner than 30 days from the veteran's preferred date. We will make changes to the regulation to address the new wait-time criterion that is shorter than 30 days in the Choice Act as amended in a separate rulemaking. To address this comment more generally, the Program and its underlying authorities were established specifically to address situations in which veterans could not get scheduled appointments in a timely manner. As noted above, the Program is not designed to take the place of VA's existing authority to provide emergent care through non-VA providers—such care, and other non-VA care, is available under other authorities than the Act. In short, our goal is to furnish timely care to all veterans, whether within a VA medical facility or through a non-VA provider, and Choice is not the only mechanism available to furnish this care. If a veteran requires care sooner and VA is unable to furnish this care, while the veteran would not be eligible for the Program, VA may and does use another statutory authority to furnish non-VA care.

We also received a comment recommending that VA streamline the eligibility process for veterans who qualify under the wait-time criterion. The commenter stated that there can be up to a 72-hour delay before a veteran is added to the Veterans Choice List, the record system VA uses to identify veterans who are eligible for the Program. The commenter further stated that there can be a 2–3 day delay between placement on the Veterans Choice List and when the vendors administering the program are able to verify the veteran's eligibility. The commenter expressed concern that these administrative steps are delaying care for veterans. While this comment is outside the scope of the rulemaking, which only needs to define the eligibility criteria and not the specific procedures VA follows to execute the Program, we are working to streamline eligibility determinations and have learned a great deal about how to operate the Program more effectively during the first several months of operation. For example, VA is now sending the updated Veterans Choice List to the vendors administering the Program on a daily basis. The list includes all veterans who are eligible based on the wait time criterion as well as those veterans who elect to be placed on an electronic waiting list to receive services from VA. We are not making a change as a result of this comment.

Eligibility Based on Distance From a VA Medical Facility

Under § 17.1510(b)(2), a veteran is eligible if the veteran resides more than 40 miles from the VA medical facility that is closest to the veteran's residence. This standard considers the distance between a veteran's residence, as defined in § 17.1505, and any VA medical facility, even if that facility cannot provide the care that the veteran requires. We received several comments suggesting that the 40 mile criterion in general should be removed or eased so that more veterans can participate in the Program. In April, VA published an interim final rule modifying this standard in accordance with the comments we received, to change the methodology for calculating distances from geodesic (or ''straight-line'') distance to driving distance. 80 FR 22906. In response to the interim final rule published in April changing this methodology, VA received 12 comments. Many of these comments supported this change. Several commenters raised issues beyond the scope of that rulemaking but in response to the larger Program. For example, some comments noted that traffic conditions or the veteran's health make even a 40 mile driving distance too much for some veterans to bear. We understand this concern and believe that the discussion later in this final rule related to the ''excessive or unusual burden on travel'' standard under § 17.1510(b)(4) may help address these concerns. VA is not making a change to the driving distance provision as a result of these comments.

The April interim final rule greatly expanded veteran eligibility based on this criterion, representing liberalization similar to what had been suggested by many commenters. However, to the extent that commenters believe that 40-miles driving distance is still an unreasonable calculation, we do not believe that the Act gives us authority to depart from that standard.

VA received a large number of comments recommending that VA measure distance from the closest VA medical facility that can provide the care a veteran needs. As we explained in detail in the November interim final rule, the plain language of the Act refers only to ''the medical facility of the Department that is closest to the residence of the veteran,'' without allowing VA to consider whether the facility can actually provide the care needed by the veteran. Sec. 101(b)(2)(B), Public Law 113–146, 128 Stat. 1754. Additionally, the Conference Report accompanying the legislation states that veterans are eligible if they live ''within 40 miles of a medical facility,'' again without regard to such facility's ability to provide the required care. H. Rpt. 113–564, p. 55. The use of the general article ''a'' demonstrates that Congress intended for this to refer to any facility, rather than to a specific facility. The Act also specifically included community-based outpatient clinics (CBOC) among VA medical facilities, and Congress was aware that CBOCs offer a more limited set of services than VA medical centers and hospitals. We do not believe we have authority under the Act to modify this standard, and as a result, we are not making a change in response to these comments.

VA also received a comment recommending that we modify the definition of ''VA medical facility'' to exclude health care centers. We defined the term ''VA medical facility'' to mean a VA hospital, a VA community-based outpatient clinic (CBOC), or a VA health care center. ''VA health care center'' is a term we use to describe a facility that offers services between what is available at a CBOC and a VA hospital. The phrase ''medical facility of the Department,'' as used in the Act in section 101(b)(2)(B) and elsewhere, specifically includes CBOCs, so we conclude that any facility that offers more services than those available at a CBOC should be included within the definition of a VA medical facility. As a result, we are not making a change based on this comment.

Under § 17.1510(b)(3), a veteran is eligible if the veteran's residence is in a state without a full-service VA medical facility and the veteran lives more than 20 miles from such a facility. A full-service VA medical facility is one that provides—on its own and not through a joint venture—hospital care, emergency medical services, and surgical care having a surgical complexity of standard. VA received one comment about the applicability of this provision to veterans residing in New Hampshire. The commenter stated that veterans living in New Hampshire near the Manchester VA Medical Center were not eligible to participate in the Program based on their proximity to this facility. That reading of the law and regulations is incorrect and does not reflect VA's practice in implementing the Program. Section 101(b)(2)(C) of the Act, and § 17.1510(b)(3) of the regulations, state that a veteran may be eligible if he or she resides in a State without a full-service VA medical facility and lives more than 20 miles from such a facility. The Manchester VA Medical Center is not a full-service VA medical facility because it does not have a surgical complexity of standard, and because no other facility in New Hampshire has such a designation, veterans in New Hampshire may be eligible if they reside more than 20 miles from a full-service VA medical facility. The only full-service VA medical facility within 20 miles of New Hampshire's borders is the White River Junction VA Medical Center in Vermont. Veterans residing in New Hampshire and within 20 miles of this facility are not eligible to participate in the Program under the § 17.1510(b)(3) criterion, but all other veterans in New Hampshire are eligible to participate based on this criterion. The Manchester, NH area is more than 20 miles from White River Junction, VT. Therefore, as long as a veteran residing in Manchester meets the initial eligibility criteria in § 17.1510(a), he or she will be eligible to participate in the Program. VA is not making any changes to the rule as a result of this comment.

One commenter asked what system VA will use, and how VA will ensure that it is properly measuring distances from newly constructed housing. VA uses the Esri Geographic Information System to identify locations for purposes of determining mileage under the Program. In the vast majority of situations, VA is able to locate a new address. In those cases where VA is unable to locate the new address, our staff work with the veteran to correct the issue.

On May 22, 2015, the Construction Authorization and Choice Improvement Act was signed into law (Pub. L. 114–19); section 3(a)(1) of this law amended section 101(b)(2)(B) of the Act to clarify that the 40 miles is to be ''calculated based on distance traveled''. VA is interpreting this revision as support for the use of driving distance, which reflects the distance traveled, rather than the straight-line or geodesic distance standard VA previously adopted. VA is not making a further change to § 17.1510(e) as a result of the statutory revision enacted in Public Law 114–19.

Eligibility Based on Burden in Traveling

Under the November interim final rule, § 17.1510(b)(4), a veteran may be eligible if she or he lives 40 miles or less from a VA medical facility but faces an unusual or excessive burden in traveling to such medical facility based on the presence of a body of water or a geologic formation that cannot be crossed by road. We received several comments recommending that this standard be loosened to provide greater flexibility to allow veterans to participate in the Program. The commenters did not recommend a specific alternative interpretation, but on May 22, 2015, the Construction Authorization and Choice Improvement Act was signed into law modifying this standard. Public Law 114–19. Specifically, section 3(a)(2) of Public Law 114–19 revised section 101(b)(2)(D)(ii) of the Act by changing the standards that could be the basis for an unusual or excessive burden. Specifically, the Act now allows VA to determine that there is an unusual or excessive burden in traveling to a VA medical facility based on geographical challenges; environmental factors, such as roads that are not accessible to the general public, traffic, or hazardous weather; a medical condition that impacts the ability to travel; or other factors, as determined by the Secretary. We appreciate Congress' assistance with modifying this provision of law and allowing VA to consider other factors that may create a burden on veterans traveling to a VA medical facility. As a result of the change in law, VA will be publishing a separate rulemaking announcing the criteria VA will use to determine veteran eligibility based on this new law.

Section 17.1515 Authorizing Non-VA Care

Section 17.1515 describes the process and requirements for authorizing non-VA care under the Program. We received several comments on different aspects of the authorization process. Although some of these comments addressed issues beyond the immediate scope of the November interim final rule, VA is responding to the comments here nonetheless.

First, we received a comment asking why a patient would be required to travel to a different VA facility farther from home, when seeking advanced authorization would not have been reasonable, sound, wise, or practicable. The commenter cited to VA's regulations at 38 CFR 17.120(c), which uses some of this terminology. That regulation, however, deals with reimbursing veterans for emergency treatment when Federal facilities are unavailable. As explained in the interim final rule published in November, the Program generally does not cover emergency care, which is covered instead by other statutes and regulations. Any veteran requiring emergency care should not contact VA to use the Program but should seek such emergency services as are necessary. Furthermore, under the Program, VA would not require a veteran to travel to another VA facility; a veteran's eligibility is determined based upon the veteran's residence or whether the veteran can be seen by VA within the wait-time goals of the Veterans Health Administration. VA is not making a change to its regulations based on this comment.

Another comment stated that requiring advanced authorization may prevent veterans from receiving timely care. VA also received several comments that non-VA providers should be able to be reimbursed for care furnished for conditions present that were not identified during the initial authorization. The Act requires VA to furnish hospital care and medical services through the completion of the episode of care deemed necessary as part of the recommended treatment. Sec. 101(h), Public Law 113–146, 128 Stat. 1754. If a non-VA health care provider believes that a veteran needs additional care outside the scope of the authorized course of treatment, the health care provider must contact VA prior to administering such care to ensure that this care is authorized. There is no indication in the law that it was intended to authorize unscheduled or unauthorized non-VA care. Indeed, the preauthorization requirement is important to ensure that VA is not subject to an open ended commitment, and so that veterans are not subjected to unnecessary procedures and tests but only receive care that is necessary. VA is not making a change based on these comments.

Several commenters recommended that VA simplify and standardize the authorization and claims processes in order to reduce the administrative burdens on participating eligible providers. VA also received a comment stating that VA should reduce or eliminate the preauthorization requirement for treatment from approved non-VA providers who have an established record of effective and efficient care within the Program. The Program's regulations do not identify any requirement for providers beyond what is included in the Act, and the authorization of care is also required for the reasons stated above. We believe that continued experience with the Program will help VA and eligible, participating providers streamline this process to facilitate faster access to care. We are not making a change to the rule as a result of these comments.

VA also received comments offering recommendations for a simpler method for authorizing care. For example, some comments stated that there should be a unique call-in number for providers, and that VA and the vendors administering the Program should have a better records system so that a veteran does not have to provide the same information multiple times. Most of these comments are beyond the scope of the rulemaking because they deal with purely administrative or operational issues, like the use of a dedicated phone line for providers or recordkeeping, which are not mandated by regulation. We appreciate this feedback and will consider it as part of our ongoing effort to more efficiently execute the Program. One goal of VA and the vendors administering the Program is to record information accurately so that others can have access to the same information, and as we have more experience with the Program, we are improving the customer service experience as well. We are not making a change to the rule as a result of these comments because these matters are not covered by regulation, nor is it necessary to address them through regulation.

Commenters also suggested that authorizations or contracts should be retroactive to the date of an eligible request because this would result in fewer non-health-center providers refusing to care for unauthorized veterans, and fewer uncompensated care costs for health centers. It is unclear how this change would produce that result. Moreover, VA is concerned that imposing a retroactive date could create confusion as to when the 60 day authorization period begins, and in such a case, a retroactive date would limit a veteran's ability to receive care. Consequently, VA is not making a change to the rule.

Several comments stated that veterans and providers should be notified if care will not be continued past 60 days and that authorizations for care for patients with chronic conditions should cover emergency primary care needs. As we stated in the November interim final rule, we will be working with providers and veterans to notify them in advance if the 60 day authorization period is coming to an end, particularly if such care will not be re-authorized because the veteran or provider is no longer eligible to participate in the Program. For patients with chronic conditions, VA may authorize care to address related issues that could develop, such as respiratory infections or other complications, if VA has a basis to determine that this care is necessary. For veterans who have never been seen by a VA health care provider, such a determination would be more difficult because we would not know the type of treatment a veteran has previously received, what other conditions the veteran may have, or the medications the veteran is taking. Another comment suggested that veterans should be able to make their own appointments once care has been authorized. In our experience, many veterans prefer to have VA schedule their appointments, but a veteran may opt to schedule his or her own appointment once care has been authorized. We do require through the contract with the vendors administering the program, though, that such vendors request that the veteran provide information about the appointment and the vendors then report this information to VA so we can ensure that appointments are timely. VA is not making a change based on these comments.

Some commenters asserted that requiring authorization for each and every treatment is time consuming and does not produce any benefits, and that VA should find ways to facilitate quicker appointments. As we explained in the November interim final rule, VA has an obligation to ensure that care furnished under the Program is necessary, and we will continue to abide by this requirement. However, VA can issue a broad authorization in some circumstances for care that is determined at the outset to likely be necessary. For example, if we know that a patient is being treated for a condition that has several common comorbidities, or if we know that a treatment approach that will be administered has common side effects or complications, we could authorize treatment for these services in advance to include ancillary or specialty services. We are not making a change to the rule based on these comments.

We received several comments raising additional issues concerning authorizations for care. The comments stated that it was sometimes unclear which services were being authorized and who is making the determination, and asked VA to explain what criteria VA is using to determine what care is necessary. The authorization the eligible provider receives from VA should clearly identify what services are covered—if the provider is unsure, he or she should contact VA to ensure that only those services covered by the authorization are performed. The commenter also suggested VA provide more details on the authorization process, including timeframes for authorizations. These timelines and other operational details are case-specific, and as such, VA does not believe they can or should be placed in regulation. If providers have any questions about the process or a specific authorization, they should feel free to contact VA for clarification. We are not making changes to the regulations based on these comments because they concern administrative matters beyond the scope of the regulations.

Finally, one commenter suggested that veterans should not have to contact the vendors administering the Program to verify their eligibility prior to care being authorized. This is not an express requirement in the regulation, and as such is outside the scope of this rulemaking. As a result, we are not making a change based on this comment. However, as a practical matter, VA believes the step of the veteran contacting the vendors administering the Program is important to ensure that necessary care is authorized for the right veteran with the right provider.

Section 17.1530 Eligible Entities and Providers

Section 17.1530 defines requirements for non-VA entities and health care providers to be eligible to be reimbursed for furnishing hospital care and medical services to eligible veterans under the Program. VA received a number of comments on this section.

VA received several comments recommending that other entities, such as rural health clinics, community health centers, women's health centers, essential community providers, and Medicaid providers, be included among eligible entities. At the time that the comment periods for both the November and April interim final rules closed, section 101(a)(1)(B) of the Act identified only four categories of eligible entities or providers: any health care provider that is participating in the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*), including any physician furnishing services under such program; any Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)); the Department of Defense; or the Indian Health Service. Since the close of the comment periods for both the November and April interim final rules, section 4005(c) of Public Law 114–41 amended sections 101(a)(1)(B) and 101(d) of the Act to permit VA to expand provider eligibility beyond those providers expressly listed in section 101(a)(1)(B) of the Act, in accordance with eligibility criteria as established by VA. Sec. 4005(c), Public Law 114–41, 129 Stat. 443. As a result of this amendment to the Act, VA will be publishing a separate rulemaking announcing the additional eligible providers. We will now address other comments related to eligible entities and providers.

One commenter recommended that VA publish a list of eligible providers under the Program on a Web site to help veterans elect to receive care closer to home. This is an administrative recommendation outside the scope of the rulemaking, but we do note that VA maintains a list of all eligible providers that can be found on the Choice Program Web site at *www.va.gov/opa/choiceact/*. VA updates this list regularly to ensure accuracy of information. Veterans also can request a specific provider that is not on the list but meets the eligibility criteria under this section and who is willing to enter into an agreement with VA. VA is not making a change to the rule as a result of this comment.

Under § 17.1530(b), an entity or provider must enter into an agreement with VA to provide non-VA hospital care or medical services under the Program. VA received several comments on the process for entering into agreements. Several comments suggested that local facilities should be able to enter into contracts to provide services through the Program. The rulemaking is silent on this point, and we do not believe the regulation needs to be specific on this issue. Nothing in the regulations governing the program would prevent a local VA facility from entering into a contract with a local provider, although the Program is presently administered only under national contracts. If VA determines that the national contracts cannot provide all of the care needed and available in the Program, VA can use the provider agreement authority established by the Act to obtain the needed care. We note that VA has not yet implemented this provider agreement authority, but is developing a provider agreement template that can be used by local facilities. VA therefore is not making a change as a result of these comments.

Several comments also stated that existing agreements, including agreements with Tribal and urban health programs among others, should be used to furnish care. Existing contracts and agreements with eligible providers can be used to furnish care, and VA is promoting their use, particularly prior to the implementation of the provider agreement authority established by the Act. VA is not making a change as a result of these comments.

Under § 17.1530(d), a non-VA provider must maintain at least the same or similar credentials and licenses as required by VA of its own providers. We received several comments on this provision. We received comments that the process for submitting and reviewing credentials and privileging information should not be overly burdensome. Administratively, we have tried to make this process as simple as possible, while still adhering to the requirements of the Act in section 101(i), by making the credentialing and privileging process part of the provider's approval process with the vendors administering the program. The regulations do not address the system for this specifically, and we do not think such detail is needed in case we need to modify the system at a later time. We are not making a change to the rule as a result of these comments.

We also received a recommendation to broaden the language about credentialing and licensing to ensure qualified non-physician practitioners qualify to participate in the Program. Another commenter suggested that VA include osteopathic and allopathic credentials for physicians. VA is limited by section 101(i) of the Act to accepting non-VA providers who meet the same or similar standards as VA providers; to the extent non-physician practitioners or physicians with osteopathic or allopathic credentials in VA could perform functions or procedures, those in the community could do so as well under the Program if they have the same qualifications. VA is not making a change to the rule based on these comments.

Although not addressed in the regulation, VA stated in the November interim final rule notice that eligible entities and providers furnishing hospital care and medical services to eligible veterans through the Program, to the extent possible, should submit medical records back to VA in an electronic format. The agreements VA reaches with eligible entities and providers clarify this requirement. We received several comments on the exchange of information under the Program, which are outside the scope of the rulemaking but will be addressed here nonetheless. Several commenters suggested that VA should ensure that participating providers have timely access to the necessary patient information to help them make informed clinical decisions regarding treatment. VA's Non-VA Care Coordination (NVCC) program is intended to help facilitate care by sharing information, to the extent authorized by law and regulation, with non-VA providers prior to a patient's appointment. However, some veterans who have never received health care from VA are eligible to participate in the Program, and for these veterans, VA cannot furnish information in advance of an appointment. We are working to standardize the transmission of information, both to and from VA, to improve the delivery of health care for veterans receiving treatment in VA and the community. Other comments suggested that electronic submission of medical records back to VA should be streamlined and simple so that providers do not have to struggle to comply with this requirement. VA has set up a secure Web site where providers can submit this information, and we believe it is simple and easy to use. VA is not making a change to the rule as a result of these comments.

Section 17.1535 Payment Rates and Methodologies

Section 17.1535 addresses payment rates and payment methodologies. VA received a number of comments on this section.

Several commenters stated that VA should be paying Medicare rates under the Program. Section 17.1535(a)(1) establishes the payment rule that most reimbursement rates under the Program will not exceed the Medicare rate, consistent with section 101(d)(2)(B)(i) of the Act. There are only two exceptions to this rule in the Act. First, § 17.1535(a)(2) authorizes VA to pay a rate higher to an eligible entity or provider in a highly rural area, so long as such rate is still determined by VA to be fair and reasonable. Second, § 17.1535(a)(3) authorizes VA to pay a higher rate when no Medicare rate is available. We explain in the discussion below that we are adding two additional exceptions to § 17.1530.

The vendors administering the Program also operate the Patient-Centered Community Care (PC3) contract, which can pay rates lower than the Medicare rate, and it is possible that there is some confusion among providers regarding whether they are providing care under the Program or the PC3 contract. Indeed, we received some comments stating that providers did not always know under which authority they were furnishing care. We shared these comments with the vendors administering the Program and are working to improve communication so that providers understand what care is furnished under the Program and what is performed pursuant to PC3. Providers who signed contracts to furnish care under PC3 at a set rate may also be subject to receiving that negotiated rate when furnishing care under the Program as well, but VA is not a party to those agreements between vendors and providers and cannot interfere with the terms of those agreements. We are not making any changes based on these comments.

However, we are adding two additional exceptions to § 17.1535(a). First, we are adding a new paragraph (a)(3) authorizing VA to pay eligible providers or entities in the State of Alaska using rates set forth in 38 CFR 17.55(j) and 17.56(b). The rates in §§ 17.55(j) and 17.56(b) are currently used to establish special rates to pay for non-VA care in Alaska under authorities other than the Program, and the new paragraph would simply make the Program comparable. We are also adding a new § 17.1535(a)(4) authorizing VA to use the rate set forth in a State with an All-Payer Model Agreement under the Social Security Act that became effective on January 1, 2014. These two new exceptions were authorized by section 242 of Division I of Public Law 113–235. 128 Stat. 2568. We are redesignating current § 17.1535(a)(3) as § 17.1535(a)(5).

One commenter suggested that VA should ensure Federally Qualified Health Centers (FQHC) are reimbursed for their reasonable costs under Medicare and refer to Medicare Part B for pharmaceutical rates. VA is permitted to pay up to the Medicare rate under section 101(d)(2)(B) of the Act, and this includes special rates available for FQHCs under 42 U.S.C. 1395 *et seq.* Another commenter urged VA to allow medication prescriptions from non-VA providers to be filled at VA pharmacies. We clarify that VA is not making payments to providers for medications under the Program; as explained in the November interim final rule, VA will fill prescriptions, including prescription drugs, over-the-counter drugs, and medical and surgical supplies prescribed by eligible non-VA entities and providers. VA has been filling these prescriptions through its own Pharmacy Benefits Management program or at VA expense and will continue to do so to ensure participating veterans have access to the medications they need. We are not making a change as a result of these comments.

Section 17.1535(b) details payment responsibilities. One comment stated that VA should explicitly reference in its regulations section 101(e)(2) of the Act to clearly communicate that VA is responsible for care, the responsibilities of any other parties (*e.g.*, insurance companies), and whether such care is for a non-service connected disability. This comment also suggested that VA supply to non-VA providers the necessary documentation so those providers may pursue payment from any other parties. We do not believe it is necessary to be this specific in our regulations, but VA will certainly comply with any statutory requirement in the Act, including the requirements of section 101(e)(2). The agreements entered into under the Program contain greater specificity on some of these issues, and the authorizations for care provide additional information. VA is not making a change as a result of this comment.

Section 17.1540 Claims Processing System

Section 17.1540 provides general requirements for a VA claims processing system. We received a number of comments on this system. Most of the comments urged VA to pay promptly, and to pay interest on claims that are overdue. Some comments recommended specific timelines for reviewing claims, and others urged VA to reference the Prompt Payment Act, 31 U.S.C. 3901 *et seq.*, in § 17.1540. VA is working to pay claims under the Program as quickly as possible, and is bound to adhere to the Prompt Payment Act under section 105 of the Act. The Prompt Payment Act, and its implementing regulations at 5 CFR part 1315, define the parameters within which Federal agency payments are considered timely, requirements for reviewing claims, and the penalties for late payments. We do not believe modifications to the Program's regulations are necessary.

We received comments stating the processing system should be simple, and that it should be easy for providers and entities to submit information. We also received comments suggesting that VA provide further information on the new claims processing system, in particular how it will be restructured to facilitate the appropriate reimbursement of claims and how it will ensure prompt payments. Some of these comments indicated that the new system has not improved the efficiency of the payment system. We are working to ensure all aspects of the Program are as simple as possible, and welcome recommendations for how to improve our administrative operations. However, it is not appropriate to include such operational details in our regulations, as such specificity could serve to restrict our ability to innovate and adapt the system to become more efficient and easy to use. We are not making any changes to the regulation as a result of these comments.

Miscellaneous Comments

In addition to the areas above, VA also received comments on other matters. For example, several comments requested case management assistance with their own particular health care situations and/or claims under the Program, and we reached out to these veterans to help them; however, we are not making any changes to the regulation based on these comments.

Several comments asked about other non-VA care programs. Some stated that eligible veterans were unsure whether to use the Program or another non-VA authority. Other comments stated that the staff at their facilities were not sufficiently trained to explain the differences between the Program and other non-VA care programs. We recognize that the number and different types of non-VA care programs and authorities can be confusing to veterans, our stakeholders, and our employees, and we are currently reexamining these various programs as part of a greater effort to streamline VA's use of non-VA care. As we stated in the November interim final rule and above, we have attempted to administer the Program similarly to other non-VA health care programs in an effort to reduce confusion. For some veterans, particularly those with their own health insurance, there may be some differences under the Program, because while VA will attempt to cover the veteran's financial obligations under his or her insurance plan, VA cannot pay more than the Medicare rate (with limited exceptions) for the services provided, meaning the veteran may owe some copayment, cost share, or deductible amount from their other health insurance to the provider. VA is unable to completely eliminate any potential copayment liability because under the Program, VA is a secondary payer, while under other non-VA care, we are the primary payer, and our payment to the non-VA health care provider is payment in full. Consequently, there may be some differences in a veteran's experience between the Program and other non-VA care, and we are available to assist eligible veterans with any questions they may have. We are not making any changes to the rule as a result of these comments. Other comments were that VA should use its existing legal authority to furnish non-VA care for veterans who do not qualify for the Program. Specifically, some comments stated that VA should permit veterans to access non-VA health care providers if they need services that no VA medical facility that is accessible (by geography or timeliness) can provide. We are unsure whether these specific comments referenced care under the Choice Program or care under other non-VA care programs. We reiterate that the 40-mile distance criterion in the Choice Program considers the distance between a veteran's residence and any VA medical facility, even if that facility cannot provide the care that the veteran requires. However, we note that over the past 12 to 18 months VA has been using non-VA authorities other than the Act with much greater frequency than in prior years; in fiscal year 2014, VA completed 16.2 million appointments in the community, an average of more than 1.3 million appointments per month. We will continue to use these authorities when available and appropriate. We are not making a change to the rule based on these comments.

VA received comments that it should address late payment claims for care authorized under other authorities so that community providers would be more likely to participate in the Program. This is outside the scope of the rulemaking, but we are working to pay promptly claims under any authority, including the Program, and if there are specific claims that are late, we encourage the providers to contact us so we can rectify the situation. We are not making any changes as a result of these comments.

We also received a number of comments about other issues. One comment stated that VA should not be using funds appropriated by the Act to expand the number of residency positions in VA. This is outside the scope of the rulemaking, which only implements section 101 of the Act, while provisions regarding residency programs were addressed in section 302 of the Act. However, VA is complying with the requirements of that section as directed by Congress, and we believe that increasing our own capacity to furnish care will allow us to better meet the needs of all enrolled veterans. VA is not making a change to the rule based on this comment.

Another comment stated that VA should not be authorized to define the Program or eligibility criteria for it. VA was expressly required to do this through section 101(n) of the Act, which directed VA to publish interpretive regulations for the Program within 90 days of enactment. Therefore, VA is not making a change to the rule based on this comment.

Several comments recommended better communication with the public about the Program. For example, some suggested outreach to medical societies and physician associations to increase awareness, some suggested better education materials for eligible veterans and providers, and some recommended better coordination and consistency with the vendors administering the Program to clarify the requirements of the Program. Although these comments are outside the scope of the rulemaking, we appreciate this feedback and are working with all of these populations to increase awareness of the Program. For example, when we initially launched the Program, we mailed explanatory letters to over eight million veterans, and we completed an outbound call campaign to those veterans who were initially eligible under the wait-time criterion. We have prepared and updated fact sheets for veterans that can be accessed online or at a facility, and we have worked with provider groups and Veterans Service Organizations to support further outreach. Earlier this year, VA launched a public service announcement for eligible veterans, and we began hosting town halls related to the Program at VA medical facilities. We have also increased staff education and training and appointed more than 900 ''Choice Champions'' to assist veterans and the public with questions about the Program. One comment suggested the vendors administering the Program should inform providers if they are signing up for the Program or another non-VA health care program, and that VA should clarify which vendor is responsible for patients who live in states served by both vendors. We are also in close and constant communication with the vendors to ensure we are sharing a clear and consistent message with the public and our stakeholders. We forwarded applicable comments like these to the vendors to ensure they were aware of some of the feedback we were receiving, and we will continue to work together so that patients and providers understand the Program better. We are not making a change to the rule based on these comments.

One comment recommended that non-VA providers that participate in the Program be permitted to provide primary care services to Veterans. We clarify that VA does permit non-VA providers to furnish primary care services, as primary care services are part of the hospital care and medical services that may be provided under section 101(a)(1)(a) of the Choice Act, as well as under § 17.1500(b). We therefore do not make any changes to the rule based on this comment.

One comment recommended that VA should permit non-VA providers that participate in the Program to be covered by the Federal Tort Claims Act (FTCA). The FTCA only covers Federal agencies and agency employees acting within the scope of their employment. See 28 U.S.C. 2671 et al. However, non-VA providers that participate in the Program cannot be VA employees, or, if they are VA employees, such providers must not be acting within the scope of their VA employment when they provide services under the Program. See 38 CFR 17.1530(a)(1)–(2). We reiterate from the November interim final rule that § 17.1530(a)(1)–(2) was promulgated because the Act specifically envisions that care under the Program is provided by non-VA resources, as demonstrated by section 101(a)(3) of the Act, which requires VA to coordinate through the Non-VA Care Coordination Program the furnishing of care and services under this Program. The title of section 101 of the Act, ''Expanded availability of hospital care and medical services for veterans through use of agreements with non-Department of Veterans Affairs entities,'' also clearly demonstrates Congress's intent that any entity or provider that is a VA resource should not be eligible to participate in the Program. We therefore do not make any changes to the rule based on this comment.

We also received several comments that Tribes and Tribal organizations can contribute to the Program. As we stated in the November interim final rule, outpatient health programs or facilities operated by a Tribe or Tribal organization under the Indian Self-Determination and Education Assistance Act or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act are defined as Federally-qualified health centers in section 1905(l)(2)(B) of the Social Security Act and can be eligible providers under section 101(a)(1)(B) of the Act. The comments urged VA to establish direct communication with these programs and include them at the table with the Indian Health Service when considering new model language or agreements and when identifying and developing performance metrics, and recommended that VA use and expand where possible current agreements to furnish care. These comments touch on issues beyond the scope of the rulemaking, principally how VA works with the Indian Health Service, Tribes, and Tribal organizations generally, but we are committed to using existing agreements and partnerships where possible. We are not making a change to the rule based on these comments.

Administrative Procedure Act

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary of Veterans Affairs concluded that there was good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date. The Secretary found that it was impracticable and contrary to law and the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date, and therefore issued two interim final rules published at 79 FR 65571 (November 5, 2014) and 80 FR 22906 (April 24, 2015). This rulemaking amends § 17.1535(a) to establish two alternative rates of payments. These provisions were mandated by Congress in a public law that was enacted subsequent to the November interim final rule. *See* Public Law 113–235 (discussed above). These regulatory changes reflect these new provisions, and notice and public comment could not therefore result in any change to these provisions. Further, since the public laws became effective on their respective dates of enactment, VA believes it is impracticable and contrary to law and the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rule, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Under 44 U.S.C. 3507(a), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number. See also 5 CFR 1320.8(b)(3)(vi).

This final rule will impose the following new information collection requirements. Section 17.1515 requires eligible veterans to notify VA whether the veteran elects to receive authorized non-VA care through the Veterans Choice Program, be placed on an electronic waiting list, or be scheduled for an appointment with a VA health care provider. Section 17.1515(b)(1) also allows eligible veterans to specify a particular non-VA entity or health care provider, if that entity or provider meets certain requirements. Section 17.1510(d) requires eligible veterans to submit to VA information about their health-care plan to participate in the Veterans Choice Program. Participating eligible entities and providers are required to submit a copy of any medical record related to hospital care or medical services furnished under this Program to an eligible veteran. Section 17.1530 requires eligible entities and providers to submit verification that the entity or provider maintains at least the same or similar credentials and licenses as those required of VA's health care providers, as determined by the Secretary.

As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collections to OMB for its review. OMB approved these new information collection requirements associated with the final rule and assigned OMB control number 2900–0823. We have added the approved OMB control number to the relevant parentheticals.

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined that this is an economically significant regulatory action under Executive Order 12866. VA's regulatory impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its regulatory impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Congressional Review Act

This regulatory action is a major rule under the Congressional Review Act, 5 U.S.C. 801–08, because it may result in an annual effect on the economy of $100 million or more. Although this regulatory action constitutes a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 804(2), it is not subject to the 60-day delay in effective date applicable to major rules under 5 U.S.C. 801(a)(3) because the Secretary finds that good cause exists under 5 U.S.C. 808(2) to make this regulatory action effective on the date of publication, consistent with the reasons given for the publication of this final rule. Delay in expanding access to non-VA care for eligible veterans could result in the deterioration of their health. In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulatory action and VA's Regulatory Impact Analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not have a significant economic impact on participating eligible entities and providers who enter into agreements with VA. To the extent there is any such impact, it will result in increased business and revenue for them. We also do not believe there will be a significant economic impact on insurance companies, as claims will only be submitted for care that will otherwise have been received whether such care was authorized under this Program or not. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on October 6, 2015, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: October 22, 2015.

Michael Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

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

■ 2. In § 17.1535, redesignate paragraph (a)(3) as paragraph (a)(5) and add paragraphs (a)(3) and (4) to read as follows:

§ 17.1535 Payment rates and methodologies.

(a) * * *

(3) For eligible entities or providers in Alaska, the Secretary may enter into agreements at rates established under §§ 17.55(j) and 17.56(b).

(4) For eligible entities or providers in a State with an All-Payer Model Agreement under the Social Security Act that became effective on January 1, 2014, payment rates will be calculated based on the payment rates under such agreement.

* * * * *

[FR Doc. 2015–27481 Filed 10–28–15; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, 27, and 73

[AU Docket No. 14–252; GN Docket No. 12–268; WT Docket No. 12–269; DA 15–1183]

Application Procedures for Broadcast Incentive Auction Scheduled To Begin on March 29, 2016; Technical Formulas for Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Final rule; requirements and procedures.

SUMMARY: This document announces the final application procedures for the broadcast television spectrum incentive auction (Auction 1000), including the forward and reverse auctions (Auctions 1001 and 1002 respectively). This document also summarizes detailed information, instructions, and deadlines for filing applications, as well as certain post-auction procedures established by the Commission's prior orders.

DATES: Reverse Auction (Auction 1001) applications must be filed prior to 6 p.m. Eastern Time (ET) on December 18, 2015; Forward Auction (Auction 1002) applications must be filed prior to 6 p.m. ET on January 28, 2016.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For general auction questions: Linda Sanderson at (717) 338–2868; for reverse auction legal questions: Erin Griffith or Kathryn Hinton at (202) 418–0660; for forward auction legal questions: Valerie Barrish or Leslie Barnes at (202) 418–0660. *Media Bureau, Video Division:* For broadcaster questions: Dorann Bunkin at (202) 418–1636.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 1000 Application Procedures Public Notice* (*Auction 1000 Application Procedures PN* or *Public Notice*), AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, and DA 15–1183, released on October 15, 2015. The complete text of the *Auction 1000 Application Procedures PN,* including all attachments and associated appendices, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov*, or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/*. Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (SFRFA) of the possible significant economic impact on small entities by the procedures and instructions described in Attachment 4 of the *Auction 1000 Application Procedures PN.*

Report to Small Business Administration

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center will send a copy of the *Auction 1000 Application Procedures PN,* including the Supplemental Final Regulatory Flexibility Analysis (SFRFA), to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Paperwork Reduction Act

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Congressional Review Act

The Commission will send a copy of the *Auction 1000 Application Procedures PN,* including the SFRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

I. General Information

A. Introduction

1. In the *Auction 1000 Bidding Procedures PN,* 80 FR 61918, October 14, 2015, the Commission established the bidding procedures for both the reverse auction and the forward auction. Pursuant to the Commission's direction, the *Auction 1000 Application Procedures PN* establishes final application procedures for the reverse and forward auctions, provides detailed information, instructions, and deadlines for filing applications, and finalizes certain post-auction procedures established by the Commission's prior orders.

2. The *Auction 1000 Application Procedures PN* includes an attachment with the final appendices providing the technical details implementing the Commission's decisions in the *Auction 1000 Bidding Procedures PN* regarding the clearing target determination procedure, the final television channel assignment plan, and the assignment of frequency-specific licenses to forward auction clock-phase winning bidders, as well as algorithms for reverse and forward auction bid processing. These final technical appendices reflect modifications made to the detailed proposals contained in the appendices of the *Auction 1000 Comment PN,* 80 FR 4816, January 29, 2015, as a result of the Commission's decisions in the *Auction 1000 Bidding Procedures PN.* An additional attachment to the *Auction 1000 Bidding Procedures PN* provides information relating to the determination of opening prices for each bid option available to each eligible broadcast television licensee in the reverse auction, including the process for identifying ''not-needed'' stations. Finally, the *Auction 1000 Application Procedures PN* includes as an attachment information on the PEA-by-PEA spectrum reserve eligibility of nationwide providers. Opening prices for each bid option available to each eligible broadcast television licensee in the reverse auction will be released in a separate public notice in the near future. Additional data and information related to the broadcast incentive auction, including the final constraints and the associated supporting files, is being made available on the Auction 1000 Web site (*http://www.fcc.gov/auctions/1000*) contemporaneously with the release of the *Auction 1000 Application Procedures PN.*

B. Background of Proceeding

3. Auction 1000 (including Auctions 1001 and 1002) will be conducted pursuant to Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), which authorizes incentive auctions to help meet the Nation's accelerating spectrum needs and requires the Commission to conduct a broadcast television spectrum incentive auction. The *Incentive Auction R&O,* 79 FR 48411, August 15, 2014, established the framework for Auction 1000, including the 600 MHz Band Plan, the repacking of the broadcast television bands, the incentive auction process, and the post-incentive auction transition. The Commission established final procedures for determining the spectrum clearing target and bidding in the reverse and forward auctions in the *Auction 1000 Bidding Procedures PN.* The *Auction 1000 Application Procedures PN,* the *Prohibited Communications PN,* 80 FR 63125, October 19, 2015, and the *Auction 1000 Bidding Procedures PN,* together establish the final auction procedures for the incentive auction. In addition to the *Incentive Auction R&O* and these procedures public notices, the Commission has released a number of other decisions in this proceeding regarding the incentive auction and the repacking process.

4. The information and deadlines the Bureau announced in the *Auction 1000 Application Procedures PN* also implement the Commission's general competitive bidding rules in part 1, subpart Q of the Code of Federal Regulations. The Commission made significant changes to the rules applicable to the forward auction in the *Part 1 R&O,* 80 FR 56764, September 18, 2015. Potential bidders in Auction 1000, particularly those interested in Auction 1002, also should make themselves familiar with the decisions in the *Part 1 R&O.*

II. Applying To Participate in the Reverse Auction

5. Licensees of commercial and noncommercial educational (NCE) full power and Class A television stations (eligible broadcast licensees) identified in the attached Final Baseline (Appendix I of Attachment 2 in the Public Notice) may apply to participate in the reverse auction. On its application, an eligible broadcast licensee will have up to three bid options depending on its pre-auction band: (1) Go off-air (available to all stations); (2) move to a Low-VHF channel (available to UHF or High-VHF stations); and (3) move to a High-VHF channel (available only to UHF stations). An applicant that intends to relinquish its spectrum usage rights in order to share a channel with a station that will remain on the air following the auction will bid to go off-air.

A. Applicable Rules and Disclaimers

i. Relevant Authority

6. Section 6403(a) of the Spectrum Act, codified at 47 U.S.C. 1452(a), authorizes the reverse auction to determine the amount of compensation that each eligible broadcast licensee would accept in return for voluntarily relinquishing some or all of its broadcast television spectrum usage rights. In the *Incentive Auction R&O,* the Commission adopted rules and policies for the reverse auction. More recently, the Commission developed detailed bidding procedures necessary to govern the reverse auction process in the *Auction 1000 Bidding Procedures PN.*

7. Prospective applicants must familiarize themselves thoroughly with the Commission's competitive bidding rules for the reverse auction. As many of the reverse auction pre-auction procedures and application requirements are substantially similar to the Commission's procedures and requirements for typical spectrum license auctions, prospective reverse auction applicants should also familiarize themselves with the Commission's decisions in proceedings regarding its general competitive bidding procedures and application requirements. Prospective bidders should also familiarize themselves with the Commission's rules relating to channel sharing, media ownership, post-incentive auction licensing and operation, and rules relating to applications, environmental review, practice and procedure. All bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *Incentive Auction R&O,* the *Auction 1000 Bidding Procedures PN,* the *Prohibited Communications PN,* the *Auction 1000 Application Procedures PN,* other public notices and/or decisions in this proceeding, and any future public notices and/or decisions that may be issued in this proceeding, as well as any other relevant public notices and/or decisions issued by the Commission relating to the incentive auction.

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all

Commission rules and with all public notices pertaining to this auction. Copies of incentive auction-related Commission documents, including public notices, can be retrieved from the Auction 1000 Web site at *http://www.fcc.gov/auctions/1000.* Additionally, documents are available at the FCC's headquarters located at 445 12th Street SW., Washington, DC 20554 during normal business hours.

ii. Due Diligence

9. The Bureau reminds each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the bid(s) it submits in the reverse auction. An applicant should perform its due diligence research and analysis before applying to participate in the reverse auction, as it would with any business decision. Each reverse auction bidder in Auction 1001 should continue its research and analysis throughout the auction. In particular, the Bureau strongly encourages each potential bidder to review all Commission orders and public notices establishing rules and policies for the incentive auction. Additionally, each potential bidder should perform technical analyses to assure itself that, should the Commission accept its bid to relinquish spectrum usage rights, the bidder will be able to relocate, build, and operate its facilities, if applicable, in compliance with all applicable technical and regulatory requirements. The Bureau also strongly encourages each applicant to keep apprised of pending administrative or judicial proceedings, including enforcement proceedings and non-final license validity proceedings or downgrade orders that might affect its decision to offer a particular station in the auction. In addition, applicants should be aware that future administrative or judicial proceedings may affect broadcast television stations generally or individually.

10. The due diligence considerations mentioned in the *Auction 1000 Application Procedures PN* does not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As in past spectrum license auctions, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests, and to undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts. In addition, each reverse auction applicant will be required to acknowledge that it accepts responsibility for its bids and will not attempt to place responsibility for its bids on either the Commission or the information provided by third parties as part of the Commission's extensive outreach and education efforts. An auction applicant's failure to include these or any other required certifications in its auction application by the applicable filing deadline would render its application unacceptable for filing, and its application would be dismissed with prejudice.

iii. Red Light Rule

11. The Commission's rules, including a provision referred to as the ''red light rule,'' implement the Commission's obligation under the Debt Collection Improvement Act of 1996 to aggressively collect debts owed to the Commission. Under the red light rule, the Commission will not process applications and other requests for benefits by parties that owe non-tax debt to the Commission. Absent payment or waiver of the red light rule, eligible broadcast licensees that owe debt to the Commission would not be permitted to participate in the reverse auction.

12. Robust broadcaster participation is critical to the success of the incentive auction. Recognizing that, the Commission expressly committed to removing barriers to encourage broadcasters to participate in the reverse auction. Consistent with that commitment, in order to encourage broadcaster participation in the reverse auction, the Bureau waives the red light rule for the limited purpose of permitting any eligible broadcast licensee that is red lighted for debt owed to the Commission at the time it submits a reverse auction application to participate in the reverse auction, subject to certain conditions. Additionally, the Bureau recognizes that a reverse auction applicant may incur debt to the Commission after submission of its application, and may fail to pay the debt when due. Accordingly, in order to participate in the auction, each reverse auction applicant will be required to certify in its application that it (1) acknowledges its liability to the Commission for any debt owed to the Commission that the applicant incurred before, or that it may incur after, the reverse auction application deadline, including all accrued interest, penalties and costs, and that the debt will continue to accrue interest, penalties and costs until paid; and (2) agrees that the Commission may pay all debt owed by the applicant to the Commission from the applicant's share of auction proceeds. As noted by the Bureau, this waiver is limited. It does not waive or otherwise affect the Commission's right or obligation to collect any debt owed to the Commission by an eligible broadcast licensee by any means available to the Commission, including set off, referral of debt to the United States Treasury for collection and/or red lighting other applications or requests for benefits filed by an eligible broadcast licensee.

13. The Bureau will also require each reverse auction applicant to certify its agreement that if an appeal of, or request for waiver or compromise of, any debt owed by the applicant to the Commission is pending at the conclusion of the incentive auction, the Commission may withhold so much of the applicant's share of the auction proceeds as is necessary to pay the debt in full, including accrued interest, penalties and costs, until issuance of a final non-appealable decision regarding the debt or waiver or compromise request, and may then pay the debt from the applicant's withheld share. Auction funds held to pay such debt will be held in accordance with the provisions of paragraph 48 of the *Auction 1000 Application Procedures PN.*

14. The Bureau advises potential applicants to review their own records as well as the Commission's Red Light Display system to determine whether they owe non-tax debt to the Commission, and to do so periodically during the incentive auction. The Bureau also encourages eligible broadcast licensees to resolve and pay all outstanding debts to the Commission as soon as possible to avoid the accrual of interest, penalties and costs on unpaid debt.

iv. Use of Auction System

15. Bidders will be able to participate in Auction 1001 over the Internet using the Commission's bidding system (Auction System). The Commission makes no warranty whatsoever with respect to the Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the Auction System. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the Auction System.

v. Fraud Alert

16. As is the case with many business opportunities, some unscrupulous

parties may attempt to use Auction 1001 to deceive and defraud unsuspecting eligible broadcast licensees. Every eligible broadcast licensee is responsible for monitoring whether any applications have been filed for its license(s) in order to assure that only authorized applications are filed. All licensees of eligible facilities recently completed a Form 2100 Schedule 381 Pre-Auction Technical Certification for each eligible facility using the Commission's new Licensing and Management System (LMS). At that time, if that licensee had more than one FCC Registration Number (FRN) associated with the eligible facility, LMS required the licensee to choose one FRN and one related password to associate with that facility. Individuals in possession of this FRN and the related password will be able to file an application to participate in the reverse auction on behalf of the licensee. Therefore, the Bureau urges all licensees to maintain the integrity of their FRN and related password by regularly changing their password, and to monitor the auction filing system to assure that no unauthorized filings are made. Because the Bureau will keep the identity of all reverse auction participants confidential, the licensee must review the auction filing system to become aware of fraudulent or unauthorized reverse auction filings rather than relying on review of a publicly released list of participants. Licensees that become aware of an unauthorized filing should notify the Commission immediately in writing by email to *auction1001@fcc.gov*.

B. Auction Specifics

i. Auction Title and Start Date

17. The reverse portion of the incentive auction will be referred to as ''Auction 1001—Broadcast Television Spectrum Incentive Reverse Auction.'' The incentive auction will begin on March 29, 2016, with the deadline for reverse auction applicants to commit to an initial bid option in Auction 1001.

18. Reverse auction bidders will be informed of the initial schedule of bidding rounds, including the time each round will start and finish and the number of rounds per day, when they are informed that they are qualified to bid.

ii. Auction 1001 Dates and Deadlines

19. The following dates and deadlines apply: (1) The pre-auction process tutorial will be available (via Internet) on November 17, 2015; (2) the reverse auction application (FCC Form 177) filing window opens on December 1, 2015 (12:00 noon ET); (3) the reverse auction application (FCC Form 177) filing window deadline is on December 18, 2015 (6:00 p.m. ET); (4) the bidding and post-auction process tutorial will be available (via Internet) on February 29, 2016; (5) the initial commitment deadline is on March 29, 2016 (6:00 p.m. ET); (6) the initial clearing target and band plan will be announced three to four weeks after the initial commitment deadline; (7) the specific date for the mock auction(s) will be provided to each applicant that is qualified to bid by confidential status letter after the initial clearing target is announced; and (8) the specific date for which bidding in the clock round will begin will be provided to each applicant that is qualified to bid by confidential status letter after the initial clearing target is announced.

iii. Requirements for Qualifying To Bid

20. Eligible broadcast licensees wishing to qualify to bid in the clock rounds of Auction 1000 must: (1) Submit an auction application (FCC Form 177) electronically prior to 6:00 p.m. ET, on December 18, 2015, following the electronic filing instructions that will be provided in a separate public notice to be released in the near future (FCC Form 177 Instructions); (2) Make an initial commitment prior to 6:00 p.m. ET, on March 29, 2016, following the procedures and instructions that will be set forth in the FCC Form 177 Instructions; and (3) Comply with all provisions outlined in the *Auction 1000 Application Procedures PN,* the *Auction 1000 Bidding Procedures PN,* the *Incentive Auction R&O,* and other applicable Commission rules and policies.

iv. Auction Delay, Suspension, or Cancellation

21. By public notice or by announcement during the reverse auction, the auction may be delayed, suspended, or cancelled in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the competitive bidding starting from the beginning of the current or from some previous round or cancel the competitive bidding in its entirety. The Bureau emphasizes that it will exercise this authority solely at its discretion.

C. Reverse Auction Application (FCC Form 177)

22. The applicant to participate in the reverse auction (Auction 1001) must be the broadcast television licensee that holds the spectrum usage rights being offered for relinquishment. A licensee that holds licenses for multiple eligible stations that it wishes to offer in the auction may include all of its eligible stations in a single application, as long as it identifies each such station and provides the required information for each. The application to participate in Auction 1001 is referred to as FCC Form 177 and provides information used to determine whether the applicant is legally qualified to participate in the reverse auction to relinquish some or all of its spectrum usage rights in exchange for a portion of the incentive auction proceeds. Submitting an FCC Form 177 is the first of two steps in the Commission's process to qualify to bid in the reverse auction.

23. Each licensee seeking to relinquish spectrum usage rights in Auction 1001 must file an auction application electronically via the Auction System prior to 6:00 p.m. ET on December 18, 2015, following the procedures that will be provided in the FCC Form 177 Instructions. All eligible broadcast licensees, including reverse auction applicants, are subject to the Commission's rules prohibiting certain communications beginning at the deadline for filing.

24. Applicants bear full responsibility for submitting accurate, complete and timely reverse auction applications. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 177 related to the information provided in its application and its participation in the auction, and must confirm that it is in compliance with all statutory and regulatory requirements for participation in the reverse auction, including any requirements with respect to stations identified in the auction application.

25. An applicant submitting an application in Auction 1001 to relinquish spectrum usage rights for a Class A or NCE television station must submit additional information about the relevant license. Specifically, if the license is for a Class A television station, the applicant must certify under penalty of perjury that it is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station. If the license is for an NCE station, the applicant must specify whether it operates on a reserved or non-reserved channel.

26. The submission of an FCC Form 177 (and any amendments thereto) constitutes a representation by the individual certifying the application that he or she is authorized to do so on behalf of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. If the individual certifying the FCC Form 177 is not an officer, director, board member, or controlling interest holder of the applicant, the applicant must be able to provide evidence that such individual has the authority to bind the applicant. Submission of any false certification(s) to the Commission may result in penalties, including monetary forfeitures, license forfeitures, denial or dismissal of applications with respect to Auction 1001, ineligibility to participate in future auctions, and/or criminal prosecution.

27. In the following sections, the Bureau discusses additional details regarding certain information required to be submitted in the FCC Form 177. However, each applicant should read carefully the forthcoming FCC Form 177 Instructions and consult the Commission's rules to ensure that, in addition to the materials discussed in the *Public Notice,* all the information required to be submitted in an auction application is included within its application.

i. Authorized Bidders

28. As part of the auction application, the applicant must identify at least one, but no more than three, person(s) authorized to place bids in the auction. There may be circumstances in which reverse auction applicants might share the same authorized bidder. The individual submitting the application must certify that the applicant agrees that any bid submitted is an irrevocable, binding offer by the applicant to relinquish the relevant spectrum usage rights at the offered price.

ii. Identifying Relinquishment Bid Option(s) for Each Eligible Facility

29. *Background.* Eligible broadcast licensees may bid to voluntarily relinquish the spectrum usage rights associated with station facilities identified in the attached Final Baseline. A station may be included in the Final Baseline notwithstanding that its license has been cancelled, has expired, is subject to a revocation order (collectively, a license validity proceeding) or, for a Class A station, is subject to a downgrade order. Such a station will no longer be eligible to be offered for relinquishment in the reverse auction, however, if that license validity proceeding or downgrade becomes final and non-reviewable by December 18, 2015. An eligible broadcast licensee may offer to relinquish the spectrum usage rights associated with a station subject to a license validity proceeding or Class A downgrade order that has not become final and non-reviewable by that deadline subject to certain conditions.

30. *Application Procedures.* For each station that the applicant includes on its application, the applicant must identify one or more bid options, corresponding to the relinquishment options that the applicant wishes to be able to consider for that station in the reverse auction. The bid options are described in the preceding section and in more detail in the *Auction 1000 Bidding Procedures PN.*

31. An applicant has no obligation to bid for the options it identifies in its application; if the applicant plans to bid in the clock rounds, it will need to commit to one of its identified bid options prior to the deadline to submit an initial commitment. However, an applicant should take care when selecting bid options in its auction application. As determined in the *Auction 1000 Bidding Procedures PN,* if an applicant does not identify a particular bid option for a specific station on its auction application, that applicant will not be able to bid for that option for that station, either in making its initial commitment or in the clock bidding rounds. An applicant wishing to preserve flexibility to bid for all options in the auction should select all options available to each station.

iii. Ownership Disclosure Requirements

32. Each applicant must comply with the applicable Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2204 and 1.2112(a). Specifically, in completing the FCC Form 177, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2112. Each applicant is responsible for ensuring that information submitted in its application is complete and accurate.

33. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the FCC Form 177 (such as information submitted in an FCC Form 175 filed from a previous auction) will automatically be entered into the applicant's auction application. Each applicant must carefully review any information automatically entered in its FCC Form 177 to confirm that all information supplied on the application is complete and accurate as of the application filing deadline. The FCC Form 323 is not compatible with the FCC Form 177; therefore, information provided to the Commission on that form will not be automatically entered into an applicant's auction application.

34. Among other information, applicants must supply identifying information about the applicant, including the applicant's name and address, if the applicant is an individual; the name and address of the corporate office and the name and title of an officer or director if the applicant is a corporation; the name, citizenship, and address of all general partners, and, if a general partner is not a natural person, then the name and title of a responsible person for that partner, if the applicant is a partnership; the name and address of the trustee, if the applicant is a trust; and if the applicant is none of the above, it must identify and describe itself and its principals or other responsible persons. Additionally, for non-profit entities, applicants must list the name, address, and citizenship of each member of the governing board and of any educational institution or governmental entity with a controlling interest in the applicant, if applicable.

iv. National Security Certification

35. Section 6004 of the Spectrum Act, codified at 47 U.S.C. 1404, prohibits a person who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant from participating in any auction that is required or authorized to be conducted pursuant to the Spectrum Act. In the *Incentive Auction R&O,* the Commission adopted a rule to implement this mandate by adding a certification to the various other certifications that a reverse auction applicant must make in its application. Pursuant to this rule, any applicant seeking to participate in Auction 1001 must certify in its FCC Form 177, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction.

v. Additional Information and Certifications Required From Applicants Intending to Channel Share

36. *Background.* The Commission adopted rules and procedures concerning channel sharing arrangements in the *Channel Sharing R&O,* the *Incentive Auction R&O,* and the *First Order on Reconsideration.* An eligible broadcast licensee interested in entering into a channel sharing arrangement should familiarize itself with those orders and the requirements adopted therein, as well as any future orders or public notices concerning channel sharing.

37. Under the Commission's rules, a reverse auction bidder that is interested in relinquishing its spectrum usage rights on its current channel in order to share another licensee's channel following the auction, and that has entered into a channel sharing agreement (CSA) before the reverse auction application filing deadline (pre-auction CSA), must submit an executed copy of the CSA with its auction application. Applicants who have entered into a pre-auction CSA must also make several certifications under penalty of perjury. The rules also provide that an applicant that executes a pre-auction CSA and submits a copy of the executed agreement with its auction application will be covered under a limited exception to the rule prohibiting communications regarding bids and bidding strategies during the period defined by the rule. This exception will allow the applicant to discuss bids and bidding strategies with the other party or parties to the pre-auction CSA to the extent covered by this exception, subject to the limitations outlined in the *Prohibited Communications PN.* As discussed in the *Prohibited Communications PN,* applicants may choose not to avail themselves of the exception in order to protect against rule violations. Applicants will be able to provide information with their applications regarding relevant firewalls or other safeguards established to protect against rule violations, although there is no requirement that they do so.

38. Additionally the Commission's rules allow winning reverse auction bidders that relinquish their spectrum usage rights in the reverse auction to enter into CSAs after the completion of the incentive auction (post-auction CSAs), provided that they (1) Indicate in their pre-auction applications that they have a present intent to find a channel sharing partner after the auction (the expression of present intent will not bind an applicant to seek out a channel sharing partner or enter into a post-auction CSA); and (2) execute and implement their post-auction CSAs by the date on which they would otherwise be required to relinquish their licenses. The channel sharing exception to the rule prohibiting certain communications will not cover applicants that indicate their present intent to enter into a post-auction CSA and do not submit a pre-auction CSA.

39. *Application Requirements.* A channel ''sharee'' applicant that intends to relinquish spectrum usage rights in order to share another station's channel post-auction will be required to indicate on its auction application whether it has entered into a CSA prior to the reverse auction application filing deadline, and/or has a present intent to enter into a CSA after the conclusion of the incentive auction and release of the *Channel Reassignment PN.* An applicant that indicates it has entered into a pre-auction CSA must identify on its auction application the parties to the CSA, including the sharer or host station, any other sharee(s), and the television channel the applicant has agreed to share. An applicant that submits an executed CSA may also express an intention to enter into a CSA after the conclusion of the incentive auction. Doing so could allow the licensee to seek a different channel sharing partner following the auction.

40. An applicant submitting a copy of an executed CSA with its auction application should not redact any portion of the agreement. Unless required by law, the Commission will keep the copy of the executed CSA submitted with the auction application from being made public, even if such an applicant becomes a winning bidder. Winning reverse auction channel sharing bidders will be required to include a copy of their CSA with their post-auction construction permit application (LMS Form 2100—Schedules A and E), which will be publicly available, and the Bureau will allow applicants to redact confidential or proprietary terms for the purposes of that submission.

a. Channel Sharing Certifications

41. An applicant with a pre-auction CSA will be required to certify under penalty of perjury that: (1) The CSA is consistent with all Commission rules and policies, and that the applicant accepts any risk that the implementation of the CSA may not be feasible for any reason, including any conflict with requirements for operation on the shared channel; (2) the proposed channel sharing arrangement will not trigger a new combination that violates the multiple ownership rules, set forth in 47 CFR 73.3555 based on facts at the time the application is submitted; (3) its operation from the shared channel facilities will not result in a change to its Designated Market Area; and (4) it can meet the community of license coverage requirement set forth in 47 CFR 73.625(a) from the shared channel facilities or, if not, that the new community of license for its shared channel facilities either meets the same or a higher allotment priority as its current community; or, if no community meets the same or higher allotment priority, provides the next highest priority. With respect to certification (2), a sharee must include a showing of compliance with the multiple ownership rules in its construction permit application if operation from the shared site triggers a new multiple ownership combination that is subject to those rules regardless of whether an arrangement is entered into pre- or post-auction. For pre-auction arrangements, the showing must be based on the facts at the time the sharee filed its application to participate in the reverse auction. For post-auction arrangements, the showing must be based on the facts as of the filing of the construction permit application.

42. A prospective sharer station under a pre-auction CSA need not submit an application to participate in the reverse auction unless it intends to participate in bidding to offer some or all of its spectrum usage rights for relinquishment. Examples of this would be where a sharer with a UHF channel bids to move to the VHF band, or a CSA in which the sharee is defined as the party that becomes the provisionally winning station first during the bidding rounds. However, it must make the first two certifications listed in the immediately preceding paragraph. Additionally, if the sharer is a Class A station it must certify under penalty of perjury that it is and will remain in compliance with the ongoing statutory eligibility requirements to remain a Class A station. Also, a sharer station must certify that the CSA submitted by the reverse auction applicant is a true, correct, and complete copy of the CSA between the parties. The FCC Form 177 Instructions will provide a form with the required certifications that a sharer must sign and give to the sharee(s) to upload into the sharee(s)'s auction application.

43. The channel sharing certifications must be made by persons authorized to bind the sharee and sharer, respectively. The Bureau notes that the person who makes the channel sharing certifications for the sharee may be a different person than the person who makes all other

required certifications in the sharee's reverse auction application.

vi. Provisions Regarding Pending Proceedings

44. *Background.* The Commission determined that eligible broadcast licensees with pending enforcement matters or license renewal applications that raise enforcement issues whose bids may result in their holding no broadcast licenses, as well as eligible broadcast licensees of facilities subject to a non-final license validity proceeding or downgrade order, may participate in the reverse auction subject to any incentive payment being held until the pending proceedings are finally resolved. This section describes the additional information that such licensees must provide on their reverse auction applications and the process by which the Commission will hold their incentive payments pending resolution of these types of proceedings.

45. *Application Procedures.* Each applicant that selects going off-air as a bidding option for a station must indicate on its auction application whether or not it will hold any other broadcast licenses in the event that all of the bids that it might place to go off-air are accepted. If it will hold another broadcast license in such an event, then the applicant must certify that the applicant will remain subject to any license renewal, as well as any enforcement action, pending at the time of the auction application deadline against the station that may go off-air as a result of the auction. If it will not hold any other broadcast licenses in such an event, then the applicant must certify its agreement (1) That pursuant to the Commission's announced procedures for resolving such matters in connection with this auction, the Commission may withhold a portion of the share of auction proceeds for the station, if any, pending final determination of any FCC liabilities with respect to the station and such portion may be applied towards the satisfaction of such liabilities; and (2) that the applicant remains subject to the Commission's jurisdiction and authority to impose enforcement or other FCC liabilities with respect to the station, notwithstanding the surrender of its license for the station.

46. Each applicant must also indicate for each license identified in its application whether the license is subject: (1) To a non-final revocation order; or (2) has expired or been cancelled and is subject to a non-final license cancellation order. If such an order becomes final and non-reviewable before the deadline for filing, the former licensee is not eligible to participate. Likewise, an applicant that includes a Class A television station in its application must indicate whether that station is subject to a non-final downgrade order. If such a downgrade order becomes final before the deadline for filing, the licensee is no longer eligible to participate. An applicant that indicates that a license in its application is subject to any of the foregoing revocation, cancellation, or downgrade proceedings must certify in its application that it agrees with the Commission's announced procedures to withhold all of any incentive payment for the station pending the final outcome of the proceeding.

47. In the confidential letter informing an applicant of the initial status of its auction application, the Wireless Telecommunications and Media Bureaus (collectively, the Bureaus) will inform the applicant of any potential FCC liabilities with respect to a particular station that cannot be resolved before the initial commitment deadline. In addition, the Bureaus will indicate the amount of auction proceeds that the Commission will withhold should the applicant relinquish its license(s) as a result of the auction and therefore otherwise no longer be subject to the Commission's jurisdiction. The amount withheld will represent the maximum necessary to cover a potential forfeiture based on enforcement matters existing at that time. This process ensures that the applicant will be aware of any withholding before making an initial commitment to relinquish its spectrum usage rights. The applicant's certifications ensure that an applicant whose stations may go off-air as a result of the auction will not thereby avoid any liability to the public and owed to the Commission.

48. All auction proceeds held (1) To cover potential enforcement liabilities, (2) because of an ongoing license validity or downgrade proceeding, or (3) until final resolution of an appeal of a debt determination or a compromise or waiver request will be held by the Commission in the U.S. Treasury. As determined by the Commission in the *Incentive Auction R&O,* amounts held following the auction will be released to the broadcaster or applied towards any forfeiture costs and other debt the broadcaster owes to the Commission, as appropriate in light of the final resolution of the relevant issues. This procedure is consistent with the Commission's reverse auction competitive bidding rules and with its proposal in the *Auction 1000 Comment PN* that auction proceeds be held in the U.S. Treasury pending resolution of outstanding enforcement proceedings, license renewal proceedings, or other potential eligibility impediments.

vii. Modifications to FCC Form 177

a. Only Minor Modifications Allowed

49. After the initial FCC Form 177 filing deadline, an Auction 1001 applicant will be permitted to make only minor changes to its application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, and change in the applicant's selected bidding preference (electronic or telephonic). Major modification to an FCC Form 177 (*e.g.,* add or remove a license identified for relinquishment, change of relinquishment option for a particular license, certain changes in ownership that would constitute an assignment or transfer of control of the applicant, change any of the required certifications, change the certifying official, add a new CSA or change a party to a CSA, change in applicant's legal classification that results in a change in control) will not be permitted after the initial FCC Form 177 filing deadline. If an amendment reporting changes is a ''major amendment,'' as defined in 47 CFR 1.2204(d)(3), the major amendment will not be accepted and may result in the dismissal of the application.

b. Duty To Maintain Accuracy and Completeness of FCC Form 177

50. Pursuant to 47 CFR 1.65 and 1.2204(d)(5) each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in the reverse auction. An Auction 1001 applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence, or amend its FCC Form 177 no more than five days after the applicant becomes aware of the need for the amendment. An applicant's obligation to make modifications to a pending application in order to provide additional or corrected information continues in accordance with the Commission's rules. An applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of the application.

c. Submitting Modifications to FCC Form 177

51. If an applicant needs to make permissible minor changes to its FCC Form 177, or must make changes in order to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2204(d)(5), during a time when the system is available to the applicant for purposes of making the type of change(s) required, such changes should be made electronically to its FCC Form 177 using the Auction System. For the change to be submitted and considered by the Commission, an applicant must click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

52. An applicant cannot use the Auction System outside of the initial and resubmission filing windows to make changes to its FCC Form 177 for other than administrative changes (*e.g.,* changing responsible party or contact person name and related information, adding or deleting an authorized bidder). If other permissible minor changes need to be made, or if changes are required pursuant to 47 CFR 1.65 and 1.2204(d)(5), outside of these windows, the applicant must submit a letter briefly summarizing the changes to its FCC Form 177 by email to *auction1001@fcc.gov*. The email summarizing the changes must include a subject or caption referring to Auction 1001 and the name of the applicant, for example, ''Re: Changes to Auction 1001 Auction Application of XYZ Corp.'' Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. Questions about FCC Form 177 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660. An applicant that submits its changes in this manner must subsequently update its FCC Form 177 in the Auction System once it is open and available to applicants. Moreover, after the initial filing window has closed, the Auction System will not permit an applicant to make certain permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification). This is the case because certain fields on the FCC Form 177 will no longer be available to, or changeable by, the applicant after the initial application filing window closes. If an applicant needs to make a permissible minor change that cannot be made using the Auction System, it must submit a written request by email to *auction1001@fcc.gov* requesting that the Commission manually make the change on the applicant's behalf. The applicant must then recertify its application by clicking on the SUBMIT button to confirm the change.

53. As with the FCC Form 177, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

54. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed in the *Auction 1000 Prohibited Communications PN,* parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2205. A party seeking to submit, outside of the Auction System, information that might reflect non-public information, such as a party's decision to submit an application, any applicant's name, or any other information identifying a reverse auction applicant, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications pursuant to 47 CFR 1.2205.

D. Auction 1001 Process

i. Online Auction Tutorials and Training

55. Prior to the deadline to apply to participate in the reverse auction, the Commission will provide, in various formats, detailed educational information to would-be participants and channel sharers. Among other things, the Commission will hold workshops/webinars addressing the reverse auction application and bidding processes. In addition, Commission staff will provide two auction tutorials for prospective bidders to walk through the auction process and the application and bidding screens. The first auction tutorial will focus on the application process and the second tutorial will focus on the bidding process. These online tutorials will provide information about pre-auction procedures, completing reverse auction applications, auction conduct, the auction bidding system, and auction rules. The application tutorial will be available on the Auction 1001 Web page no later than November 17, 2015, and the bidding process tutorial will be available no later than February 29, 2016.

56. Based on the Bureau's experience with past auctions, parties interested in participating in this auction will find the interactive, online tutorials an efficient and effective way to further their understanding of the auction process. The tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission licensing and auctions staff, and screen shots of the online application and bidding system. The tutorials will be accessible through a web browser with Adobe Flash Player.

57. The auction tutorials will be accessible from the Commission's Auction 1001 Web page at *http://www.fcc.gov/auctions/1001* through an ''Auction Tutorial'' link under the ''Education'' tab. Once posted, these tutorials will remain available and accessible anytime for reference in connection with the procedures outlined in *Auction 1000 Application Procedures PN.*

ii. FCC Form 177—Due Prior to 6:00 p.m. ET on December 18, 2015

58. As the first step to qualify to bid in the clock rounds of the reverse auction, an applicant must follow the procedures provided in the forthcoming FCC Form 177 Instructions to submit an application to participate in the reverse auction (FCC Form 177) electronically via the Auction System.

59. An applicant may file its application to participate in Auction 1001 during the filing window that will open at noon ET on December 1, 2015, and close at 6:00 p.m. ET on December 18, 2015. The application must be submitted prior to the closing of the filing window. Late applications will not be accepted. No application fee is required. The Bureau strongly encourages applicants to file early. Potential applicants are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on December 18, 2015.

60. An applicant must always click on the SUBMIT button on the ''Certify &

Submit'' screen to successfully submit its FCC Form 177 and any modifications; otherwise the application or changes to the application will not be received or reviewed by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 177 will be included in the FCC Form 177 Instructions. FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

iii. Application Processing

61. After the deadline for filing reverse auction applications to participate, Commission staff will process all timely submitted applications to determine whether the application is complete as to each station the applicant identified to relinquish spectrum usage rights. Subsequently, the Bureau will send confidential letters to the contact person listed on the applicant's FCC Form 177 identifying as to each station whether the application (1) Is complete, (2) has been rejected, or (3) is incomplete or deficient because of minor defects that may be corrected. The letter will include the deadline for resubmitting corrected applications and will inform the applicant of any potential FCC liabilities with respect to a particular station that cannot be resolved before the reverse auction. Applicants that fail to correct defects in their applications to participate by the deadline will have their applications dismissed with no opportunity for resubmission.

62. Applicants will be provided a limited opportunity to cure specified defects and to resubmit a corrected application. The Bureau cautions, however, that any application to participate that does not contain all of the certifications required pursuant to the Commission's rules cannot be corrected subsequent to the initial application filing deadline, and will be dismissed. During the resubmission period for curing defects, an auction application may be amended or modified to cure identified defects or to make minor amendments or modifications.

63. After the resubmission filing deadline, Commission staff will determine whether an applicant's resubmitted application is complete *as to each station the applicant included in the application.* The staff will send a confidential letter to the contact person listed in the FCC Form 177 notifying him or her of the final status of its application to participate in the reverse auction with respect to each station in the application. If the application is complete for one or more stations, the letter will contain information about how to submit an initial commitment for those complete stations which is the second step in qualifying to bid in the clock rounds of the reverse auction. If the application is deemed not complete as to any particular station the applicant will be not be able to make an initial commitment for that station.

64. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the auction application, unless the applicant's certifying official or contact person notifies the Commission in writing that the applicant's counsel or other representative is authorized to speak on its behalf. In no event, however, will the FCC send auction registration materials to anyone other than the contact person listed on the FCC Form 177 or respond to a request for replacement registration materials from anyone other than the authorized bidder, contact person, or certifying official listed on the applicant's FCC Form 177. Authorizations may be sent by email to *auction1001@fcc.gov.*

iv. Initial Commitment

65. As the second step to qualify to bid in the clock rounds of the reverse auction, an applicant that has submitted a timely and complete application must commit, at the opening price, to a preferred relinquishment option for each station that it intends to bid for in the reverse auction prior to 6:00 p.m. ET on March 29, 2016. For each station deemed complete, an applicant may only commit to a relinquishment option(s) that it identified for that station when initially submitting its auction application. An applicant will receive instructions on how to submit an initial commitment for such stations in the confidential letter that informs the applicant whether the station has been deemed complete.

66. An applicant's initial commitment to a relinquishment option constitutes an initial bid, and as such, is an irrevocable offer by the applicant to relinquish the relevant spectrum usage rights in exchange for the opening price offer for that bid option if that station is selected to be a winning station. An applicant that fails to commit to an initial relinquishment option for a given station by the deadline will not be qualified to bid in the clock rounds of the auction for that station. Applicants should carefully review the *Auction 1000 Bidding Procedures PN* for further details concerning how the selection of a preferred option and a fallback option may affect its bidding options in the clock rounds.

67. Based on the initial commitments, the Auction System will determine an initial clearing target for the incentive auction. Once the initial clearing target has been determined, the Bureau will send a confidential letter to each reverse auction applicant to inform it of its status with respect to the clock rounds of the reverse auction. The letters will notify the applicant at the contact address provided in the Form 177, for each station included in the application, either that (1) The station is qualified to participate in the clock rounds of the reverse auction; (2) the station is not qualified because no initial commitment was made, and therefore, that station will be designated to be repacked in its pre-auction band; (3) the commitment(s) made by the applicant for the station could not be accommodated, and therefore, that station is not qualified and will be designated to be repacked in its pre-auction band; or (4) the Auction System determined that the station is not needed to meet the initial or any subsequent clearing target, and therefore, the station is not qualified and will be designated to be repacked in its pre-auction band.

v. Qualified Bidder Registration Materials

68. All qualified bidders in the reverse auction are automatically registered for the auction. The materials needed to participate in the clock rounds of the reverse auction will be distributed by overnight mail. The mailing will be sent to the contact person at the contact address listed in the FCC Form 177 and will include the SecurID® tokens that each authorized bidder will need to place bids, the auction system bidder's guide, and the Auction Bidder Line phone number.

69. Bidders qualified to bid in the reverse auction clock rounds that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on five days prior to the mock auction, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration materials.

70. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's application to participate in the reverse

auction may request replacements. To request replacement of these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

vi. Remote Electronic Bidding

71. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. All telephone calls are recorded. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 177 application. In either case, each authorized bidder must have its own designated SecurID® token, which the Commission will provide at no charge. Each authorized bidder will be issued a unique SecurID® token. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the ''Reverse Auction System Bidder's Guide'' are only mailed to the contact person at the contact address listed on the FCC Form 177. Each SecurID® token is tailored to a specific auction and designated authorized bidder. SecurID® tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 1001.

vii. Mock Auction

72. All bidders qualified to bid in the clock rounds will be able to participate in a mock reverse auction prior to the start of the bidding, which will enable bidders to obtain hands-on experience with the Auction System. The mock auction will enable bidders to become familiar with the Auction System prior to the auction. The Bureau strongly recommends that all bidders participate in the mock auction.

73. The Bureau anticipates that it will need to conduct at least two mock auctions to accommodate the large number of broadcasters that it expects will qualify to bid in the reverse auction. In the final confidential status letter, each qualified bidder will be notified of the date of the mock auction to which it has been assigned.

III. Applying To Participate in the Forward Auction

74. Auction 1002 will offer new, flexible-use licenses suitable for providing mobile broadband services, which will be licensed on a geographic area basis according to Partial Economic Areas (PEAs). As more fully explained in the *Auction 1000 Bidding Procedures PN,* Auction 1002 will consist of two phases—an ascending clock phase and an assignment phase.

A. Applicable Rules and Disclaimers

i. Relevant Authority

75. As more fully explained in the *Auction 1000 Bidding Procedures PN,* the Commission will conduct Auction 1002 pursuant to Title VI of the Spectrum Act. Prospective applicants for Auction 1002 must familiarize themselves thoroughly with the specific rules and policies adopted by the Commission to provide the necessary framework for the forward auction, including service rules relating to the 600 MHz Band, potential impairments and transition periods affecting the licenses offered in the auction, and rules relating to applications, environmental review requirements, practice and procedure. Prospective applicants must also familiarize themselves with the Spectrum Act, as well as the Commission's general competitive bidding rules in part 1, subpart Q of the Code of Federal Regulations, Commission decisions in proceedings regarding competitive bidding procedures and obligations of Commission licensees—particularly the Commission's recent *Part 1 R&O*—and with the procedures, terms, and conditions contained in the *Auction 1000 Application Procedures PN,* the *Auction 1000 Bidding Procedures PN,* the *Auction 1000 Prohibited Communications PN,* and any other public notices related to Auction 1000, including Auction 1002.

76. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auction-related Commission documents, including public notices, can be retrieved from the FCC Auctions Web site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying at the FCC's headquarters located at 445 12th Street SW., Washington, DC 20554 during normal business hours.

ii. International Coordination

77. Potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican borders should be aware that the use of some or all of the 600 MHz Band frequencies they acquire in the forward auction are subject to international agreements with Canada and Mexico. Potential bidders should be aware that, until such time as any new agreements between the United States, Mexico, and/or Canada can be made, wireless operations in the 600 MHz Band must not cause harmful interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada. As the Commission noted in the *Incentive Auction R&O,* it routinely works with the United States Department of State and Canadian and Mexican government officials to ensure the efficient use of the spectrum as well as interference-free operations in the border areas near Canada and Mexico. The Commission has finalized arrangements with Industry Canada (IC) and the Instituto Federal de Telecomunicaciones (IFT) that set forth a framework and common guidelines for repurposing TV spectrum for mobile broadband on both sides of the borders. These arrangements significantly reduce potential interference to future wireless operations in the border regions and provide assurance that mobile broadband services in the border markets will face less potential interference from Canadian or Mexican television broadcast stations. Pursuant to joint planning between the Commission and Industry Canada, and in light of Industry Canada's decision to repurpose the 600 MHz Band, the 138 and 144 megahertz clearing targets will not be considered in order to better harmonize the 600 MHz Band Plan between the two countries.

iii. Quiet Zones

78. Licensees that intend to operate base and fixed stations in the downlink portion of the 600 MHz Band in close proximity to Radio Astronomy Observatories must follow the procedures set forth in the Commission's rules.

iv. Due Diligence

79. A Commission spectrum auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, and the Commission makes no representations or warranties about the use of the spectrum offered in Auction 1002 for particular services. A Commission license does not constitute a guarantee of business success, and each applicant should therefore perform its due diligence research and analysis before proceeding, as it would with any new business venture, to ensure that any licenses won in this auction will be

suitable for its business plans and needs.

80. Each potential bidder is solely responsible for investigating and evaluating all legal, technical, and marketplace factors and risks associated with the licenses that it is seeking in Auction 1002, evaluating the degree to which those factors and risks may have a bearing on the value of the licenses and/or affect the bidder's ability to bid on, otherwise acquire, or make use of such licenses, and conducting any technical analyses necessary to assure itself that, if it wins any license(s), it will be able to build and operate facilities in accordance with the Commission's rules. Each potential bidder's due diligence efforts should include, among other things: (1) Reviewing all Commission orders and public notices establishing rules and policies for the 600 MHz Band, including but not limited to spectrum use during the Post-Auction Transition Period and potential impairments affecting certain licenses; (2) conducting research to determine the existence of any pending administrative or judicial proceedings, including pending allocation rulemaking proceedings, that might affect its decision to participate in the auction; (3) performing (or refreshing previous) technical analyses; and (4) inspecting any prospective transmitter sites located in, or near, the service area for which it plans to bid and confirming the availability of such sites and their conformance with applicable federal, state, and local land use requirements. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

81. Applicants should bear in mind that the due diligence considerations mentioned in the *Auction 1000 Application Procedures PN* do not comprise of an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

82. The Commission's statutory authority under the Communications Act to add, modify and eliminate rules governing spectrum use, as the public interest warrants, applies equally to all licenses, whether acquired through the competitive bidding process or otherwise. The Bureau strongly encourages each participant in Auction 1002 to continue such research throughout the auction. Pending and future Commission and judicial proceedings—including applications, applications for modification, rulemaking proceedings, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review—may relate to particular applicants or the licenses available in Auction 1002 (or the terms and conditions thereof, including all applicable Commission rules and regulations), and each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on licenses available in this auction.

v. Use of Auction System

83. Bidders will be able to participate in Auction 1002 over the Internet using the Commission's bidding system (Auction System). The Commission makes no warranty whatsoever with respect to the Auction System. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the Auction System.

vi. Environmental Review Requirements

84. Licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes. The construction of a wireless antenna facility is a federal action, and the licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the licensee must follow the provisions of the Commission's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The licensee must prepare an environmental assessment for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, designated critical habitats, historical or archaeological sites, Native American religious sites, floodplains, surface features, or migratory birds. In addition, the licensee must prepare an environmental assessment for any facility that includes high intensity white lights in residential neighborhoods or excessive radio frequency emission.

B. Auction Specifics

i. Auction Title and Start Date

85. The forward portion of the Incentive Auction will be referred to as ''Auction 1002—Broadcast Television Spectrum Incentive Forward Auction.'' The clock phase of the initial stage of Auction 1002 will begin on the second business day after the close of bidding in the reverse auction (Auction 1001), but no sooner than 15 business days after the release of a public notice announcing all qualified bidders for the forward auction. Unless otherwise announced, bidding on all generic spectrum blocks in all PEAs will be conducted on each business day until bidding has stopped on all spectrum blocks in all PEAs. Following the conclusion of the clock phase in the final stage, the Auction System will make available more detailed information about the assignment phase (including scheduling information and bidding options) to the winning clock phase bidders five business days before starting the assignment phase.

ii. Auction 1002 Dates and Deadlines

86. The following dates and deadlines apply: (1) The pre-auction process tutorial will be available (via Internet) on January 7, 2016; (2) the forward auction application (FCC Form 175) filing window opens on January 14, 2016 (12:00 noon ET); (3) the forward auction application (FCC Form 175) filing window deadline is on January 28, 2016 (6:00 p.m. ET); (4) the bidding and post-auction process tutorial will be available (via Internet) on February 29, 2016; (6) the practice auction will occur in the spring of 2016; (7) the initial commitment deadline is on March 29, 2016 (6:00 p.m. ET); (8) the initial clearing target and band plan will be announced three to four weeks after the initial commitment deadline; (9) upfront payments (via wire transfer) will be due by the deadline announced in the *Upfront Payments PN* (6:00 p.m. ET);

(10) the clock and assignment phase mock auction will be announced in the *Auction 1002 Qualified Bidders PN;* and (11) the clock-phase auction will be begin on the date announced in the *Auction 1002 Qualified Bidders PN.*

iii. Requirements for Participation

87. Those wishing to participate in Auction 1002 must: (1) Submit a forward auction application (FCC Form 175) electronically prior to 6:00 p.m. ET, on January 28, 2016 following the electronic filing instructions that will be provided in a separate public notice to be released in the near future (FCC Form 175 Instructions); (2) submit a sufficient upfront payment by 6:00 p.m. ET, on the deadline to be announced in a separate public notice to be released after the initial clearing target and associated band plan scenario has been determined (*Upfront Payment PN*); and (3) comply with all provisions outlined in the *Auction 1000 Bidding Procedures PN* and the *Auction 1000 Application Procedures PN* as well as applicable Commission rules and policies.

iv. Auction Delay, Suspension, or Cancellation

88. By public notice or by announcement during the forward auction, the auction may be delayed, suspended, or cancelled in the event of natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the competitive bidding starting from the beginning of the current round or from some previous round or cancel the auction in its entirety. The Bureau emphasizes that it will exercise this authority solely at its discretion.

C. Forward Auction Application (FCC Form 175)

89. An application to participate in the forward auction (FCC Form 175) is the first part of the Commission's two-part auction application process for Auction 1002. The FCC Form 175 is a streamlined application filed by parties seeking to participate in an auction that provides information used by Commission staff to determine whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits. An applicant's eligibility to bid in Auction 1002 is based on the information provided in its FCC Form 175 and required certifications as to the applicant's qualifications, and on the applicant's submission of a sufficient upfront payment. In the second part of the application process for Auction 1002, each winning bidder must file a more comprehensive post-auction application (FCC Form 601) and must have a complete and accurate ownership disclosure information report (FCC Form 602) on file with the Commission.

90. Every entity and individual seeking to bid on a license available in Auction 1002 must file an FCC Form 175 electronically via the Auction System prior to 6:00 p.m. ET on January 28, 2016, following the procedures prescribed in the FCC Form 175 Instructions. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used to determine whether the applicant may request the claimed bidding credit. As more fully explained in the *Prohibited Communications PN,* an applicant that files an FCC Form 175 to participate in Auction 1002 will be subject to the Commission's prohibited communications rules beginning effective as of the application filing deadline.

91. Applicants bear full responsibility for submitting accurate, complete, and timely auction applications. Each applicant must make a series of certifications under penalty of perjury on its FCC Form 175 related to the information provided in its application and its participation in the auction, and must confirm that it is legally, technically, financially, and otherwise qualified to hold a license. If an Auction 1002 applicant fails to make the required certifications in its FCC Form 175 by the application filing deadline, its application will be unacceptable for filing and cannot be corrected subsequent to the filing deadline.

92. The submission of an FCC Form 175 (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of any false certification(s) to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

93. The Commission's rules prohibit the filing of more than one auction application by the same individual or entity. An individual or entity may therefore not submit more than one application for a single auction. If a party submits multiple applications for any license(s) in a particular auction, only one of its applications can be found to be complete when reviewed for completeness and compliance with the Commission's rules. Similarly, and consistent with the Commission's general prohibition on joint bidding agreements, an entity is generally permitted to participate in a Commission auction only through a single bidding entity. Accordingly, the filing of applications by entities controlled by the same individual or set of individuals will generally not be permitted. This restriction applies across all applications in a particular auction, without regard to the licenses or geographic areas selected. Section 1.2105(a)(3) provides a limited exception to the general prohibition on the filing of multiple applications by commonly-controlled entities for qualified rural wireless partnerships and individual members of such partnerships pursuant to which each qualifying rural wireless partnership and its individual members will be permitted to participate separately in an auction. 47 CFR 1.2105(a)(3).

94. The Bureau discusses additional details regarding certain information required to be submitted in the FCC Form 175. However, each applicant should read carefully the Auction 1002 application instructions and consult the Commission's rules to ensure that all of the information required to be submitted in an auction application is included within its application.

i. Authorized Bidders

95. An applicant must designate at least one authorized bidder, and no more than three, in its FCC Form 175. The Commission's rules prohibit an individual from serving as an authorized bidder for more than one auction applicant. Accordingly, the same individual may not be listed as an authorized bidder in more than one FCC Form 175.

ii. License Area Selection

96. An applicant must select all of the PEA(s) on which it may want to bid from the list of available PEAs on its FCC Form 175. The application will not ask an applicant to select a number of generic blocks on which it may wish to bid since the number of blocks available in each PEA will not be known at the time applications are due. The applicant must carefully review and verify its PEA selections before the FCC Form 175 filing deadline because PEA selections cannot be changed after the auction application filing deadline. The Auction

System will not accept bids on PEA(s) that were not selected on the applicant's FCC Form 175.

iii. Qualification To Bid on Market-Based Spectrum Reserve

97. An entity can qualify to bid on reserved spectrum by either (1) holding an attributable interest in less than 45 megahertz of below-1–GHz spectrum in a given PEA; or (2) being a non-nationwide provider. The attribution criteria set forth in 47 CFR 20.22 govern qualification to bid on the spectrum reserve under either of the two prongs. To qualify to bid on reserved licenses in a PEA under the first prong, an entity must not have an attributable interest on a population-weighted basis of 45 megahertz or more of below-1–GHz spectrum that is suitable and available for the provision of mobile telephony/mobile broadband services in that PEA, at the deadline for filing an FCC Form 175 to participate in Auction 1002. A total of 134 megahertz of below-1–GHz spectrum is currently considered to be ''suitable'' and ''available,'' as follows: 50 megahertz of 800 MHz cellular spectrum, 70 megahertz of 700 MHz spectrum, and 14 megahertz of SMR spectrum.

98. Here, the Bureau addresses additional implementation issues related to qualification to bid on the spectrum reserve: (1) An element of the methodology for calculating below-1–GHz spectrum holdings in a PEA, related to cellular license areas; (2) guidance regarding how certain types of rural partnerships, or members thereof, can request status as non-nationwide providers; and (3) logistical details regarding the required certification by applicants of their reserve-eligible qualification in particular PEAs. In addition, Attachment 3 to the *Auction 1000 Application Procedures PN* contains a list, for each PEA, of the nationwide providers that are reserve-eligible in that PEA based on application of the Bureau's current records of the methodology for calculating below-1–GHz spectrum holdings.

a. Accounting for Cellular License Areas in Calculating Below-1–GHz Spectrum Holdings in a PEA

99. As set forth in the *Mobile Spectrum Holdings R&O,* for purposes of determining reserve-eligibility, the Bureau will calculate an entity's below-1–GHz spectrum holdings in a PEA by summing the product of county spectrum holdings and county population within the PEA (using U.S. Census 2010 population data), and then dividing that sum by the total population of the PEA. In those PEAs where there are existing long-term commercial leases, as the Bureau attributes the leased spectrum to both the lessee and lessor, it increases the total below-1–GHz spectrum amount included by the population-weighted amount of the lease—and accordingly increase the threshold for reserve-eligibility in those markets to approximately one-third of the total—so that service providers' holdings are not overstated in those markets. The Bureau notes that 800 MHz cellular service license areas (Cellular Geographic Service Areas or CGSAs), which are relevant to determining an entity's below-1–GHz holdings, do not generally follow county lines. As a result, the Bureau will take additional steps to calculate an entity's cellular holdings at the PEA level. Specifically, it will first overlay map files of each service provider's CGSAs as of May 2015 onto map files of census blocks. The CGSA map files are available at: *https://www.fcc.gov/encyclopedia/cgsa*. Census block map files are available at: *https://www.census.gov/cgi-bin/geo/shapefiles2010/main*. Next, it will attribute cellular spectrum in each census block to each entity whose CGSA boundary overlaps the geometric center of the block, referred to as the centroid. The ''centroid'' refers to the internal point latitude/longitude of a census block polygon. The Commission has used this methodology, which relies on publicly available information and is an administratively simple and efficient approach to apply, for determining in other contexts how to categorize individual census blocks. Once the Bureau calculates an entity's holdings in each census block within the PEA, the standard population-weighted methodology is used to aggregate spectrum holdings to the PEA level. Census block cellular spectrum holdings are multiplied by the population of the census block for all census blocks in the PEA. The sum is then divided by the population of the PEA to yield the population-weighted megahertz cellular spectrum holdings at the PEA level. The Bureau notes that this methodology produces the same results, and is administratively easier, than a methodology that first aggregates census blocks up to the county level and then aggregates counties up to the PEA level.

100. In order to provide an opportunity for potential applicants in Auction 1002 to review the Bureau's current assessment of which of the nationwide providers would qualify to bid on reserve spectrum in each PEA, and to inform applicants of how to determine where they may certify eligibility for bidding on such spectrum, Attachment 3 to the *Auction 1000 Application Procedures PN* includes a list of qualified nationwide providers for each PEA, based on the methodology and in the *Mobile Spectrum Holdings R&O.* The Bureau notes that non-nationwide providers can qualify to bid on reserve spectrum irrespective of their below-1–GHz spectrum holdings for the reasons set out in the *Mobile Spectrum Holdings R&O,* and the *Auction 1000 Bidding Procedures PN.* If an interested party would like to raise potential corrections to this list, it may do so by making a filing in AU Docket No. 14–252, GN Docket No. 12–268, and WT Docket No. 12–269, and sending the filing by electronic mail to *catherine.matraves@fcc.gov* and *karen.sprung@fcc.gov* by November 16, 2015. An updated list of all nationwide applicants qualified to bid on reserved spectrum in each PEA will be issued prior to the FCC Form 175 filing deadline. The Bureau notes that spectrum holdings that are the subject of an application for assignment or transfer of control that has been approved as of the date of the *Auction 1000 Application Procedures PN* will be attributed to the assignee or transferee for purposes of the determinations in Attachment 3 to the *Public Notice.* The updated list that will be released prior to the FCC Form 175 filing deadline similarly will reflect such attributions as of the date of that updated list.

b. Required Certification of Eligibility for Reserved Spectrum

101. In the *Auction 1000 Comment PN,* the Commission proposed to require an applicant seeking to participate in the forward auction as a reserve-eligible entity to certify in its application that it is a reserve-eligible entity with respect to each PEA in which it wishes to be able to bid for reserved blocks. The Commission further proposed that an applicant must make this certification in its application and that it shall not be able to revise its certification thereafter. The Commission stated that this approach will enable potentially reserve-eligible applicants to forego reserve-eligible status on a PEA-by-PEA basis, and that requiring applicants intending to bid for reserved spectrum blocks to affirmatively declare their eligibility to do so will avoid any subsequent ambiguity or uncertainty by each applicant regarding its reserve-eligible status. The Commission received no comment on these proposals, and the Bureau therefore adopts a spectrum reserve eligibility certification for Auction 1002.

102. Under this certification requirement, an applicant that is eligible to bid on reserved spectrum blocks in a given PEA, and that included the PEA in its license area selection(s), must certify its eligibility to bid for reserved blocks in the PEA. An applicant is not required to bid on, or certify its eligibility for, reserved spectrum blocks in any or all areas in which it is eligible. However, an applicant that does not certify its eligibility with respect to a particular license area because it is not eligible or it declines to do so will not be able to bid for reserved spectrum blocks in that PEA during the auction. Accordingly, any demand by that applicant in that license area will not be counted as demand for reserved spectrum blocks when determining the actual number of blocks that will be reserved in a PEA.

c. Effect of Relationships Between a Non-Nationwide Provider and a Nationwide Provider

103. In the *Auction 1000 Bidding Procedures PN,* the Commission recognized a concern that it would be inconsistent with the intent of the reserve, in certain unique circumstances involving limited equity interests by nationwide providers in long-standing rural partnerships, to apply the attribution rule in 47 CFR 20.22 so as to prevent non-nationwide providers from bidding for reserved spectrum. In particular, the Commission identified specific circumstances in which certain rural partnerships can secure status as non-nationwide providers for purposes of qualifying to bid on the spectrum reserve. These circumstances are where the nationwide provider is not the managing partner of the rural partnership, has not and will not provide funding for the purchase of the licenses in spectrum auctions by the rural partnership, including the incentive auction, the rural partnership is of long standing, the nationwide provider's interest in the rural partnership is non-controlling and is less than 33 percent, and the partnership's retail service is not branded under the name of the nationwide provider.

104. If a member of a long-standing rural partnership applying to participate in Auction 1002 wishes to assert qualification to bid on reserved spectrum in a PEA on the basis of status as a non-nationwide provider, notwithstanding attributable relationships with AT&T, Verizon, Sprint, or T-Mobile, it should submit an attachment to its FCC Form 175 certifying and detailing how it meets the circumstances specified by the Commission to secure status as a non-nationwide provider for purposes of qualifying to bid on the spectrum reserve.

iv. Disclosure of Agreements Related to Licenses Being Auctioned

105. An applicant must provide in its FCC Form 175 a brief description of, and identify each party to, any partnerships, joint ventures, consortia, or agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party. For purposes of this rule, a controlling interest includes all individuals or entities with positive or negative *de jure* or *de facto* control of the licensee. In connection with the agreement disclosure requirement, the applicant must certify under penalty of perjury in its FCC Form 175 that it has described, and identified each party to, any such agreements, arrangements, or understanding into which it has entered. An applicant may continue negotiating, discussing, or communicating with respect to a new agreement after the FCC Form 175 filing deadline, provided that the communications involved do not relate both to the licenses being auctioned and to bids or bidding strategies or post-auction market structure. An Auction 1002 applicant that enters into any agreement relating to the licenses being auctioned during the auction is subject to the same disclosure obligations as it would be for agreements existing at the FCC Form 175 filing deadline and must maintain the accuracy and completeness of the information in its pending auction application.

106. For purposes of making the required agreement disclosures on the FCC Form 175, if parties agree in principle on all material terms prior to the application filing deadline, each party to the agreement that is submitting an auction application must provide a brief description of, and identify the other party or parties to, the agreement on its respective FCC Form 175 pursuant to 47 CFR 1.2105(a)(2)(viii) and (c)(1), even if the agreement has not been reduced to writing. However, if the parties have not agreed in principle by the FCC Form 175 filing deadline, they should not describe, or include the names of parties to, the discussions on their applications.

107. As recently amended, the Commission's rules now generally prohibit joint bidding and other arrangements involving auction applicants (including any party that controls or is controlled by, such applicants). This prohibition applies to joint bidding arrangements involving two or more nationwide providers, as well as joint bidding arrangements involving a nationwide and one or more non-nationwide providers, where any party to the arrangement is an applicant for the auction. Non-nationwide providers may enter into agreements to form a consortium or a joint venture (as applicable) that result in a single party applying to participate in an auction. Specifically, a designated entity can participate in only one consortium in an auction, which shall be the exclusive bidding vehicle for its members in that auction, and non-nationwide providers may participate in an auction through only one joint venture, which also shall be the exclusive bidding vehicle for its members in that auction. While two or more non-nationwide providers may participate in an auction through a joint venture, a nationwide and a non-nationwide provider may not do so. The general prohibition on joint bidding arrangements excludes certain agreements, including those that are solely operational in nature, as defined in 47 CFR 1.2105(a)(2)(ix)(A)–(C).

108. For purposes of the prohibition on joint bidding arrangements, ''joint bidding arrangements'' include arrangements relating to the licenses being auctioned that address or communicate, directly or indirectly, bidding at the auction, bidding strategies, including arrangements regarding price or the specific licenses on which to bid, and any such arrangements relating to the post-auction market structure. A ''non-nationwide provider'' refers to any provider of communications services that is not a ''nationwide provider.'' For Auction 1002, AT&T, Verizon, Sprint, and T-Mobile are considered to be ''nationwide providers.''

109. In connection with disclosing any agreements related to the licenses being auctioned in Auction 1002, an applicant must certify that neither the applicant, nor any party that controls or is controlled by the applicant, has entered or will enter into any agreements relating to the licenses being auctioned other than those fall within the limited exceptions in 47 CFR 1.2105(a). In addition, an applicant must certify that it is not, and will not be, privy to, or involved in, in any way the bids or bidding strategy of more than one auction applicant and that, if

applicable, it has established procedures to preclude its agents, employees, or related parties, from possessing information about the bids or bidding strategies of more than one applicant or communicating such information regarding another applicant. Although 47 CFR 1.2105(c)(1) does not prohibit auction applicants from communicating about matters that are within the scope of an agreement described in 47 CFR 1.2105(a)(2)(ix)(A)–(C) that has been disclosed in an FCC Form 175 pursuant to 47 CFR 1.2105(a)(2)(viii), the Bureau reminds applicants that certain discussions or exchanges could nonetheless touch upon impermissible subject matters, and that compliance with the Commission's rules will not insulate a party from enforcement of the antitrust laws.

110. Applicants should bear in mind that a winning bidder will be required to disclose in its FCC Form 601 post-auction application the specific terms, conditions, and parties involved in any agreement relating to the licenses being auctioned into which it had entered prior to the filing of its FCC Form 175 application. This applies to any bidding consortium, joint venture, partnership, or other agreement, arrangement, or understanding of any kind entered into relating to the competitive bidding process, including any agreements relating to the licenses being auctioned that address or communicate directly or indirectly bids (including specific prices), bidding strategies (including the specific licenses on which to bid or not to bid), or the post-auction market structure, to which the applicant, or any party that controls or is controlled by the applicant, is a party.

v. Ownership Disclosure Requirements

111. Each applicant must comply with the uniform Part 1 ownership disclosure requirements and provide information required by 47 CFR 1.2105 and 1.2112, and, where applicable 1.2110. Specifically, in completing the FCC Form 175, an applicant will be required to fully disclose information on the real party- or parties-in-interest and the ownership structure of the applicant, including both direct and indirect ownership interests of 10 percent or more, as prescribed in 47 CFR 1.2105 and 1.2112, and, where applicable, 1.2110.

112. In certain circumstances, an applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the FCC Form 175 (such as information submitted in an FCC Form 602 or in an FCC Form 175 filed for a previous auction) will automatically be entered into the applicant's auction application. Each applicant must carefully review any information that has been automatically entered in its FCC Form 175 to confirm that all information supplied on the application is complete and accurate as of the application filing deadline.

vi. Foreign Ownership Disclosure Requirements

113. Section 310 of the Communications Act requires the Commission to review foreign investment in radio station licenses and imposes specific restrictions on who may hold certain types of radio licenses. The provisions of section 310 apply to applications for initial radio licenses, applications for assignments and transfers of control of radio licenses, and spectrum leasing arrangements under the Commission's secondary market rules. In completing the FCC Form 175, an applicant will be required to disclose information concerning any foreign ownership of the applicant. If an applicant has a foreign owner(s) with ownership interests in excess of the applicable limit or benchmark set for in section 310, it may seek to participate in Auction 1002 as long as it has filed a petition for declaratory ruling with the Commission prior to the FCC Form 175 filing deadline. An applicant must certify in its FCC Form 175 that, as of the deadline for filing its application to participate in Auction 1002, the applicant either is in compliance with the foreign ownership provisions of section 310 or has filed a petition for declaratory ruling requesting Commission approval to exceed the applicable foreign ownership limit or benchmark in section 310(b) that is pending before, or has been granted by, the Commission.

vii. National Security Certification

114. The Commission's rules require that any applicant seeking to participate in an auction that is required or authorized to be conducted pursuant to the Spectrum Act must certify in its FCC Form 175, under penalty of perjury, that the applicant and all of the related individuals and entities required to be disclosed on its application are not person(s) who have been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant, and who are thus statutorily prohibited from participating in such a Commission auction. Because the Commission will conduct Auction 1002 under its general competitive bidding rules and Auction 1002 is subject to the national security restriction in section 6004 of the Spectrum Act, Auction 1002 applicants must certify as to their compliance with the national security restriction in 47 CFR 1.2105(a)(2)(xiii).

viii. Provisions for Small Businesses and Rural Service Providers

115. The Commission recently revised the designated entity rules that apply to all licenses acquired with bidding credits, including those won in Auction 1002. A bidding credit represents an amount by which a bidder's winning bid will be discounted, subject to the caps discussed in the ''Caps on Bidding Credits'' section. Applicants should note that all references to a ''winning bid'' discussed in the context of designated entity bidding credits in the *Auction 1000 Application Procedures PN* (*e.g.,* the application of a small business discount to an applicant's winning bid) refer to the calculated license price discussed in the ''Calculating Individual License Prices'' section and set forth in section 9 of Appendix H in Attachment 1 to the *Auction 1000 Application Procedures PN.*

116. As set forth in 47 CFR 1.2110, these rule revisions include, but are not limited to: (1) Adopting a two-pronged standard for evaluating eligibility for small business benefits and eliminating the attributable material relationship (AMR) rule; (2) establishing a new attribution rule for certain disclosable interest holders of applicants claiming designated entity benefits; (3) updating the gross revenue amounts defining eligibility for small business benefits; (4) creating a separate bidding credit for eligible rural service providers; and (5) establishing caps on the total amount of designated entity benefits any eligible winning bidder may receive.

117. In Auction 1002, bidding credits will be available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). Bidding credits will not be cumulative—an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both. Each applicant must also certify that it is eligible for the claimed bidding credit in its FCC Form 175. Each applicant should review carefully the Commission's decisions regarding the designated entity provisions as well as the newly-adopted Part 1 rule changes.

a. Small Business Bidding Credit

118. For Auction 1002, bidding credits will be available to eligible small businesses and consortia thereof, subject

to the caps. Under the service rules applicable to the 600 MHz Band licenses to be offered in Auction 1002, the level of bidding credit available is determined as follows: (1) A bidder with attributed average annual gross revenues that do not exceed $55 million for the preceding three years is eligible to receive a 15 percent discount on its winning bid; and (2) a bidder with attributed average annual gross revenues that do not exceed $20 million for the preceding three years is eligible to receive a 25 percent discount on its winning bid.

119. Small business bidding credits are not cumulative; an eligible applicant may receive either the 15 percent or the 25 percent bidding credit on its winning bid, but not both. The Commission's unjust enrichment provisions also apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license within a certain period to an entity not qualifying for the same level of bidding credit.

120. Each applicant claiming a small business bidding credit must disclose the gross revenues for the preceding three years for each of the following: (1) The applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 1002. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 1002, the identity and the attributable gross revenues of any such disclosable interest holder must be disclosed. If an applicant is applying as a consortium of small businesses, the disclosures described in this paragraph must be provided for each consortium member.

b. Rural Service Provider Bidding Credit

121. An eligible applicant may request a 15 percent discount on its winning bid using a rural service provider bidding credit, subject to the $10 million cap. To be eligible for a rural service provider bidding credit, an applicant must be: (1) A service provider that is in the business of providing commercial communications services and, together with its controlling interests, affiliates, and the affiliates of its controlling interests, has fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers; and (2) serves predominantly rural areas, defined as counties with a population density of 100 or fewer persons per square mile. These eligibility requirements must be satisfied by the FCC Form 175 filing deadline for Auction 1002, *i.e.,* January 28, 2016. Additionally, an applicant may count any subscriber as a single subscriber even if that subscriber receives more than one service.

122. Each applicant seeking a rural service provider bidding credit must disclose the number of subscribers it has, along with the number of subscribers of its affiliates, controlling interests, and the affiliates of its controlling interests. The applicant must also submit an attachment that lists all parties with which the applicant has entered into any spectrum use agreements or arrangements for any licenses that be may won by the applicant in Auction 1002. In addition, to the extent that an applicant has an agreement with any disclosable interest holder for the use of more than 25 percent of the spectrum capacity of any license that may be won in Auction 1002, the identity and the attributable subscribers of any such disclosable interest holder must be disclosed. Like applicants seeking eligibility for small business bidding credits, eligible rural service providers may also form a consortium. If an applicant is applying as a consortium of rural service providers, the disclosures described in this paragraph, including the certification, must be provided for each consortium member.

c. Caps on Bidding Credits

123. Eligible applicants claiming either a small business or rural service provider bidding credit will be subject to certain caps on the total amount of bidding credits that any eligible applicant may receive. Specifically, an applicant claiming a small business bidding credit is subject to a $150 million aggregate cap, of which at most $10 million may apply to licenses won in PEAs with a population of 500,000 or less. Additionally, an applicant claiming a rural service provider bidding credit is subject to a $10 million aggregate cap. No winning designated entity bidder will be able to obtain more than $10 million in bidding credits in total for licenses won in PEAs 118–416, with the exception of PEA 412 (Puerto Rico), which exceeds the 500,000 population threshold.

d. Attributable Interests

(i) Controlling Interests and Affiliates

124. Pursuant to 47 CFR 1.2110 an applicant's eligibility for designated entity benefits is determined by attributing the gross revenues (for those seeking small business benefits) or subscribers (for those seeking rural service provider benefits) of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of greater than 50 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis based on the totality of the circumstances. The following are some common indicia of *de facto* control: (1) The entity constitutes or appoints more than 50 percent of the board of directors or management committee; (2) the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; and (3) the entity plays an integral role in management decisions.

125. Applicants should refer to 47 CFR 1.2110(c)(2) and FCC Form 175 Instructions to understand how certain interests are calculated in determining control for purposes of attributing gross revenues. For example, officers and directors of an applicant are considered to have a controlling interest in the applicant.

126. Affiliates of an applicant or controlling interest include an individual or entity that (1) directly or indirectly controls or has the power to control the applicant, (2) is directly or indirectly controlled by the applicant, (3) is directly or indirectly controlled by a third party that also controls or has the power to control the applicant, or (4) has an ''identity of interest'' with the applicant. The Commission's definition of an affiliate of the applicant encompasses both controlling interests of the applicant and affiliates of controlling interests of the applicant. For more information on the application requirements regarding controlling interests and affiliates, applicants should refer to 47 CFR 1.2110(c)(2) and (c)(5) respectively, as well as the FCC Form 175 Instructions.

127. An applicant seeking a small business bidding credit must demonstrate its eligibility for the bidding credit by: (1) Meeting the applicable small business size standard, based on the controlling interest and affiliation rules, and (2) retaining control, on a license-by-license basis,

over the spectrum associated with the licenses for which it seeks small business benefits. For purposes of the first prong of the standard, applicants should note that control and affiliation may arise through, among other things, ownership interests, voting interests, management and other operating agreements, or the terms of any other types of agreements—including spectrum lease agreements—that independently or together create a controlling, or potentially controlling, interest in the applicant's or licensee's business as a whole. In addition, once an applicant demonstrates eligibility as a small business under the first prong, it must also be eligible for benefits on a license-by-license basis under the second prong. As part of making the FCC Form 175 certification that it is qualified as a designated entity under 47 CFR 1.2110, an applicant is certifying that it does not have any spectrum use or other agreements that would confer *de jure* and *de facto* control of any license it seeks to acquire with bidding credits.

128. Under this new standard for evaluating eligibility for small business bidding credits, if an applicant executes a spectrum use agreement that does not comply with the Commission's relevant standard of *de facto* control, it will be subject to unjust enrichment obligations for the benefits associated with that particular license, as well as the penalties associated with any violation of section 310(d) of the Communications Act and related regulations. If that spectrum use agreement (either alone or in combination with the designated entity controlling interest and attribution rules), goes so far as to confer control of the applicant's overall business, the gross revenues of the additional interest holders will be attributed to the applicant, which could render the applicant ineligible for all current and future small business benefits on all licenses.

(ii) Limitation on Spectrum Use

129. The Commission determined that a new attribution rule will apply going forward under which the gross revenues (or the subscribers, in the case of a rural service provider) of an applicant's disclosable interest holder are attributable to the applicant, on a license-by-license basis, if the disclosable interest holder has an agreement with the applicant to use, in any manner, more than 25 percent of the spectrum capacity of any license won by the applicant and acquired with a bidding credit during the five-year unjust enrichment period for the applicable license. For purposes of this rule, a disclosable interest holder of an applicant seeking designated entity benefits is defined as any individual or entity holding a ten percent or greater interest of any kind in the applicant, including but not limited to, a ten percent or greater interest in any class of stock, warrants, options or debt securities in the applicant or licensee. Any applicant seeking a bidding credit for licenses won in Auction 1002 will be subject to this attribution rule and must make the requisite disclosures.

130. The Commission also determined that certain disclosable interest holders may be excluded from this attribution rule. Specifically, an applicant claiming the rural service provider bidding credit may have spectrum license use agreements with a disclosable interest holder, without having to attribute the disclosable interest holder's subscribers, so long as the disclosable interest holder is independently eligible for a rural service provider credit and the use agreement is otherwise permissible under the Commission's existing rules. If applicable, the applicant must attach to its FCC Form 175 any additional information as may be required to indicate any license (or license area) that may be subject to this attribution rule or to demonstrate its eligibility for the exception from this attribution rule. To the extent an Auction 1002 applicant is required to submit any such additional information, the applicant must not disclose details of its submission to others as it would reveal information regarding its license area selection(s). Consistent with the Commission's limited information procedures, the Bureau intends to withhold from public disclosure all information contained in any such attachments until after the close of the auction.

(iii) Exceptions From Attribution Rules for Small Businesses and Rural Service Providers

131. Applicants claiming designated entity benefits may be eligible for certain exceptions from the Commission's attribution rules. For example, the Commission has clarified that, in calculating an applicant's gross revenues under the controlling interest standard, it will not attribute to the applicant the personal net worth, including personal income, of its officers and directors. The Commission has also exempted from attribution to the applicant the gross revenues of the affiliates of a rural telephone cooperative's officers and directors, if certain conditions specified in 47 CFR 1.2110(b)(4)(iii) are met. An applicant claiming this exemption must provide, in an attachment, an affirmative statement that the applicant, affiliate and/or controlling interest is an eligible rural telephone cooperative within the meaning of 47 CFR 1.2110(b)(4)(iii), and the applicant must supply any additional information as may be required to demonstrate eligibility for the exemption from the attribution rule.

132. An applicant claiming a rural service provider bidding credit may be eligible for an exception from the Commission's attribution rules as an existing rural partnership. To qualify for this exception, an applicant must be a rural partnership providing service as of July 16, 2015, and each member of the rural partnership must individually have fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers. Because each member of the rural partnership must individually qualify for the bidding credit, by definition, a partnership that includes a nationwide provider as a member will not be eligible for the benefit.

133. Finally, a consortium of small businesses or rural service providers may seek an exception from the Commission's attribution rules. Under the Commission's rules, a consortium of small businesses or rural service providers is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of small business or rural service provider. A consortium must provide additional information for each member demonstrating each member's eligibility for the claimed bidding credit in order to show that the applicant satisfies the eligibility criteria for the bidding credit. The gross revenue or subscriber information of each consortium member will not be aggregated for purposes of determining the consortium's eligibility for the claimed bidding credit. However, this information must be provided to ensure that each consortium member qualifies for the bidding credit sought by the consortium.

ix. Tribal Lands Bidding Credit

134. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. Applicants do not provide information regarding tribal lands bidding credits on their FCC Form 175. Instead, winning bidders may apply for the tribal lands bidding credit after the auction when they file their more detailed, FCC Form 601 applications.

x. Provisions Regarding Current and Former Defaulters

135. Pursuant to the rules governing competitive bidding, each applicant must make certifications regarding whether it is a current or former defaulter or delinquent. A current defaulter or delinquent is not eligible to participate in Auction 1002, but a former defaulter or delinquent may participate so long as it is otherwise qualified and makes an upfront payment that is fifty percent more than would otherwise be necessary.

136. For purposes of evaluating the certifications under 47 CFR 1.2105(a)(2)(xi) and (xii), the Bureau clarifies that ''non-tax debt owed to any Federal agency'' includes, within the meaning of the rule, all amounts owed under Federal programs, including contributions to the Universal Service Fund, Telecommunications Relay Services Fund, and the North American Numbering Plan Administration, notwithstanding that the administrator of any such fund may not be considered a Federal ''agency'' under the Debt Collection Improvement Act of 1996. *See* 31 U.S.C. 3716 and 3717; *see also* 47 CFR 1.1911, 1.1912, 1.1940. For example, an applicant with a past due USF contribution as of the auction application filing deadline would be disqualified from participating in Auction 1002 under the Commission's rules. If, however, the applicant cures the overdue debt prior to the auction application filing deadline (and such debt does not fall within one of the exclusions described in the ''Provisions Regarding Current and Former Defaulters'' section), it may be eligible to participate in Auction 1002 as a former defaulter under the Commission's rules.

137. Accordingly, each applicant must certify under penalty of perjury on its FCC Form 175 that it, its affiliates, its controlling interests, and the affiliates of its controlling interests, are not in default on any payment for a Commission construction permit or license (including down payments) and that it is not delinquent on any non-tax debt owed to any Federal agency. Additionally, an applicant must certify under penalty of perjury whether it (along with its controlling interests) has ever been in default on any payment for a Commission construction permit or license (including down payments) or has ever been delinquent on any non-tax debt owed to any Federal agency, subject to the exclusions. For purposes of making these certifications, the term ''controlling interest'' is defined in 47 CFR 1.2105(a)(4)(i).

138. Under the Commission's revised rule regarding applications by former defaulters, an applicant is considered a ''former defaulter'' or a ''former delinquent'' when, as of the FCC Form 175 deadline, it or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission license or delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) The notice of the final payment deadline or delinquency was received more than seven years before the FCC Form 175 filing deadline; (2) the default or delinquency amounted to less than $100,000; (3) the default or delinquency was paid within two quarters (*i.e.,* six months) after receiving the notice of the final payment deadline or delinquency; or (4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding. With respect to the first exclusion, notice to a debtor may include notice of a final payment deadline or notice of delinquency and may be express or implied depending on the origin of any Federal non-tax debt giving rise to a default or delinquency. Additionally, for the third exclusion, the date of receipt of the notice of a final default deadline or delinquency by the intended party or debtor will be used for purposes of verifying receipt of notice.

139. In addition to the *Auction 1000 Application Procedures PN,* applicants are encouraged to review the Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction application process. Parties are also encouraged to consult with the Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

140. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the ''red light rule,'' that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules ''are not affected'' by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

141. The Bureau reminds each applicant, however, that the Commission's Red Light Display system, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of post-auction applications by auction winners, an auction applicant's lack of current ''red light'' status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation. Moreover, a prospective applicant in Auction 1002 should note that any post-auction application filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's post-auction application. The Bureau strongly encourages each applicant (including its affiliates, controlling interests, and the affiliates of its controlling interests) to carefully review all records and other federal agency databases and information sources available to it to determine whether the applicant owes or was ever delinquent in the payment of non-tax debt owed to any Federal agency.

xi. Optional Applicant Status Identification

142. Applicants owned by members of minority groups and/or women, as defined in 47 CFR 1.2110(c)(3), and rural telephone companies, as defined in 47 CFR 1.2110(c)(4), may identify themselves regarding this status in filling out their FCC Form 175 applications. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of various groups in its auctions.

xii. Modifications to FCC Form 175

a. Only Minor Modifications Allowed

143. After the initial FCC Form 175 filing deadline, an Auction 1002 applicant will be permitted to make only minor changes to its application. Examples of minor changes include the deletion or addition of authorized bidders (to a maximum of three), revision of addresses and telephone numbers of the applicant, its responsible party, and its contact person, and change in the applicant's selected biding option (electronic or telephonic). Major modification to an FCC Form 175 application (*e.g.,* change of license area selection, change in ownership that would constitute an assignment or transfer of control of the applicant, change of certifying official, change in applicant's legal classification that results in a change in control, or change in claimed eligibility for a higher percentage of bidding credit) will not be permitted after the initial FCC Form 175 filing deadline. If an applicant makes a ''major amendment,'' as defined by 47 CFR 1.2105(b)(2), the major amendment will not be accepted and may result in the dismissal of the application. Any change in control of an applicant—resulting from a merger, for example—will be considered a major modification, and the application will consequently be dismissed. The Bureau reiterates that, even if an applicant's FCC Form 175 is dismissed, the applicant would remain subject to the communication prohibitions of 47 CFR 1.2105(c) until the down-payment deadline.

b. Duty To Maintain Accuracy and Completeness of FCC Form 175

144. Each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in its pending application, including a pending application in a competitive bidding proceeding. An Auction 1002 applicant must furnish additional or corrected information to the Commission within five days after a significant occurrence, or amend its FCC Form 175 no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. An applicant's obligation to make modifications to a pending application in order to provide additional or corrected information continues in accordance with the Commission's rules. The Bureau notes that an applicant is obligated to amend its pending application even if a reported change is considered to be a major modification that may result in the dismissal of its application.

c. Submitting Modifications to FCC Form 175

145. If an applicant needs to make permissible minor changes to its FCC Form 175, or must make changes in order to maintain the accuracy and completeness of its application pursuant to 47 CFR 1.65 and 1.2105(b)(4), during a time when the system is available to the applicant for purposes of making the type of change(s) required, such changes should be made electronically to its FCC Form 175 using the Auction System. For the change to be submitted and considered by the Commission, an applicant must click on the SUBMIT button. After the revised application has been submitted, a confirmation page will be displayed stating the submission time, submission date, and a unique file number.

146. An applicant cannot use the Auction System outside of the initial and resubmission filing windows to make changes to its FCC Form 175 for other than administrative changes (*e.g.,* changing responsible party or contact person name and related information, adding or deleting an authorized bidder). If other permissible minor changes need to be made, or if changes are required pursuant to 47 CFR 1.65 and 1.2105(b)(4), outside of these filing windows, the applicant must submit a letter briefly summarizing the changes to its FCC Form 175 by email to *auction1002@fcc.gov.* The email summarizing the changes must include a subject or caption referring to Auction 1002 and the name of the applicant, for example, ''Re: Changes to Auction 1002 Application of XYZ Corp.'' Any attachments to email must be formatted as Adobe® Acrobat® (PDF) or Microsoft® Word documents. Questions about FCC Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418–0660. An applicant that submits its changes in this manner must subsequently update its FCC Form 175 application in the Auction System once it is open and available to applicants. Moreover, after the initial filing window has closed, the Auction System will not permit an applicant to make certain permissible changes itself (*e.g.,* correcting a misstatement of the applicant's legal classification, reducing the applicant's claimed bidding credit level). This is the case because certain fields on the FCC Form 175 will no longer be available to, or changeable by, the applicant after the initial application filing window closes. If an applicant needs to make a permissible minor change that cannot be made using the Auction System, it must submit a written request by email to the *auction1002@fcc.gov* mailbox requesting that the Commission manually make the change on the applicant's behalf. The applicant must then recertify and resubmit its application by clicking on the SUBMIT button to confirm the change.

147. As with the FCC Form 175, any application amendment and related statements of fact must be certified by an authorized representative of the applicant with authority to bind the applicant. Applicants should note that submission of any such amendment or related statement of fact constitutes a representation by the person certifying that he or she is an authorized representative with such authority, and that the contents of the amendment or statement of fact are true and correct.

148. Applicants must not submit application-specific material through the Commission's Electronic Comment Filing System. Further, as discussed in the *Prohibited Communications PN,* parties submitting information related to their applications should use caution to ensure that their submissions do not contain confidential information or communicate information that would violate 47 CFR 1.2105(c) or the limited information procedures adopted for Auction 1002. A party seeking to submit, outside of the Auction System, information that might reflect non-public information, such as an applicant's license area selections, upfront payment amount, or bidding eligibility, should consider submitting any such information along with a request that the filing or portions of the filing be withheld from public inspection until the end of the prohibition of certain communications period pursuant to 47 CFR 1.2105(c).

D. Auction 1002 Process

i. Online Auction Tutorials and Training

149. Online auction tutorials will be available on the Auction 1002 Web page for prospective bidders to familiarize themselves with the forward auction application and bidding processes. The online tutorials will provide information about pre-auction procedures, completing auction applications, auction conduct, the Auction System, auction rules, and 600 MHz Band service rules. Specifically, the first auction tutorial will focus on the auction application process and the second tutorial will focus on the biding

process. Both tutorials will also provide an avenue to ask Commission staff questions about the auction, auction procedures, filing requirements, and other matters related to the forward auction. The tutorials will allow viewers to navigate the presentation outline, review written notes, listen to audio recordings of the notes, and search for topics using a text search function. Additional features of this web-based tool include links to auction-specific Commission releases, email links for contacting Commission licensing and auctions staff, and screen shots of the online application and Auction System. Using a web browser with Adobe Flash Player, the tutorials will be accessible from the Commission's Auction 1002 Web page at *http://www.fcc.gov/auctions/1002* through an ''Auction Tutorial'' link under the ''Education'' tab. The application tutorial will be available on the Auction 1002 Web page under the ''Education'' tab on January 7, 2016, and the bidding process tutorial will be available on February 29, 2016. Once posted, the tutorials will remain available and accessible anytime for reference in connection with the procedures outlined in the *Auction 1000 Application Procedures PN.* In addition, an Auction 1002 applicant whose application has been deemed to be ''complete'' will be provided with additional opportunities to gain knowledge and experience with the auction bidding system prior to the mock auction that will be offered to qualified bidders. Based on the Bureau's experience with past auctions, parties interested in participating in this auction will find the interactive, online tutorials an efficient and effective way to further their understanding of the auction process.

ii. FCC Form 175—Due Prior to 6:00 p.m. ET on January 28, 2016

150. In order to be eligible to bid in the forward auction, applicants must first follow the procedures set forth in the FCC Form 175 Instructions to submit an FCC Form 175 electronically via the Auction System.

151. An applicant may file its application to participate in Auction 1002 during the filing window that will begin at noon ET on January 14, 2016 and close at 6:00 p.m. ET on January 28, 2016. The application must be submitted prior to the closing of the filing window. Late applications will not be accepted. No application fee is required, but an applicant must submit a timely upfront payment to be eligible to bid. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. There are no limits or restrictions on the number of times an application can be updated or amended until the filing deadline on January 28, 2016.

152. An applicant must always click on the SUBMIT button on the ''Certify & Submit'' screen to successfully submit its FCC Form 175 and any modifications; otherwise the application or changes to it will not be received or reviewable by Commission staff. Additional information about accessing, completing, and viewing the FCC Form 175 will be included in the FCC Form 175 Instructions. FCC Auctions Technical Support is available at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY); hours of service are Monday through Friday, from 8:00 a.m. to 6:00 p.m. ET. In order to provide better service to the public, all calls to Technical Support are recorded.

iii. Application Processing and Minor Corrections

a. Public Notice of Applicants' Initial Application Status and Opportunity for Minor Corrections

153. After the deadline for filing auction applications, the Bureau will process all timely submitted applications to determine which are complete, and subsequently will issue a public notice with applicants' initial application status identifying (1) those that are complete, (2) those that are rejected, and (3) those that are incomplete or deficient because of minor defects that may be corrected. The public notice will include the deadline for resubmitting corrected applications.

154. After the application filing deadline on January 28, 2016, applicants can make only minor corrections to their applications. Major modifications (*e.g.,* change license selection, change control of the applicant, change the certifying official, or claim eligibility for a higher percentage of bidding credit) will not be permitted.

155. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the applicant's FCC Form 175, unless the applicant's certifying official or contact person notifies Commission staff in writing that another representative is authorized to speak on the applicant's behalf. Authorizations may be sent by email to *auction1002@fcc.gov.*

b. Public Notice of Applicants' Final Application Status After Upfront Payment Deadline

156. The *Auction 1002 Qualified Bidders PN* will be issued at least 15 business days before bidding in the initial stage of Auction 1002 begins. Qualified bidders are those applicants with submitted FCC Form 175 applications that are deemed timely-filed and complete, provided that such applicants have timely submitted an upfront payment that is sufficient to qualify them to bid.

iv. Upfront Payments and Bidding Eligibility

157. In order to be eligible to bid in Auction 1002, an applicant must submit an upfront payment. An upfront payment is a refundable deposit made by each bidder to establish its eligibility to bid on licenses. Upfront payments help deter frivolous or insincere bidding, and provide the Commission with a source of funds in the event that the bidder incurs liability during the auction. Upfront payments will be due after the initial clearing target and associated band plan scenario has been determined. The deadline for submitting upfront payments for Auction 1002, as well as detailed instructions about submitting upfront payments, will be provided in the *Upfront Payment PN.*

158. The amount of the upfront payment will determine a bidder's initial bidding eligibility in terms of bidding units, *i.e.,* the maximum number of blocks, as measured by their associated bidding units, a bidder may demand in the clock phase of the forward auction. In order to bid for blocks in a particular PEA, a qualified bidder must have selected that PEA on its FCC Form 175 and must have a current eligibility level that meets or exceeds the number of bidding units assigned to the blocks in that PEA multiplied by the number of blocks for which it wishes to bid. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one block in one of the PEAs selected on its FCC Form 175 for Auction 1002, or else the applicant will not be eligible to bid in the auction. In addition, each applicant should check its calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. An applicant does not have to make an upfront payment to cover all of the blocks in all of the license areas the applicant selected on its FCC Form 175, but only enough to cover the maximum number of bidding units that are associated with the blocks in the license

area(s) on which it wishes to bid in any round. The total upfront payment does not affect the prices at which the bidder may demand blocks, nor the bidder's dollar commitment associated with the bidder's total demands at any point in the auction.

159. The Commission adopted an upfront payment amount of $2,500 per bidding unit for Auction 1002. The number of bidding units assigned to the spectrum blocks in each PEA, calculated using the approach adopted by the Commission in the *Auction 1000 Bidding Procedures PN* is set forth in Attachment 1, Appendix F (Forward Auction Bidding Units, Upfront Payments, and Minimum Opening Bids) to the *Auction 1000 Application Procedures PN*. The number of bidding units for the blocks in a given PEA will be fixed and will not change during the auction, regardless of price changes. The specific minimum opening bids and upfront payments for the forward auction are set forth in Attachment 1, Appendix F to the *Auction 1000 Application Procedures PN*.

160. Applicants considered to be former defaulters under the Commission's rules must make upfront payments that are 50 percent greater than non-former defaulters. For purposes of this calculation, an ''applicant'' includes the applicant itself and its controlling interests, as defined in 47 CFR 1.2105 and 1.2110. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified licenses by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

v. Auction Registration

161. All qualified bidders listed in the *Auction 1002 Qualified Bidders PN* will be automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 application and will include the SecurID® tokens that will be required to place bids, the ''Auction System Bidder's Guide,'' and the Auction Bidder Line phone number. Forward auction qualified bidders will have access to detailed impairment information, including the actual source and location of any impairment, upon receipt of their registration materials.

162. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon five days prior to the mock auction, call the Auctions Hotline at (717) 338–2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

163. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's FCC Form 175 may request replacements. To request replacement of these items, call Technical Support at (877) 480–3201, option nine; (202) 414–1250; or (202) 414–1255 (TTY).

vi. Remote Electronic Bidding

164. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference—electronic or telephonic—on its FCC Form 175. In either case, each authorized bidder must have its own designated SecurID® token, which the Commission will provide at no charge. Each authorized bidder will be issued a unique SecurID® token. For security purposes, the SecurID® tokens, the telephonic bidding telephone number, and the ''Auction System Bidder's Guide'' are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction and designated authorized bidder. SecurID® tokens issued for other auctions or obtained from a source other than the Commission will not work for Auction 1002. All telephone calls are recorded.

vii. Mock Auction—Clock and Assignment Phases

165. All Auction 1002 qualified bidders will be eligible to participate in a mock auction prior to bidding in Auction 1002. This mock auction will enable bidders to become familiar with the ascending clock auction format and assignment phase bidding using the Auction System prior to the start of the auction. The Bureau strongly recommends that all bidders participate in the mock auction. The date for the mock auction will be announced in *Auction 1002 Qualified Bidders PN.*

IV. Post-Auction Process

A. Channel Reassignment PN

166. Following completion of the reverse and forward auctions, the Media and Wireless Telecommunications Bureaus will announce the results of the incentive auction and the repacking process in the *Channel Reassignment PN.* Specifically, the *Channel Reassignment PN* will provide the results of the reverse auction, the forward auction and the repacking, indicating the reassignments of television channels and reallocations of broadcast television spectrum. The *Channel Reassignment PN* will also establish the beginning of a 39-month post-auction transition period. Finally, the *Channel Reassignment PN* will provide additional details relating to post-auction procedures for successful bidders in the reverse and forward auctions, respectively.

B. Incentive Payments To Reverse Auction Winning Bidders

i. Payees and Transmittal

167. Incentive payments will be disbursed from the proceeds received in the forward auction. A successful bidder in the reverse auction must submit the necessary financial information via a standardized incentive payment form to facilitate the disbursement of its incentive payment. Specific procedures for submitting the form, including applicable deadlines, will be set forth in the *Channel Reassignment PN.* As noted in the *Incentive Auction R&O,* the Commission intends to follow winning reverse auction bidders' payment instructions as set forth on their respective standardized incentive payment forms to the extent permitted by applicable law.

ii. Time of Payment

168. The Commission will share auction proceeds with broadcasters relinquishing spectrum usage rights as soon as practicable following the successful conclusion of the incentive auction. As explained in the *Incentive Auction R&O,* the Commission may disburse auction proceeds only after spectrum licenses associated with winning forward auction bids have been granted, absent express statutory direction to do otherwise. The Commission typically grants spectrum licenses after an auction on a rolling basis, as license applications filed by winning bidders are ready to be granted. Likewise, incentive auction proceeds will become available for distribution on a rolling basis over time and at intervals tied to the forward auction licensing process. Consequently, the Bureau cannot at this point set a specific deadline for sharing incentive auction proceeds.

169. The Commission is committed to disbursing auction proceeds as

promptly as possible while meeting all of its statutory responsibilities. As the Commission noted in the *Auction 1000 Comment PN,* circumstances regarding the post-auction transition process for broadcasters may make it in the public interest to prioritize payments to some broadcasters over others in order to expedite the entire post-auction transition process. The Commission may take factors that facilitate the transition process into account when determining the sequence of payments sharing auction proceeds.

C. Forward Auction Participants

170. Shortly after bidding has ended, the *Channel Reassignment PN* will be issued declaring the auction closed, identifying the winning bidders and the total amount that they will owe, and establishing the deadlines for submitting down payments, final payments, post-auction applications, and ownership disclosure information reports. The *Channel Reassignment PN* will include the type information that is traditionally contained in an auction closing public notice.

i. Calculating Individual License Prices

171. In order to calculate individual license prices, the Auction System must determine how to apportion to individual licenses any assignment phase payments and potentially, any capped bidding credit discounts, since in both cases, a single amount may apply to multiple licenses. For example, a single assignment phase payment will apply to multiple licenses if a bidder won multiple licenses in a PEA or if PEAs were grouped for bidding in the assignment phase. A single capped bidding credit will apply if a bidder's bidding credit percentage as applied to all its winnings in small markets or in all markets overall, results in a discount larger than the applicable cap.

172. In order to calculate individual license prices, the Auction System will: (1) Calculate, for all licenses won by a bidder with a bidding credit, the total amount of any bidding credit discount for the bidder, capping that amount as needed (for a winning bidder claiming a small business bidding credit, this requires a determination in (1) of which bidding credit cap(s) apply); (2) apportion the total discount amount to the group of licenses won by the bidder in each PEA or assignment phase PEA group; (3) apportion the resulting discount and the assignment phase payment among the individual licenses won in the PEA/PEA group; and finally, (4) calculate the license price net of any bidding credit discount as the sum of the impairment adjusted clock phase price for that license plus the amount apportioned to the license in (3). To calculate the gross individual license price, the Auction System will ignore any apportioned bidding credit discount. For more detailed information about how final license prices are determined, please see Attachment 1, Appendix H (Forward Auction Assignment Phase and Post-Auction License Prices), attached to the *Auction 1000 Application Procedures PN.*

173. Consistent with past practices, the verification of eligibility and final calculation of any designated entity benefits for any license won in Auction 1002 will be conducted during the post-auction application process.

ii. Down Payments

174. Within ten business days after release of the *Channel Reassignment PN,* each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 1002 to twenty percent of the amount of its total final payments net of any applicable small business or rural service provider bidding credits.

iii. Final Payments

175. Each winning bidder will be required to submit the balance of the net amount of its total final payments within ten business days after the applicable deadline for submitting down payments.

iv. Post-Auction Application (FCC Form 601)

176. The Commission's rules provide that, within ten business days after release of the *Channel Reassignment PN,* winning bidders must electronically submit a properly completed post-auction application (FCC Form 601) for the license(s) they won through Auction 1002.

177. A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought. Further instructions on these and other filing requirements will be provided to winning bidders in the *Channel Reassignment PN.*

178. Winning bidders organized as bidding consortia must comply with the FCC Form 601 post-auction application procedures established in the *CSEA/Part 1 Report and Order.* Specifically, each member (or group of members) of a winning consortium seeking separate licenses will be required to file a separate post-auction application for its respective license(s). If the license is to be partitioned or disaggregated, the member (or group) filing the post-auction application must provide the relevant partitioning or disaggregation agreement in its post-auction application. In addition, if two or more consortium members wish to be licensed together, they must first form a legal business entity, and the post-auction application must demonstrate that any such entity must meet the applicable designated entity criteria.

v. Ownership Disclosure Information Report (FCC Form 602)

179. Within ten business days after release of the *Channel Reassignment PN,* each winning bidder must also comply with the ownership reporting requirements in 47 CFR 1.913, 1.919, and 1.2112 by submitting an ownership disclosure information report for wireless telecommunications services (FCC Form 602) with its FCC Form 601 post-auction application.

180. If a winning bidder already has a complete and accurate FCC Form 602 on file in Universal Licensing System (ULS), it is not necessary to file a new report, but the winning bidder must certify in its FCC Form 601 application that the information on file with the Commission is complete and accurate. If the winning bidder does not have an FCC Form 602 on file, or if it is not complete and accurate, it must submit one.

181. When a winning bidder submits an FCC Form 175, ULS automatically creates an ownership record. This record is not an FCC Form 602, but may be used to pre-fill the FCC Form 602 with the ownership information submitted on the winning bidder's FCC Form 175 application. A winning bidder must review the pre-filled information and confirm that it is complete and accurate as of the filing date of the FCC Form 601 post-auction application before certifying and submitting the FCC Form 602. Further instructions will be provided to winning bidders in the *Channel Reassignment PN.*

vi. Tribal Lands Bidding Credit

182. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally recognized tribal lands that are unserved by any telecommunications carrier or that have a wireline penetration rate equal to or below 85 percent is eligible to receive a tribal lands bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

183. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application. When initially filing the post-auction application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal lands bidding credit, for each license won in the auction, by checking the designated box(es). After stating its intent to seek a tribal lands bidding credit, the winning bidder will have 180 days from the close of the post-auction application filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal lands bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f)(3)(vii). For additional information on the tribal lands bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rulemaking proceeding regarding tribal lands bidding credits and related public notices.

vii. Default and Disqualification

184. Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely FCC Form 601 post-auction application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 1002 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. For purposes of Auction 1002, the ''winning bid'' refers to the calculated license price discussed in the ''Calculating Individual License Prices'' section of the *Auction 1000 Application Procedures PN* and set forth in section 9 of Appendix H in Attachment 1 (Forward Auction Assignment Phase and Post-Auction License Prices) to the *Auction 1000 Application Procedures PN.*

185. The percentage of the bid that a defaulting bidder must pay in addition to the deficiency will depend on the auction format ultimately chosen for a particular auction. The Commission's rules specify that in an auction without combinatorial bidding, such as Auction 1002, the percentage shall be between three and 20 percent. In the *Auction 1000 Comment PN,* the Commission proposed an additional default payment of 20 percent of the applicable bid for the forward auction, concluding that the maximum amount is in the public interest given the importance of deterring defaults in order to minimize the possibility that the actual proceeds generated by the auction will not differ significantly from the amounts used to determine that the final stage rule is met. As the Commission noted in the *Incentive Auction R&O,* parties receiving the first disbursements of auction proceeds once amounts become available for distribution—including broadcasters relinquishing spectrum usage rights—will be insulated from the effects of any forward auction bidder defaults. The Commission received no comment on this proposal. Given the policy and public interest considerations underlying this proposal, and in the absence of any opposition, the Bureau adopts an additional default payment of 20 percent for Auction 1002.

186. Finally, in the event of a default, the Commission has the discretion to re-auction the license or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

viii. Refund of Remaining Upfront Payment Balance

187. After the auction, an applicant that is not a winning bidder or is a winning bidder whose upfront payment exceeded the net amount of its total final payments may be entitled to a refund of some or all of its upfront payment. Information about requesting a refund of a remaining upfront payment balance will be provided in the *Upfront Payment PN.* A bidders should not request a refund of their upfront payments before the Commission releases a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, FCC Form 601 post-auction applications, and final payments.

V. Supplemental Final Regulatory Flexibility Analysis

188. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (SFRFA) of the possible significant economic impact on small entities by the procedures and instructions described in Attachment 4 of the *Auction 1000 Application Procedures PN.*

A. Need for, and Objectives of, Public Notice

189. The *Auction 1000 Application Procedures PN* implements the procedures established in the Commission's prior orders to carry out the broadcast television spectrum incentive auction, which is scheduled to begin on March 29, 2016, and consists of the reverse auction (Auction 1001) and the forward auction (Auction 1002). In the *Auction 1000 Comment PN,* the Commission sought comment on the proposals for conducting the incentive auction, including the proposed procedures for the forward auction, the reverse auction, and the integration of the reverse and forward auctions, that would implement rules previously proposed in the *Incentive Auction NPRM* and adopted in the *Incentive Auction R&O.* In the *Auction 1000 Bidding Procedures PN,* the Commission established the bidding procedures for the reverse and forward auctions. Pursuant to the Commission's direction, the *Auction 1000 Application Procedures PN* establishes the application procedures for the reverse and forward auctions; provides detailed information, instructions, and deadlines for filing applications; and finalizes certain post-auction procedures established by the Commission's prior orders.

190. Previously, as required by the RFA, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) in connection with the *Incentive Auction NPRM* and a Final Regulatory Flexibility Analysis (FRFA) in connection with the *Incentive Auction R&O.* Likewise, the Commission's *Mobile Spectrum Holdings NPRM* included an Initial Regulatory Flexibility Analysis and the *Mobile Spectrum Holdings R&O* included a Final Regulatory Flexibility Analysis (MSH FRFA). Recently, the Commission modified its Part 1 competitive bidding rules, including the designated entity rules that apply to all licenses acquired with bidding credits, including those won in Auction 1002. The *Part 1 NPRM* and *Part 1 PN* included an IRFA and Supplemental IRFA respectively, and the resulting *Part 1 R&O* included a Final Regulatory Flexibility Analysis (Part 1 FRFA).

191. Following the release of the *Auction 1000 Comment PN,* a *Supplemental Public Notice* sought comment on how the proposals in the *Auction 1000 Comment PN* could affect either the IRFA or the FRFA. The *Supplemental Public Notice* provided that the proposals in the *Auction 1000 Comment PN* did not change any of the matters described in the IRFA or FRFA. As further noted in the *Supplemental Public Notice,* the request for comment focused on how the proposals in the *Auction 1000 Comment PN* might affect either the IRFA or the FRFA.

192. The subsequent *Auction 1000 Bidding Procedures PN* included a Supplemental Final Regulatory Flexibility Analysis (Bidding Procedures PN SFRFA) that addressed any determinations by the Commission that might have affected the IRFA and FRFA. In the Bidding Procedures PN SFRFA, one commenter responded to the *Supplemental Public Notice.* The SFRA addressed this response accounting for any particular impact on small businesses and explaining the reasons supporting the Commission's decisions. Aside from those comments that have been addressed in the *Auction 1000 Bidding Procedures PN* and the associated SFRFA, no other comments have been filed in response to the *Supplemental Public Notice* or the application procedures and instructions set forth in the *Auction 1000 Application Procedures PN.* As such, the procedures and instructions in the *Public Notice* do not change the analysis set forth in the IFRA, FRFA, and Bidding Procedures PN SFRFA. This SRFRA summarizes the application procedures in the Public Notice to assure that the Bureau has accounted properly for any economic impact on small businesses, consistent with the IRFA and FRFA.

193. Under the application procedures governing the conduct of the reverse auction, licensees of commercial and noncommercial educational full power and Class A television stations (eligible broadcast licensees) identified in the Final Baseline may apply to participate in the reverse auction. On its application (FCC Form 177), an eligible broadcast licensee will have up to three bid options depending on its pre-auction band: (1) Go off-air (available to all stations); (2) move to a Low-VHF channel (available to UHF or High-VHF stations); and (3) move to a High-VHF channel (available only to UHF stations). Additionally, if the applicant's application is timely-filed and deemed complete, it must then commit, at the associated opening price, to a preferred relinquishment option for each station for which it wishes to place bids in the clock rounds. Reverse auction bidders will be able to participate in the reverse auction over the Internet using the Commission's Auction System.

194. In the forward auction, each applicant must submit electronically through the Commission's Auction System a complete, accurate, and timely application (FCC Form 175), and submit a timely and sufficient upfront payment. Each stage of forward auction will consist of two phases—an ascending clock phase and an assignment phase. Forward auction bidders will also be able to participate in the forward auction over the Internet using the Commission's Auction System. Following the completion of the reverse and forward auctions, the Bureaus will release a *Channel Reassignment PN* that will provide the results of the reverse auction, the forward auction, and the repacking, indicating the reassignment of the television channels and reallocation of broadcast television spectrum, among other things.

B. Summary of Significant Issues Raised by Public Comments in Response to the Supplemental Notice

195. The Bidding Procedures PN SFRFA addressed the only response to the *Supplemental Public Notice,* and no subsequent comments were filed in response to the *Supplemental Public Notice.* Thus, no specific alternative procedures were raised for consideration by the Bureau. However, the Bureau considered the potential impact of the auction procedures and instructions in the *Auction 1000 Application Procedures PN* on all potential participants, including small businesses.

196. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the *Auction 1000 Comment PN* or the *Supplemental Public Notice.*

C. Description and Estimate of the Number of Small Entities To Which Specified Auction 1000 Procedures Will Apply

197. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules proposed in that rulemaking proceeding, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Auction 1000 is the first-of-its-kind incentive auction and participation is voluntary; therefore, the Bureau cannot make a meaningful estimate of the number of small entities who may apply to participate in the reverse and forward auctions. However, the Bureau anticipates greater participation by small businesses in the forward auction due to the recent changes in the Commission's designated entity rules aimed at providing greater opportunities for small businesses to gain access to capital in order to participate meaningfully at Commission auctions, including Auction 1002. Because the *Auction 1000 Application Procedures PN* implements those procedures and policies established in the Commission's orders relating to Auction 1000, the procedures, terms, and conditions may affect the same individuals and entities described in paragraphs 14 through 36 of the FRFA, paragraphs 5 through 30 of the MSH FRFA, and paragraphs 9 through 35 of the Part 1 FRFA.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

198. Some of the application procedures contained in the *Auction 1000 Application Procedures PN* will affect reporting, recordkeeping, and other compliance requirements for small entities. However, these procedures implement the rules and policies established in the Commission's orders, including the factual, policy, and legal analyses supporting those policies. Additionally, no comments were filed in response to these particular procedures and the Bureau intends to apply them uniformly to all entities, including small businesses. However, to the extent that some of the procedures in the *Auction 1000 Application Procedures PN* may provide supplemental information for small businesses, the Bureaus summarizes these relevant procedures.

i. Reverse Auction (Auction 1001)

199. *Red Light Rule.* To encourage broadcaster participation in the reverse auction, in the *Auction 1000*

Application Procedures PN, the Bureau waives the red light rule for the limited purpose of permitting any licensee that is red lighted for debt owed to the Commission at the time it submits a reverse auction application to participate in the reverse auction. Because a reverse auction applicant may incur debt to the Commission after submission of its application, and may fail to pay the debt when due, to participate in the auction, each reverse auction applicant will be required to certify in its application that it (1) acknowledges its liability to the Commission for any debt owed to the Commission that the applicant incurred before, or that it may incur after, the reverse auction application deadline, including all accrued interest, penalties and costs, and that the debt will continue to accrue interest, penalties and costs until paid; and (2) agrees that the Commission may pay all debt owed by the applicant to the Commission from the applicant's share of auction proceeds. Each reverse auction applicant will also be required to certify its agreement that if an appeal of, or request for waiver or compromise of, any debt owed by the applicant to the Commission is pending at the conclusion of the incentive auction, the Commission may withhold so much of the applicant's share of the auction proceeds as is necessary to pay the debt in full, including accrued interest, penalties and costs, until issuance of a final non-appealable decision regarding the debt or waiver or compromise request, and may then pay the debt from the applicant's withheld share.

200. *Channel Sharing Certification.* In the *Incentive Auction R&O,* the Commission adopted rules requiring prospective sharer stations under pre-auction channel sharing agreements (CSAs) to make certain certifications concerning their channel sharing arrangements. In addition to the certifications adopted in the *Incentive Auction R&O,* a sharer station must also certify that the CSA submitted by the reverse auction applicant is a true, correct, and complete copy of the CSA between the parties.

201. *Provisions Regarding Pending Proceedings.* Each reverse auction applicant that selects going off-air as a bidding option for a station must indicate on its FCC Form 177 whether it will hold any other broadcast licenses if all of the bids that it might place to go off-air are accepted. If it will hold another broadcast license, then the applicant must certify that the applicant will remain subject to any license renewal, as well as any enforcement action, pending at the time of the auction application deadline against the station that may go off-air as a result of the auction. If it will not hold any other broadcast licenses, then the applicant must certify in its application (1) that pursuant to the Commission's announced procedures for resolving such matters in connection with this auction, the Commission may withhold a portion of the share of auction proceeds for the station, if any, pending final determination of any FCC liabilities with respect to the station and such portion may be applied towards the satisfaction of such liabilities; and (2) that the applicant remains subject to the Commission's jurisdiction and authority to impose enforcement or other FCC liabilities with respect to the station, notwithstanding the surrender of its license for the station.

202. Additionally, each reverse auction applicant must also indicate for each license identified in its application whether the license is subject: (1) To a non-final revocation order; or (2) has expired or been cancelled and is subject to a non-final license cancellation order. An applicant that includes a Class A television station in its application must indicate whether that station is subject to a non-final downgrade order. If an applicant indicates that a license in its application is subject to any of the foregoing revocation, cancellation, or downgrade proceedings, it must certify in its application that it agrees with the Commission's announced procedures to withhold all of any incentive payment for the station pending the final outcome of any such proceeding.

203. All auction proceeds held (i) to cover potential enforcement liabilities, (ii) because of an ongoing license validity or downgrade proceeding, or (iii) until final resolution of an appeal of a debt determination or a compromise or waiver request will be held by the Commission in the U.S. Treasury. As determined by the Commission in the *Incentive Auction R&O,* amounts held following the auction will be released to the broadcaster or applied towards any forfeiture costs and other debt the broadcaster owes to the Commission, as appropriate in light of the final resolution of the relevant issues.

ii. Forward Auction (Auction 1002)

204. *Certification of Eligibility for Reserved Spectrum.* Under this certification requirement, a forward auction applicant that is eligible to bid on reserved spectrum blocks in a given PEA, and that included the PEA in its license area selection(s), must certify its eligibility to bid for reserved blocks in the PEA. An applicant is not required to bid on, or certify its eligibility for, reserved spectrum blocks in any or all areas in which it is eligible. However, an applicant that does not certify its eligibility with respect to a particular license area because it is not eligible or it declines to do so will not be able to bid for reserved spectrum blocks in that PEA during the auction.

205. *Additional Default Payment.* Any winning bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely FCC Form 601 post-auction application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). The default payment consists of a deficiency payment, equal to the difference between the amount of the Auction 1002 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. For Auction 1002, the additional default payment will be 20 percent.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

206. The RFA requires an agency to describe any significant alternatives beneficial to small entities considered in reaching a proposed approach, which may include the following four alternatives (among others): (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 for small entities of compliance and reporting requirements; (3) use of performance, rather than design, standards; and (4) an exemption for small entities. The procedures, terms, and conditions in the *Auction 1000 Application Procedures PN* correlate to those proposals and policies articulated in the Commission's orders governing Auction 1000, including Auctions 1001 and 1002. As such, a description of the steps taken to minimize the significant economic impact and the alternatives considered for these proposals can be found in the FRFA, Bidding Procedures PN SFRFA, MSH FRFA, and Part 1 FRFA.

207. In the *Auction 1000 Application Procedures PN,* the Bureau describes the application procedures and instructions for Auctions 1001 and 1002, along with the post-auction process, which are summarized in this supplemental

analysis. The policies adopted throughout the course of the incentive auction proceeding are consistent with the Commission's statutory obligations to ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' The statute also directs the Commission to promote ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses.'' For instance, the Commission concluded in the *Incentive Auction R&O* that licensing on a PEA basis is consistent with the requirements of section 309(j) because it would promote spectrum opportunities for carriers of different sizes, including small businesses. Moreover, the Commission recently revised its designated entity rules to provide small businesses with more flexibility to find the capital needed for acquiring licenses in auctions by, for instance, eliminating the attributable material relationship rule (AMR rule) and increasing the gross revenue thresholds used for determining eligibility for small business bidding credits.

208. For Auction 1000, the Bureau has taken steps to minimize the administrative burdens for applicants throughout the application process while providing small businesses with the opportunity to participate in the reverse and forward auctions. These steps include, but are not limited to: (1) Establishing auction Web sites as a central repository for auction information in addition to other Commission databases (*e.g.,* ULS, CDBS) and making such online resources available at no charge for prospective applicants to research auction application and bidding procedures as well as Commission rules, policies, and other applicable decisions; (2) publishing public notices at key points of the reverse and forward auction processes to keep auction applicants informed of their application status, applicable auction requirements, and relevant deadlines; (3) organizing, for reverse auction applicants, several workshops to address the auction application and bidding processes; (4) providing web-based, interactive online tutorials for prospective bidders to walk through the auction process and the Auction System's application and bidding screens; (5) implementing a mock auction for all qualified bidders to obtain hands-on experience with the Commission's Auction System prior to the start of the reverse and forward auctions; (6) conducting both auctions electronically over the Internet using the Commission's Auction System to include providing online availability of round results and auction announcements; and (7) providing Commission staff to answer technical, legal, and other auction-related questions.

209. Although the processes surrounding the implementation of Auction 1000 are unique, the timelines from the announcement of Auction 1000 to the execution of the reverse and forward auctions were developed with the consideration of lowering costs and burdens of compliance with the Commission's competitive bidding and media rules for all applicants, including small businesses. Following the conclusion of Auction 1000, the Bureaus will continue to provide information and services to auction applicants to facilitate compliance with the Bureaus' competitive bidding and media rules in the form of additional public notices and continued support by Commission staff. In summary, a number of application procedures which will be implemented in Auction 1000 were designed to facilitate auction participation by all interested applicants, including small businesses.

Federal Communications Commission.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13–97, 04–36, 07–243, 10–90 and CC Docket No. 95–116, 01–92, and 99–200; FCC 15–70]

Numbering Policies for Modern Communications, IP-Enabled Services, Telephone Number Requirements for IP-Enabled, Services Providers, Telephone Number Portability et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, establishes an authorization process to enable interconnected VoIP providers that choose direct access to request numbers directly from the Numbering Administrators. Next, this document sets forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system. Finally, this document modifies Commission's rules in order to permit VoIP Positioning Center (VPC) providers to obtain pseudo-Automatic Number Identification (p-ANI) codes directly from the Numbering Administrators for purposes of providing E911 services. These relatively modest steps will have lasting, positive impacts for consumers and the communications industry as we continue to undergo technology transitions.

DATES: Effective November 30, 2015, except for 47 CFR 52.15(g)(2) through(g)(3), which contains information collection requirements that have not be approved by OMB, the Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, Competition Policy Division, (202) 418–1580, or send an email to *marilyn.jones@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 13–97, 04–36, 07–243, 10–90 and CC Docket Nos. 95–116, 01–92, 99–200, FCC 15–70, adopted June 18, 2015 and released June 22, 2015. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

I. Introduction

1. The nation's communications infrastructure is undergoing key technology transitions, including that from networks based on time-division multiplexed (TDM) circuit-switched voice services to all-Internet Protocol (IP) multi-media networks. Already, these transitions have brought innovative and improved communications services to the marketplace, and consumers have embraced these new technologies. This is evidenced by the nearly 48 million interconnected VoIP retail local telephone service connections in service as of the end of 2013, comprising over a third of all wireline retail local telephone service connections.

2. Our actions today support these transitions. We establish a process to authorize interconnected VoIP providers to obtain North American Numbering Plan (NANP) telephone numbers directly from the Numbering Administrators, rather than through intermediaries. Our actions will facilitate innovative technologies and services that will benefit both consumers and providers, and further the Commission's recognized pro-consumer, pro-competition, and public safety goals. In addition, permitting interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators will improve responsiveness in the number porting process and increase visibility and accuracy of number utilization, enabling the Commission to more effectively protect the Nation's finite numbering resources. Our authorization process also enhances our ability to enforce the rules against interconnected VoIP providers. Finally, we also expect that, to the extent it encourages VoIP interconnection, authorizing interconnected VoIP providers to obtain numbers directly will help stakeholders and the Commission identify the source of routing problems and take corrective actions.

3. First, this *Order* establishes an authorization process to enable interconnected VoIP providers that choose direct access to request numbers directly from the Numbering Administrators. Next, the *Order* sets forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system. Finally, the *Order* also modifies Commission's rules in order to permit VoIP Positioning Center (VPC) providers to obtain pseudo-Automatic Number Identification (p-ANI) codes directly from the Numbering Administrators for purposes of providing E911 services. These relatively modest steps will have lasting, positive impacts for consumers and the communications industry as we continue to undergo technology transitions.

II. Background

4. Section 52.15(g)(2)(i) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The Commission has interpreted this rule as requiring evidence of either a state certificate of public convenience and necessity (CPCN) or a Commission license. As a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the Numbering Administrators. As explained below, neither authorization is typically available in practice to interconnected VoIP providers. The Commission has waived section 52.15(g)(2)(i) in two instances. The first was in 2005 to allow SBC Information Services (SBCIS), an information service provider that lacked state certification a carrier, as a carrier to obtain numbers directly from the Numbering Administrators. In that *Order,* the *SBCIS Waiver Order,* the Commission stated that, ''[t]o the extent other entities seek similar relief we would grant such relief to an extent comparable to what we set forth in this *Order.''* Following that *Order,* a number of entities filed similar petitions. The second waiver was in 2013, in order to conduct a limited trial allowing interconnected VoIP providers direct access to numbers. As described below, this trial demonstrated that there are no technical barriers preventing interconnected VoIP providers from accessing numbering resources directly and using them without intermediate carriers.

Direct Access NPRM

5. On April 18, 2013, the Commission adopted the *Direct Access Notice of Proposed Rulemaking (NPRM)* (**Federal Register** 2013–09154 Pages 23192–23194) which, among other things, proposed to allow interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators, subject to certain requirements. The Commission anticipated that allowing interconnected VoIP providers to have direct access to numbers would help speed the delivery of innovative services to consumers and businesses, while preserving the integrity of the network and appropriate oversight of telephone number assignments.

6. In the *Direct Access (NPRM),* the Commission sought comment on: (1) What type of documentation interconnected VoIP providers should have to provide to the Numbering Administrators in order to obtain numbers, (2) which existing or new numbering-related Commission requirements should apply to interconnected VoIP providers requesting numbers, and (3) how the Commission can enforce VoIP provider compliance with any numbering requirements it mandates. Specifically, regarding numbering requirements, the Commission proposed and sought comment on imposing the same requirements that it imposed in the *SBCIS Waiver Order*—number utilization and optimization requirements, numbering-related industry guidelines and practices that apply to carriers, and a 30-day notice period to inform the Commission and relevant states of the interconnected VoIP provider's intent to request numbers.

7. In the *Direct Access (NPRM),* the Commission sought comment on its proposal that interconnected VoIP providers may obtain numbers from any rate center unless a state commission finds that the request (1) is for numbers in a non-pooling rate center, and (2) will substantially contribute to number exhaust. It also sought comment on the Wisconsin Public Service Commission's proposal to impose the following requirements on interconnected VoIP providers seeking to obtain telephone numbers: (1) Provide the relevant state commission with contact information for personnel qualified to address regulatory and numbering concerns upon first requesting numbers in that state; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) maintain the original rate center designation of all numbers in its inventory; and (4) to provide customers with the ability to access all N11 numbers in use in a state.

8. The Commission also sought comment on a series of commitments offered by Vonage as a condition to obtaining direct access to numbers. Specifically, those commitments would require an interconnected VoIP provider to maintain at least 65 percent number utilization across its telephone number inventory, to offer VoIP interconnection to other carriers and providers, and to provide the Commission with a transition plan for migrating customers to its own numbers at least 90 days before commencing that migration and every 90 days thereafter for 18 months. The Commission also sought comment on whether it should modify its rules to allow VPC providers direct access to p-ANI codes for the provision of 911 and E911 services. Finally, the NPRM addressed and sought comment on the Commission's legal authority to adopt the various requirements it proposed for direct access to numbers by interconnected VoIP providers.

Direct Access Technical Trial

9. In the *Direct Access (NPRM),* the Commission established a six-month technical trial allowing interconnected VoIP providers to obtain direct access to numbers. In the trial, the Commission granted limited, conditional waivers to providers that had pending petitions for waiver of section 52.15(g)(2)(i). These

waivers allowed trial participants to obtain telephone numbers directly from the Numbering Administrators for use in providing interconnected VoIP services during the six-month technical trial. The Commission tailored the trial to test whether giving interconnected VoIP providers direct access to numbers would raise issues relating to number exhaust, number porting, VoIP interconnection, or intercarrier compensation, and if so, how those issues could be addressed. The *Direct Access (NPRM)* required trial participants to file regular reports throughout and at the end of the six-month trial, and allowed state commissions and other interested parties an opportunity to comment on the reports.

10. The Commission required trial participants to comply with its number utilization and optimization rules, as well as industry guidelines and practices, including abiding by the numbering authority delegated to state commissions and filing Numbering Resource Utilization and Forecast (NRUF) reports. The Commission also required each trial participant to maintain at least 65 percent number utilization across its entire telephone number inventory. State commissions recommended, and he Commission imposed, additional conditions on trial participants, including: (1) Providing the relevant state commission with regulatory and numbering contacts when the interconnected VoIP provider requests numbers in that state, (2) consolidating and reporting all numbers under its own unique OCN, (3) providing customers with the ability to access all abbreviated dialing codes (N11 numbers) in use in a state, and (4) maintaining the original rate center designation of all numbers in its inventory.

11. On June 17, 2013, the Wireline Competition Bureau (Bureau) adopted an *Order* announcing the participants in the trial. The Bureau concluded that the proposals submitted by Vonage Holdings Corp. (Vonage), SmartEdgeNet, LLC (SmartEdgeNet), WilTel Communications, LLC (WilTel or Level 3), Intelepeer, Inc. (Intelepeer), and Millicorp met the Commission's requirements to participate in a limited direct access to numbers trial, and approved them.

12. Upon completion of the trial, the Bureau released the *Direct Access Trial Report.* The Bureau reported that the limited trial indicated that it is technically feasible for interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators and use them to provide services. Issues involving carrier obligations for interconnection and porting did arise during the trial, but did not appear to implicate technical concerns regarding direct access to numbers. The Bureau concluded that additional guidance or clarification from the Commission could reduce such disputes in the future.

III. Discussion

13. Our pro-consumer, pro-competitive actions today are consistent with the Commission's goal to facilitate the transition to all-IP networking and promote interconnection of IP based voice networks, and serve as an integral, incremental step in furthering the Nation's technology transition. Based on the record in this proceeding, including the technical trial, and consistent with our proposal in the *Direct Access (NPRM),* we establish a process to authorize interconnected VoIP providers to voluntarily request and obtain telephone numbers directly from the Numbering Administrators under our rules, subject to their compliance with certain numbering administration requirements. Generally, we require interconnected VoIP providers obtaining numbers to comply with the same requirements applicable to carriers seeking to obtain numbers. These requirements include any state requirements pursuant to numbering authority delegated to the states by the Commission, as well as industry guidelines and practices, among others. We also require interconnected VoIP providers to comply with facilities readiness requirements adapted to this context, and with numbering utilization and optimization requirements. To extend these requirements to interconnected VoIP providers that obtain direct access, we added the definition of interconnected VoIP provider and made changes to the definitions of service provider, telecommunications carrier and telecommunications service in section 52.5 of our rules.

14. As conditions to requesting and obtaining numbers directly from the Numbering Administrators, we also require interconnected VoIP providers to: (1) Provide the relevant state commissions with regulatory and numbering contacts when requesting numbers in those states, (2) request numbers from the Numbering Administrators under their own unique OCN, (3) file any requests for numbers with the relevant state commissions at least 30 days prior to requesting numbers from the Numbering Administrators, and (4) provide customers with the opportunity to access all abbreviated dialing codes (N11 numbers) in use in a geographic area. We discuss each of these requirements in detail below.

Benefits of Interconnected VoIP Providers Obtaining Numbers Directly

15. In reaching our decision, we have considered the potential risks and benefits of authorizing interconnected VoIP providers to directly access telephone numbering resources. Some commenters assert that authorizing interconnected VoIP providers to access numbers directly will potentially have adverse impacts on consumers, competition and enforcement, as well as number exhaust. Other commenters assert that authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators could have negative consequences for routing and intercarrier compensation. Still others assert unknown, unintended consequences of authorizing direct access for interconnected VoIP providers, and urge caution. We find on balance that the expected benefits, discussed below, outweigh any perceived risks of authorizing interconnected VoIP providers to directly access telephone numbering resources. Moreover, we find that we can mitigate any risks through the conditions we establish in this Order.

16. The record supports our findings that allowing interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators will achieve a number of benefits. Both Vonage and VON assert that allowing interconnected VoIP providers to access numbers directly from the Numbering Administrators will improve efficiencies, provide greater control over call routing, and enhance the quality of service provided to customers. As SmartEdgeNet explains, ''[b]ecause interconnected VoIP providers who do their own numbering will be identified in the Local Exchange Routing Guide ('LERG') and similar industry databases, other providers will be able to determine more easily with whom they are exchanging traffic, which should lead to the development of new and more efficient traffic exchange and call termination arrangements.'' We find that allowing interconnected VoIP providers to access numbers directly from the Numbering Administrators will increase the transparency of call routing, and that in turn will enhance carriers' ability to ensure that calls are being completed properly. This enhanced ability is of value in addressing concerns about rural call completion. The Commission has

recognized problems in completing calls to rural areas, as well as concerns about the quality of service when calls are completed. To help remedy these issues, the Commission now requires certain long-distance service providers, including interconnected VoIP providers in some cases, to record, retain, and report on call attempts to rural areas. The Commission determined that these requirements will help providers and regulators identify the source of problems and take corrective action. We expect that interconnected VoIP provider use of numbers obtained directly from the numbering administrators, rather than through carrier partners, will enable more expedient troubleshooting of problematic calls to rural Local Exchange Carriers (LECs) that may originate from interconnected VoIP providers, as well as enabling greater visibility into number utilization.

17. The record also reflects that permitting interconnected VoIP providers to obtain numbers directly from the Numbering Administrators will improve competition and benefit consumers. For example, Flowroute asserts that direct access will ''increase efficiency and facilitate increased choices for American consumers.'' Vonage maintains that allowing interconnected VoIP providers to obtain numbers will improve competition in the voice services market, broadening the options for consumers and reducing costs by eliminating the middleman for telephone numbers. Vonage asserts that, as a result of the competitiveness of the voice market, ''this savings will be passed directly to consumers in the form of reduced prices, improved service, and additional features.'' Similarly, VON argues that ''easier and less costly access to numbers will allow VoIP providers to more vigorously compete in the voice services market, which can be expected to result in lower prices for consumers,'' and the ''wider variety of creative services developed and offered as a result of allowing direct access to numbers will lead to public benefits in the form of greater and more meaningful choices.'' The record demonstrates that to the extent that authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators may facilitate direct IP interconnection, it will also facilitate deployment of advanced services such as HD voice.

18. Further, we find, based on the record, that to the extent permitting interconnected VoIP providers to obtain numbers directly from the Numbering Administrators may also facilitate direct IP interconnection, ''[t]his will result in the expansion of the broadband infrastructure necessary to support VoIP, and will further the Commission's goals of accelerating broadband deployment and ensuring that more people have access to higher quality broadband service.''

19. We also find that authorizing interconnected VoIP providers to request numbers directly from the Numbering Administrators will eliminate unnecessary inefficiencies and associated expenses. We further are persuaded that having a presence in the routing guide (the LERG) may encourage VoIP interconnection58 and lead to enhanced innovation. We anticipate, based on the record, that authorizing direct access to numbers for interconnected VoIP providers will promote VoIP interconnection. Finally, we observe that permitting interconnected VoIP providers to access numbers directly is consistent with the recognized movement toward an all-IP network.

Implementation of Direct Access to Numbers for Interconnected VoIP Providers

20. As discussed above, Commission rules require an entity requesting numbering resources to demonstrate that it is ''authorized'' to provide service in the area for which it is requesting telephone numbers. Telecommunications carriers are typically required to provide either (1) a Commission license or (2) a CPCN issued by a state regulatory commission in order to obtain numbering resources from the Numbering Administrators. Neither of these authorizations is typically available to interconnected VoIP providers, because state commissions may lack jurisdiction to certify VoIP providers and they are not eligible for a Commission license. Also, the Commission has preempted state entry regulation of certain interconnected VoIP services to the extent that it interferes with important federal objectives. The Commission thus sought comment in the *Direct Access (NPRM)* on what, if any, documentation interconnected VoIP providers should be required to show in order to be eligible to obtain telephone numbers directly from the Numbering Administrators, and on specific processes by which an interconnected VoIP provider could demonstrate that it should be eligible to obtain numbers from the Numbering Administrators.

21. Today, we establish a new process by which an interconnected VoIP provider without a state certification can obtain a Commission authorization to demonstrate to the Numbering Administrators that it is authorized to provide service under our rules in order to obtain numbers directly from them. We also set forth the conditions that an interconnected VoIP provider obtaining Commission authorization must comply with in order to be eligible to obtain direct access to numbers. As a general matter, we impose on interconnected VoIP providers the same requirements to which carriers are subject. In some respects, however, we impose unique conditions of access on interconnected VoIP providers obtaining a Commission authorization, reflecting the particular circumstances of interconnected VoIP providers, including that (1) interconnected VoIP providers generally receive neither state certification nor a federal license before initiating service, and (2) nomadic interconnected VoIP service need not be tied to a particular geographic location. These conditions also reflect our understanding of the demand for numbers today, and the ways in which numbering resources may be strained. We find that the terms and conditions set forth below appropriately reflect the unique circumstances that pertain to interconnected VoIP providers and are designed to expand the type of entities that can obtain numbers without unduly straining that limited resource.

1. Requirements To Obtain Commission Authorization

22. We first address what form of documentation interconnected VoIP providers must submit to the Numbering Administrators in order to demonstrate that they have the authority to provide service within specific areas. Among our policy goals are implementing requirements to counteract number exhaust and ensure continuance of efficient number utilization, and providing adequate safeguards to prevent bad actors from gaining direct access to numbers. The extent to which permitting interconnected VoIP providers' direct access to numbers could exacerbate number exhaust has not been determined, largely because direct access would to some extent replace, rather than supplement, indirect access by interconnected VoIP providers. We recognize, however, that there are circumstances in which direct access may increase number exhaust within specific geographic areas, and our goal is to address these circumstances. We conclude that the most appropriate documentation to satisfy the required evidence of authority to provide service for interconnected VoIP providers that have not obtained state certification—and to meet our stated policy goals of

counteracting number exhaust and preventing bad actors from gaining direct access—is an authorization issued by the Commission. We therefore require all interconnected VoIP providers without a state certification to obtain Commission authorization prior to filing their initial request for numbers with a Numbering Administrator. This nationwide authorization will fulfill the requirement under the Commission's rules to provide evidence of authorization to provide service. We direct and delegate authority to the Wireline Competition Bureau to implement and maintain the authorization process. Once an interconnected VoIP provider has Commission authorization to obtain numbers, it may request numbers directly from the Numbering Administrators.

23. This process is specifically designed to assess the eligibility of interconnected VoIP providers to obtain numbers from a Numbering Administrator. We find that the process we establish today will provide a uniform, streamlined process while also ensuring that that the integrity of our numbering system is not jeopardized. The process also provides an opportunity for states to offer their unique perspective regarding numbering resources within their states, while acting consistent with national numbering policy.

24. As part of the Commission authorization process, the applicant must:

- Comply with applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements (in particular, filing NRUF Reports); comply with guidelines and procedures adopted pursuant to numbering authority delegated to the states; and comply with industry guidelines and practices applicable to telecommunications carriers with regard to numbering;
- file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators;
- provide contact information for personnel qualified to address issues relating to regulatory requirements, compliance, 911, and law enforcement;
- provide proof of compliance with the Commission's ''facilities readiness'' requirement in section 52.15(g)(2) of the rules;
- certify that the applicant complies with its Universal Service Fund (USF) contribution obligations under 47 CFR part 54, subpart H, its Telecommunications Relay Service (TRS) contribution obligations under 47 CFR 64.604(c)(5)(iii), its NANP and local number portability (LNP) administration contribution obligations under 47 CFR Sections 52.17 and 52.32, its obligations to pay regulatory fees under 47 CFR 1.1154, and its 911 obligations under 47 CFR part 9; and
- certify that the applicant has the requisite technical, managerial, and financial capacity to provide service. This certification must include the name of the applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.

We explain more fully these requirements below.

25. We find that the measures outlined above will ensure that interconnected VoIP providers are able to obtain numbers with minimal burden or delay, while simultaneously preventing providers from obtaining numbers without first demonstrating that they can deploy and properly utilize those resources. Requiring commitments to comply with the Commission's number utilization and optimization rules and to file 30 day notices of intent to request numbers with the relevant state commission before making the request with the Numbering Administrators will help to meet our goal of efficient number utilization. In addition, requiring proof of compliance with the Commission's facilities readiness requirement will ensure that only interconnected VoIP providers that are prepared to provide service can gain direct access to numbers. We conclude that authorization by a state or the Commission is necessary to protect against number exhaust, as well as to ensure competitive neutrality among traditional telecommunications carriers and interconnected VoIP providers in the competitive market for voice services. As such, we reject assertions by commenters that a documentation requirement is unnecessary, and that interconnected VoIP providers should not be required to prove their eligibility and capability to provide service prior to receiving number authorization. We also find that the process set forth above is better targeted to demonstrating authorization to provide service than reliance on the filing of an FCC Form 499–A or 477 by an interconnected VoIP provider. Those forms do not demonstrate commitments to comply with the Commission's rules and specific numbering requirements or reflect that an applicant has the appropriate technical, managerial, and financial capacity to provide service. Further, as a practical matter, a new interconnected VoIP provider seeking direct access to numbers as part of launching a new service may not have a Form 477 on file at the time that it seeks to obtain numbers.

26. The Pennsylvania Public Utility Commission proposed that the Commission create a formal process to allow states to refer concerns about the numbering practices of any provider to the Commission and the NANPA, and that the Commission also require states to develop and implement their own review and challenge processes. We do not adopt any new processes, or require states to develop and implement their own review and challenge processes in instances where the Commission, rather than the state, is responsible for certification. Section 52.15(g)(5) of the Commission's rules currently grants the states access to service providers' applications for telephone numbers. Armed with this information, states are able to contact the Numbering Administrators directly about concerns with number requests for their states. And states may, of course contact the Commission or the Bureau to discuss any specific concerns. We find that the processes already in place, combined with the advance notice of number requests we require interconnected VoIP providers to provide to state commissions, ensure the integrity of the number assignment process without needlessly blocking or delaying number assignments to interconnected VoIP providers.

a. Compliance With Number Administration Rules and Guidelines

27. Commission rules and industry practice ensure and facilitate effective administration of the NANP and prevent number exhaust. As such, it is important that we make clear that interconnected VoIP providers that obtain a Commission authorization to enable direct access to numbering resources will be subject to the Commission's numbering rules and industry guidelines and practices for numbering applicable to telecommunications carriers. These requirements include, *inter alia,* filing NRUF reports, complying with Commission requirements to obtain additional numbers in a rate center, and adhering to the numbering authority delegated to state commissions for access to data and number reclamation. The Commission required participants

in the technical trial to comply with specific number utilization and optimization requirements, including abiding by the numbering authority delegated to state commissions and filing NRUF reports, as well as industry guidelines and practices. These requirements contributed to the overall success of the trial by allowing the Commission, states, and Numbering Administrators to monitor the utilization of the number resources involved. Because of this experience, and for the reasons discussed below, we conclude that these requirements are a necessary component of interconnected VoIP providers' obtaining access to numbers permanently. Accordingly, we require interconnected VoIP providers that receive Commission authorization to obtain telephone numbers directly to comply with each of the Commission's number administration requirements, including any state requirements pursuant to numbering authority delegated to the states by the Commission. Moreover, interconnected VoIP providers relying on a Commission authorization to obtain numbers directly must also comply with industry guidelines and practices applicable to telecommunications carriers for numbering.

28. Interconnected VoIP providers' compliance with number administration requirements is key to the Commission's allowing their direct access to numbers, and no commenter argued that these requirements should not apply to them. As we discuss below, failure to comply with these obligations could result in revocation of the Commission's authorization, the inability to obtain additional numbers pending that revocation, reclamation of un-assigned numbers already obtained directly from the Numbering Administrators, or enforcement action. Requiring interconnected VoIP providers that obtain numbers directly from the Numbering Administrators to comply with the same numbering requirements and industry guidelines as carriers will help alleviate many concerns about telephone number exhaust, and will help ensure competitive neutrality among providers of voice services. Further, by imposing number utilization and reporting requirements directly on interconnected VoIP providers, we expect to have greater visibility into number utilization. For example, under our current rules, a service provider obtaining numbers directly from the Numbering Administrators must file Months-to-Exhaust Worksheets showing that it has used at least 75 percent of its numbering resources in a rate center before obtaining additional numbers in that rate center. Currently, most interconnected VoIP providers' utilization information is imbedded in the NRUF data of the carrier from which it purchases a Primary Interface Line8 Under our new requirement, the NANPA will receive NRUF reports directly from the interconnected VoIP provider that is actually serving the end user customer. This increased visibility will allow the Commission to better monitor, and take steps to limit, number exhaust.

29. We note also that we are requiring interconnected VoIP providers applying for direct access to numbers to certify that they comply with their existing USF contribution obligations under 47 CFR part 54, subpart H, TRS contribution obligations under 47 CFR Section 64.604(c)(5)(iii), NANP and LNP administration contribution obligations under 47 CFRs 52.17 and 52.32, obligations to pay regulatory fees under 47 CFR 1.1154, and 911 obligations under 47 CFR part 9. Requiring this certification of compliance with existing rules further ensures that the applicant is a company in good standing.

30. *Intermediate Numbers.* Among other things, NRUF reporting requires carriers to report how many of their numbers have been designated as ''assigned'' or ''intermediate.'' This designation affects the utilization percentage—the percentage of the total numbering inventory that is ''assigned'' to customers for use—of the reporting carrier. An ''intermediate'' number is one that is made available to a carrier or non-carrier entity from another carrier, but has not necessarily been assigned to an end-user or customer by the receiving carrier or non-carrier entity. An ''assigned'' number is one that has been assigned to a specific end-user or customer. Only ''assigned'' numbers are taken into account in the numerator of the utilization ratio when determining when a carrier or, once these rules take effect, an interconnected VoIP provider can obtain additional numbers; thus, there is an incentive for carriers and interconnected VoIP

31. As discussed in the *Direct Access (NPRM),* when a number is allocated to a carrier and the carrier assigns that number to a wholesale customer, such as an interconnected VoIP provider, section 52.15(f)(1)(v) of the Commission's rules requires that these numbers be reported as ''intermediate'' on the carrier's NRUF report until the numbers have been assigned to a retail end user. In practice, however, these numbers are often identified as ''assigned,'' whether or not the interconnected VoIP provider has a retail end-user customer for the number. In the *Direct Access (NPRM),* the Commission sought comment on how to revise the definition of ''intermediate numbers'' or ''assigned numbers'' to ensure consistency among all reporting providers.

32. Based on the record before us and the Commission's understanding that interpretation questions have arisen in certain respects regarding section 52.15(f)(1)(iii) of the rules, we conclude that it is necessary to clarify that numbers provided to carriers, interconnected VoIP providers, or other noncarrier entities by numbering partners should be reported as ''intermediate,'' and do not qualify as ''end users'' or ''customers'' as those terms are used in the definition of ''assigned numbers'' in section 52.15(f)(1)(iii) of the Commission's rules. This clarification is necessary in order to provide consistency and accuracy in number reporting and to limit telephone number exhaust. The record indicates that carriers are not reporting the use of numbers under the intermediate category consistently, and that there are widely differing interpretations of the definition of intermediate numbers and the requirement to report numbers in the intermediate category. For example, some carriers, whether they hold intermediate numbers in their inventories or allocate them to another service provider, treat all of their intermediate numbers as assigned for reporting purposes. Uniform definitions for number reporting allow the Commission to monitor individual carriers and their use of numbering resources to ensure efficient use of those resources and that the NANP is not prematurely exhausted. To achieve these goals, the Commission must obtain consistent, accurate, and complete reporting from carriers. Allowing carriers to continue to report numbers transferred to a carrier partner as assigned, instead of intermediate, would ultimately defeat our goals by gathering inaccurate information as to how many numbers are actually assigned to end-user customers. Thus, for purposes of part 52 of our rules, we make clear that the terms ''end users'' and ''customers'' do not include telecommunications carriers and non-carrier voice or telecommunication service providers. While this clarification of our rules may be less critical after our action taken today, as noted elsewhere in this Order there will be instances in which interconnected VoIP providers continue to use carrier

partners. Therefore, it is still important to clarify the definition of ''assigned'' number in our rules.

b. 30-Day Notice Requirement

33. In the *SBCIS Waiver Order,* the Commission required SBCIS, now AT&T Internet Services, to file any requests for numbers with the Commission and the relevant state commissions at least 30 days prior to requesting numbers from the Numbering Administrators. The 30-day notice period has allowed the Commission and states to monitor SBCIS's number utilization and to take measures to conserve resources, if necessary, such as determining which rate centers are available for number assignments. In the *Direct Access (NPRM),* the Commission sought comment on imposing this requirement on all interconnected VoIP providers that obtain numbers, asking whether this requirement actually furthers the Commission's goal of ensuring number optimization. The Commission also sought comment on whether it should adopt a rule providing an opportunity for states whose commissions lack authority to provide certification for interconnected VoIP service to be given a formal opportunity to object to the assignment of numbers to these providers.

34. Based on our experience with SBCIS/AT&T Internet Services filings and the record in this proceeding, we require interconnected VoIP providers to file notices of intent to request numbers with relevant state commissions, on an on-going basis, at least 30 days prior to requesting numbers from the Numbering Administrators. We agree with commenters that providing 30-days' notice to state commissions contributes to the efficient utilization of our numbering resources. These filings will allow the states to monitor number usage and raise any concerns about the request with the service provider, the Commission, and the Numbering Administrators. Having 30-days' notice of a number request allows state commissions to advise interconnected VoIP providers as to which rate centers have excess blocks of numbers available. This notice period also gives state commissions the opportunity to determine, as they currently do with carriers, whether the request is problematic for any reason, such as the provider's failure to submit timely NRUF reports or meet the utilization threshold necessary to obtain additional numbers.

35. We do not, however, require 30-days' notice to be provided to the Commission, as required in the *SBCIS Waiver Order.* While this information is used by the states to, among other things, determine if the numbering request would be problematic in that state, the Commission will have access to this information once it is made available to the Numbering Administrators. Therefore, we conclude that it is unnecessary to require interconnected VoIP providers to give the Commission a separate 30-days' notice of their intent to request numbers from the Numbering Administrators.

c. ''Facilities Readiness'' Requirement

36. The Commission's rules require that before obtaining numbers, a provider must demonstrate that it ''is or will be capable of providing service within sixty (60) days of the numbering resources activation date''—what we call ''facilities readiness.'' In the *SBCIS Waiver Order,* the Commission found that in general, SBCIS should be able to satisfy the requirement using the same type of information submitted by carriers, such as an interconnection agreement approved by a state commission. The Commission noted, however, that if SBCIS was unable to provide a copy of such agreement, it could submit evidence that it had ordered interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services. In the *Direct Access Trial Report,* interconnected VoIP providers were permitted to demonstrate ''facilities readiness'' by showing the combination of an agreement between the interconnected VoIP provider and its underlying carrier and an interconnection agreement between that underlying carrier and the relevant incumbent carrier.

37. Based on our experience with SBCIS/AT&T Internet Services and the record in this proceeding, we require interconnected VoIP providers that request telephone numbers from the Numbering Administrators to comply with the ''facilities readiness'' requirement in section 52.15(g)(2) of our rules, consistent with the requirements imposed on other providers of competitive voice services. We agree with commenters that an important aspect of direct access is that calls are interconnected with the Public Switched Telephone Network (PSTN) and terminated properly. A key difference between facilities readiness compliance with section 52.15(g)(2)(ii) in the context of interconnected VoIP providers seeking to obtaining numbers and in other contexts where the rule applies is that an interconnected VoIP provider seeking to access numbers directly need not have a carrier partner in order to provide service. As such, because the Commission has not classified interconnected VoIP services as telecommunications services or information services, nor has it otherwise addressed the interconnection obligations associated with interconnected VoIP service as a general matter, interconnected VoIP providers do not have any clearly established requirement, outside of the facilities readiness compliance context, to interconnect with a carrier that files tariffs. Therefore, we permit an interconnected VoIP provider that has obtained Commission authorization to request numbers directly to demonstrate proof of facilities readiness by (1) providing a combination of an agreement between the interconnected VoIP provider and its carrier partner and an interconnection agreement between that carrier and the relevant local exchange carrier (LEC), or (2) proof that the interconnected VoIP provider obtains interconnection with the PSTN pursuant to a tariffed offering or a commercial arrangement (such as a TDM-to-IP or a VoIP interconnection agreement) that provides access to the PSTN. The interconnected VoIP provider need not demonstrate that the point where it delivers traffic to or accepts traffic from the PSTN is in any particular geographic location so long as it demonstrates that it is ready to provide interconnected VoIP service, which is by definition service that ''[p]ermits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.''

2. Procedure for Requesting Commission Authorization

38. In order to streamline the processing of an interconnected VoIP provider's application for authorization to obtain numbers—called the ''Numbering Authorization Application''—we have established a mechanism for these applications within the Commission's Electronic Comment Filing System (ECFS). We delegate authority to the Bureau to oversee this mechanism and the processing of these applications. The mechanism we have established includes a ''Submit a Non-Docketed Filing'' module that facilitates filing of these applications into a single docket where all such applications must be filed. When making its submission, the applicant must select ''VoIP Numbering Authorization Application'' from the ''Submit a Non-Docketed Filing'' module within ECFS, or successor online-filing mechanism. The filing

must include the application, as well as any attachments.

39. Bureau staff will first review VoIP Numbering Authorization Applications for conformance with procedural rules. Assuming that the applicant satisfies this initial procedural review, Bureau staff will assign the application its own case-specific docket number and release an ''Accepted-For-Filing Public Notice,'' seeking comment on the application. The Public Notice will be associated with the docket established for the application. All subsequent filings by the applicant and interested parties related to this application must be submitted via ECFS in this docket. Parties wishing to submit comments addressing the request for authorization should do so as soon as possible, but no later than 15 days after the Commission releases an Accepted-For-Filing Public Notice, unless the public notice sets a different deadline.

40. As part of the CPCN certification process, states generally evaluate the fitness of the entity before granting a CPCN authorizing the entity to provide service in that state. In the case of interconnected VoIP providers that request numbers directly pursuant to a Commission authorization, it falls to the Commission to ensure the fitness of the entity and its principals to administer numbers, ensure that telephone numbers are not stranded, and maintain efficient utilization of numbering resources. On the 31st day after the ''Accepted-For-Filing Public Notice'' is released, the application will be deemed granted unless the Bureau notifies the applicant that the grant will not be automatically effective. The Bureau may halt this auto-grant process if (1) an applicant fails to respond promptly to Commission inquiries, (2) an application is associated with a non-routine request for waiver of the Commission's rules, (3) timely-filed comments on the application raise public interest concerns that require further Commission review, or (4) the Bureau determines that the request requires further analysis to determine whether a request for authorization for direct access to numbers would serve the public interest. To enable this process, we also delegate authority to the Bureau to make inquiries and compel responses from an applicant regarding the applicant and its principals' past compliance with applicable Commission rules.

41. Once an interconnected VoIP provider's Numbering Authorization Application is granted or deemed granted, the applicant can immediately proceed to provide states from which it intends to request numbers the required 30-days' notice. If the Bureau issues a public notice announcing that the application for authorization will not be automatically granted, the interconnected VoIP provider may not provide 30-days' notice and obtain numbers until the Bureau announces in a subsequent order or public notice that the application has been granted. This process strikes a proper balance between expeditiously authorizing interconnected VoIP provider requests for direct access to numbers, while providing an opportunity to consider more fully those requests that raise concerns.

3. Additional Requirements To Obtain Numbers

42. In the *Direct Access (NPRM),* the Commission sought comment on the Wisconsin Public Service Commission's proposal to adopt certain measures that would give state commissions oversight of interconnected VoIP providers that obtain telephone numbers. Specifically, the Wisconsin PSC recommended the following conditions for direct access: (1) Providing the relevant state commission with regulatory and numbering contacts when the interconnected VoIP provider requests numbers in that state; (2) consolidating and reporting all numbers under its own unique OCN; (3) providing customers with the ability to access all abbreviated dialing codes (N11 numbers) in use in a state; and (4) maintaining the original rate center designation of all numbers in its inventory. The Commission included these requirements in the Direct Access Trial. As described below, we require interconnected VoIP providers obtaining numbers directly from the Numbering Administrators to provide contact information to the relevant states, and also to request numbers under the interconnected VoIP provider's own OCN. For the reasons discussed below, we decline to adopt the other proposed conditions as requirements for direct access for interconnected VoIP providers.

43. *Providing Contact Information.* During the state certification process, many state commissions obtain contact information from service providers. Absent a contact information requirement, state commissions may not have accurate contact information for interconnected VoIP providers seeking direct access to numbering resources. In the *Direct Access (NPRM),* the Commission sought comment on whether interconnected VoIP providers that obtain direct access to numbers should be required to provide relevant state commissions with regulatory and numbering contacts upon first requesting numbers in that state. Several state commissions supported this requirement, while no commenter opposed it. We agree that providing accurate contact information to state regulators is important. For one thing, we agree that contact information allows state commissions to effectively and most readily address matters relating to regulatory compliance, provision of 911 service, and law enforcement to the extent already authorized. Having accurate contact information will also help state regulators monitor local numbering issues. This, in turn, helps the Commission in its overall efforts to conserve numbers. Because of its importance to state commissions and to this Commission, we require interconnected VoIP providers to give accurate regulatory and numbering contact information to the state commission when they request numbers in that state. We further require that interconnected VoIP providers update this information whenever it becomes outdated.

44. *OCN Requirements.* Under the Commission's rules, a carrier must have an OCN in order to obtain numbers from the NANPA. Based on the record we received on this issue, we require each interconnected VoIP provider to use its own unique OCN—as opposed to using the OCN of a carrier affiliate or partner—when obtaining numbers directly from the Numbering Administrators. Requiring each interconnected VoIP provider to use its own unique OCN follows the same procedure required for telecommunications carriers already getting direct access to numbers, which must request numbers using their own unique OCNs. In addition, requiring each interconnected VoIP service provider to show which numbers are in its own inventory—as opposed to in a carrier affiliate's or partner's inventories—will improve number utilization data used to predict number exhaust. It will also enable states to more easily identify the service providers involved when porting issues arise.

45. In addition to requiring each interconnected VoIP provider to have its own OCN, several state commenters assert that as a condition of obtaining numbers directly, each provider should be required to transfer all of the numbers it has obtained from its numbering partners to the interconnected VoIP provider's new OCN. We decline to adopt this condition. Commenters seeking such a condition urged the Commission to adopt it in order to minimize interconnected VoIP providers'

opportunities to hoard telephone numbers and to ensure more accurate NRUF reporting by carriers. We do not find that such a requirement is necessary to protect against these harms. As discussed above, we require each interconnected VoIP provider obtaining numbers directly from the Numbering Administrators to comply with the Commission's NRUF reporting requirements. And as we also clarify above, all numbers assigned to interconnected VoIP providers by their numbering partners are to be reported as ''intermediate,'' unless and until such numbers are assigned to ultimate retail end users. We believe that these requirements are sufficient to ensure efficient number utilization by interconnected VoIP providers and their numbering partners.

46. *Customer Access to Abbreviated Dialing Codes.* The Commission currently requires interconnected VoIP providers to supply 911 emergency calling capabilities to their customers and to offer 711 abbreviated dialing for access to telephone relay services. In the *Direct Access (NPRM),* the Commission sought comment on the Wisconsin PSC proposal for interconnected VoIP providers to provide customers with the ability to access all N11 numbers in use in a state. In addition, it sought particular comment on how providers of nomadic VoIP service could comply with a requirement to provide access to the locally-appropriate N11 numbers. In the *Direct Access Trial,* participants were required to provide consumers with the ability to access N11 numbers in use in a state. State commissions and several other commenters support the proposal for interconnected VoIP providers to provide customers with the ability to access N11 numbers in use in a state. Vonage does not oppose the proposal that interconnected VoIP providers give subscribers the ability to access N11 numbers in use in a state, insofar as they are standard conditions imposed on any provider with direct access, and provided that such an obligation is dependent on states making available to interconnected VoIP providers the information needed to correctly route those calls. AT&T, on the other hand, advocates separately addressing mandating the use of all N11 numbers in the context of interconnected VoIP service in order to give interested parties the opportunity to air all concerns, including technical feasibility. CenturyLink argues that because N11-dialing deployments are not without cost and because service providers require some time to design and deploy such functionality, if the Commission requires that the N11-dialing functionality be a requirement for interconnected VoIP providers to obtain direct access to numbers, the requirement be conditioned on a government or authorized private party asking for the deployment, the requesting party paying for the deployment, and permitting up to a year after a bona fide request to accomplish the deployment. Level 3 cautions the Commission to avoid imposing a blanket requirement that VoIP providers with access to numbers also provide access to state-designated N11numbers, as any requirement that end users be provided access to N11 services should be imposed on the end user's service provider, without regard to whether the provider has obtained numbers directly or indirectly.

47. To balance the state commission concerns about customers' expectations of access to all active N11 dialing arrangements as VoIP services becomes a replacement for traditional carrier service and the industry concerns about the technical feasibility of providing N11, we require interconnected VoIP providers, as a condition of maintaining their authorization for direct access to numbers, to continue to provide their customers with the ability to access 911 and 711, the Commission-mandated N11numbers that interconnected VoIP providers are required to provide regardless of whether they obtain numbers directly or through a numbering partner. We also require interconnected VoIP providers to give their customers access to Commission-designated N11 numbers in use in a given rate center where an interconnected VoIP provider has requested numbering resources, to the extent that the provision of these dialing arrangements is technically feasible. We expect that interconnected VoIP providers will notify consumers and state commissions if they cannot provide access to a particular N11 code due to technical difficulties. These requirements will allow the potential availability of these dialing arrangements until the Commission has concluded its pending rulemaking addressing the technical feasibility of interconnected VoIP providers' offering of these codes. Without continued access to these numbers, their availability will diminish as consumers increasingly favor interconnected VoIP services over traditional telecommunications services.

48. We decline to adopt other proposals in the record calling for additional restrictions and conditions on interconnected VoIP providers' obtaining numbers, which are not imposed on telecommunications carriers. For example, we will not require interconnected VoIP providers to take numbers from certain rate centers chosen by the state commissions in more populous areas or in blocks of less than 1000 numbers. We conclude that additional restrictions beyond those that we adopt are unnecessary and would significantly disadvantage interconnected VoIP providers relative to competing carriers offering voice services. Moreover, the record does not demonstrate the need to impose additional restrictions on interconnected VoIP providers at this time. We conclude that the measures we take in this Order will promote efficient number utilization and protect against number exhaust. Similarly, we decline to act on proposals to revise our current reporting requirements, as we do not have a sufficient record upon which to evaluate such proposals.

49. We also decline to adopt as requirements additional voluntary commitments imposed in the Direct Access Trial. In addition to complying with the Commission's numbering requirements and the requirements set forth in the *SBCIS Waiver Order,* Vonage offered several commitments as a condition of the Commission granting it a waiver in order to obtain numbers directly from the Numbering Administrators. Specifically, Vonage's commitments included: Offering to maintain at least 65 percent number utilization across its telephone number inventory, offering VoIP interconnection to other carriers and providers, and providing the Commission with a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months. Vonage indicated that these commitments would ensure efficient number utilization and facilitate Commission oversight. The Commission imposed these commitments on participants in the Direct Access Trial and sought comment on whether it should impose some or all of the Vonage commitments on interconnected VoIP providers, or on all entities that obtain telephone numbers.

50. Consistent with our effort to make the process by which interconnected VoIP providers obtain numbers as similar as possible to the process telecommunications carriers that already have direct access to numbers use, we decline to mandate additional requirements for interconnected VoIP providers that were offered by Vonage as voluntary commitments, and imposed on all participants in the Direct Access Trial. As discussed above, we

require all interconnected VoIP providers that obtain direct access to numbers to comply with the Commission's number utilization and optimization requirements, including the filing of NRUF reports and Months to Exhaust Worksheets for growth numbering resources. Given the Commission's current 75 percent utilization requirement for rate centers, we conclude that we need not require interconnected VoIP providers to maintain at least 65 percent number utilization across their entire telephone number inventories at this time. While the Commission may consider extending an overall utilization requirement to all carriers and providers in the future, we do not impose such a disparate requirement on interconnected VoIP providers obtaining direct access to numbers at this time. Moreover, as Vonage suggests, conditions attached to a short-term waiver request that were designed to ensure that an existing rule's underlying purposes were met in particular circumstances are no longer necessary—and, in fact, have the potential to undermine the eventual success of the new regulatory regime. Further, while we anticipate an increase in VoIP interconnection arrangements once interconnected VoIP providers are authorized to access numbers directly, we decline to mandate those arrangements, as the Commission is currently considering the appropriate policy framework for VoIP interconnection in pending proceedings. Therefore, we do not adopt the commitments that Vonage offered as conditions of its request for waiver as requirements for interconnected VoIP providers to access numbers directly from the Numbering Administrators, and as of the effective date of this *Order,* participants in the trial who are still using the numbers they obtained in the trial may stop complying with the conditions imposed on the trial that are not made permanent requirements by this *Order.*

4. Enforcement

51. The Commission sought comment on whether obtaining Commission authorization for an interconnected VoIP provider to obtain numbers should subject an interconnected VoIP provider to the same or similar enforcement provisions as telecommunications carriers. The Commission asked whether the Commission authorization would allow the agency to exercise forfeiture authority without first issuing a citation; whether interconnected VoIP providers that obtain numbers directly should be subject to the same penalties and enforcement procedures as carriers; and whether outstanding debts or other violations should prevent an interconnected VoIP provider from obtaining numbering resources.

52. Interconnected VoIP providers who apply for and receive Commission authorization for direct access to numbers are subject to, and acknowledge, Commission enforcement authority. As described above, we require interconnected VoIP providers that seek Commission authorization to obtain direct access to numbers to comply with the Commission's numbering obligations. As a result, interconnected VoIP providers that obtain Commission authorization for direct access to numbers are subject to the Commission's enforcement authority and forfeiture penalties for violations of the Commission's numbering rules and the obligations established herein. We also find that the Commission authorization discussed in this *Order* serves as an ''other authorization'' under section 503(b)(5) of the Act, such that no citation is needed before a forfeiture for violation of any Commission rules to which the provider is subject can be assessed. Commenters generally agree that, if interconnected VoIP providers are authorized by the Commission to obtain numbers directly, they should be subject to Commission enforcement and forfeiture authority. No commenter asserted that the Commission should have to issue a citation before it could take enforcement action against an interconnected VoIP provider for violating numbering rules or requirements. Several state commissions urged that interconnected VoIP providers that receive Commission authorization to obtain numbers should be subject to the same enforcement and penalty provisions as traditional carriers. The enforcement provisions are an important component for maintaining the integrity of the numbering system as well as ensuring fair competition with telecommunications carriers providing similar services using numbers that they obtain from the Numbering Administrators.

53. We also observe that a failure to comply with the Commission's numbering rules could result in a loss of an interconnected VoIP provider's Commission authorization, the inability to obtain additional numbers pending that revocation, and reclamation of any un-assigned numbers that the provider has obtained directly from the Numbering Administrators.181 We delegate authority to the Wireline Competition and Enforcement Bureaus to order the revocation of authorization and to direct the Numbering Administrators to reclaim any of the service provider's unassigned numbers.

5. Other Issues Relating to Direct Access for Interconnected VoIP Providers

a. Local Number Portability Obligations

54. In 2007, the Commission extended LNP obligations to interconnected VoIP providers in the *VoIP LNP Order.* The Commission's porting rules impose an ''affirmative legal obligation'' on interconnected VoIP providers ''to take all steps necessary to initiate or allow a port-in or port-out.'' In the *VoIP LNP Order,* the Commission also ''clarif[ied] that carriers have an obligation under our rules to port-out NANP telephone numbers, upon valid request, for a user that is porting that number for use with an interconnected VoIP service.'' The Commission concluded at the time that it had ''ample authority'' to impose porting requirements on local exchange carriers and interconnected VoIP providers.

55. Permitting interconnected VoIP providers direct access to numbers will enable interconnected VoIP providers to be more responsive to end user LNP requests by eliminating the extra time, complexity, and potential for confusion associated with the existing processes. It is our intention that users of interconnected VoIP services should enjoy the benefits of local number portability without regard to whether the interconnected VoIP provider obtains numbers directly or through a carrier partner. Thus, we modify our rules to include language codifying that intention. Specifically, we adopt an affirmative obligation requiring telecommunications carriers that receive a valid porting request to or from an interconnected VoIP provider to take all steps necessary to initiate or allow a port-in or port-out without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

56. We disagree with commenters' assertions that the Commission lacks authority to require local exchange carriers (LECs) and CMRS providers to port numbers to and from interconnected VoIP providers, or to require interconnected VoIP providers to port numbers to and from such carriers. The Act requires LECs ''to provide, to the extent technically feasible, number portability,'' and defines ''number portability'' as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality,

reliability, or convenience when switching from one telecommunications carrier to another.'' Opponents assert that these provisions limit the Commission to requiring number portability only between ''telecommunications carriers,'' and since the Commission has not classified interconnected VoIP providers as such, it cannot require LECs or non-LEC CMRS providers to port numbers directly to and from interconnected VoIP providers.

57. We disagree. We observe that while section 251(b)(2) expressly addresses LECs' obligations to port numbers when their customers switch to another telecommunications carrier, it is silent about any obligations of LECs beyond that, and does not preclude reliance on other, more general authority to impose additional LNP obligations on LECs under section 251(e)(1), nor does it address the obligations of non-LEC wireless carriers.192 Because number portability—whether to and from an interconnected VoIP provider, LEC, or non-LEC carrier—clearly makes use of telephone numbers, implicating ''facets of numbering administration'' under section 251(e)(1), we conclude that section 251(e)(1) provides authority supporting LECs' and non-LEC wireless carriers' obligation to port numbers directly to and from interconnected VoIP providers.

58. We also find that section 251(e)(1) provides sufficient authority to require interconnected VoIP providers that obtain numbers directly from the Numbering Administrators to port numbers to and from other providers of voice service. Section 251(e)(1) provides the Commission ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,'' and the Commission has retained its ''authority to set policy with respect to all facets of numbering administration in the United States.'' As the Commission explained in the *VoIP LNP Order,* to the extent that an interconnected VoIP provider provides services that offer its customers NANP telephone numbers, the interconnected VoIP provider ''subjects [itself] to the Commission's plenary authority under section 251(e)(1) with respect to those numbers.'' As the Commission has previously found, ''[f]ailure to extend LNP obligations to interconnected VoIP providers . . . would thwart the effective and efficient administration of our numbering administration responsibilities under section 251 of the Act.''

59. The industry and Commission have developed limits on the extent to which a provider must port numbers from one geographic area to another. For example, under a NANC guideline adopted by the Commission, a wireline carrier must port to another wireline carrier within the same rate center. A wireline carrier must port numbers to a wireless carrier where the requesting wireless carrier's coverage area overlaps with the geographic location of the customer's wireline rate center, so long as the porting-in wireless carrier maintains the number's original rate center designation following the port. A wireless carrier must port out a NANP telephone number to another wireless carrier, or a wireline carrier that is within the number's originating rate center. In the past, interconnected VoIP providers (with the exception of SBCIS) have obtained numbers through carrier partners, and the porting obligations to or from the interconnected VoIP provider stemmed from the status of the numbering partner.

60. The Commission sought comment on the geographic limitations, if any, that should apply to ports between either a wireline or wireless carrier and an interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators. There is broad support in the record for industry involvement in addressing technical feasibility in porting arrangements between interconnected VoIP providers and wireline and wireless carriers. We agree that the industry should be involved in addressing these issues. Accordingly, we direct the North American Numbering Council (NANC) to examine and address any specific considerations for interconnected VoIP provider porting both to and from wireline, wireless, and other interconnected VoIP providers. In particular, we direct the NANC to examine any rate center or geographic considerations implicated by porting directly to and from interconnected VoIP providers, including the implications of rate center consolidation, as well as public safety considerations, any such PSAP and 911 issues that could arise. We also direct the NANC to give the Commission a report addressing these issues, which includes options and recommendations, no later than 180 days from the release date of this Report and Order.

61. We find, however, that we need not delay giving interconnected VoIP providers direct access to numbers pending specific industry input. The Commission is currently examining how to address non-geographic number assignment in an all-IP world, and that proceeding is the forum in which to address such concerns. The Direct Access Trial provided an opportunity to test porting directly to interconnected VoIP providers, and that porting occurred without incident. As such, we decline at present to articulate specific geographic limitations on ports between an interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators and a wireline or wireless carrier. Instead, we find that an interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators and is not utilizing the services of a numbering partner for LNP purposes must port telephone numbers to and from a wireline or wireless carrier where technically feasible. Similarly, a wireline or wireless carrier must also port in and port out telephone numbers to an interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators and that is not utilizing the services of a numbering partner for LNP purposes where technically feasible.

b. Interconnection Obligations

62. The Commission reminds providers that the *USF/ICC Transformation Order* said that ''[t]he duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection'' and that the Commission ''expect[s] all carriers to negotiate in good faith in response to requests for [VoIP] interconnection.''

63. VoIP interconnection is an important element in completing the transition from TDM to IP networks and services. As explained above, we find, and the record reflects, that permitting interconnected VoIP providers to obtain numbers directly from the Numbering Administrators will encourage and promote VoIP interconnection. For example, Vonage explains that direct access is necessary to achieve voluntary VoIP interconnection arrangements because ''providers must, as a practical matter, be able to see i[nterconnected]VoIP providers as the 'owners' of a number in the industry databases [in] order to route traffic to such providers directly. Without direct access, i[nterconnected]VoIP providers' numbers appear to belong to underlying numbering partners, preventing direct routing between i[nterconnected]VoIP providers and their potential IP interconnection partners.'' In the *Direct Access Trial Report*, the Bureau found

that the trial indicated that there may be some confusion regarding parties' rights and obligations with respect to interconnection, but that such matters could be addressed in pending rulemakings addressing the topic. Though some commenters assert that the Commission must address VoIP interconnection obligations in its pending rulemaking proceedings before permitting interconnected VoIP providers to obtain numbers directly, we disagree that such a step is required. The process and obligations we establish in this *Order* enable interconnected VoIP providers that are unable to obtain state certification to request Commission authorization in order to enable them to obtain numbers directly from the Numbering Administrators. Our actions in this Order neither rely on, nor require, the Commission to address the many issues surrounding VoIP interconnection. Thus, given the complexity and importance of VoIP interconnection in facilitating the transition to all-IP network, we find that issues relating to VoIP interconnection that may result from interconnected VoIP providers obtaining numbers directly from the Numbering Administrators are more appropriately addressed in the Commission's pending proceedings addressing VoIP interconnection.

c. Intercarrier Compensation

64. In the *USF/ICC Transformation Order*, the Commission adopted a default uniform national bill-and-keep framework as the ultimate intercarrier compensation end state for all telecommunications traffic exchanged with a LEC, and established a measured transition that focused initially on reducing certain terminating switched access rates. As explained in the *Direct Access NPRM*, the Commission set forth several important policy goals for VoIP traffic in the *USF/ICC Transformation Order.* First, the Commission at that time " 'set an express goal of facilitating industry progression to all-IP networks.' " Second, while providing a "move away from the pre-existing, flawed intercarrier compensation regimes," the Commission sought to "reduce disputes" stemming from the lack of clarity regarding intercarrier compensation obligations for VoIP traffic. Third, the Commission stated that a significant goal was to eliminate opportunities and incentives to engage in access avoidance, both for non-VoIP traffic and for VoIP traffic.

65. The implementation of intercarrier compensation obligations depends on whether the traffic being exchanged is tariffed or exchanged pursuant to an agreement. If traffic is subject to state or federal intercarrier compensation tariffs, intercarrier compensation generally is owed by the entity that receives the tariffed access services. For traffic exchanged pursuant to an agreement, intercarrier compensation is determined by such agreements. Interconnected VoIP providers that access numbers directly from the Numbering Administrators can enter into agreements to interconnect with other providers. Thus, the Commission sought comment on concerns about how the implementation of intercarrier compensation obligations may change as a result of granting interconnected VoIP providers direct access to numbers. The Commission also sought comment on how the Commission should address any new ambiguities in intercarrier compensation payment obligations that might arise as a result of permitting interconnected VoIP providers to access number directly.

66. Intercarrier compensation was one of the considerations discussed in the technical trial completed in December 2013. Based on the results of that trial, the Bureau determined that "participants were able to port-in and port-out numbers and issue new numbers to customers, with no significant billing, routing, or compensation disputes reported." The Bureau further found that "the trial did not identify technical problems regarding . . . intercarrier compensation."

67. Commenters to this proceeding disagree as to what effect authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators will have on intercarrier compensation in the future. AT&T asserts that the Commission should reject concerns that implementation of intercarrier compensation obligations may change as a result of giving interconnected VoIP providers direct access to numbers, explaining that obligations to pay intercarrier compensation have never stemmed from numbers. Vonage contends that direct access enables interconnected VoIP providers to seek VoIP interconnection arrangements, which will facilitate the transition to a bill-and keep regime through commercial agreements. Other commenters agree that allowing direct access to numbers will have no effect on intercarrier compensation or outbound reciprocal compensation. On the other hand, Bandwidth asserts that failure to clearly address intercarrier compensation issues will "almost certainly lead to an even higher incidence of call completion problems." Interisle contends that interconnected VoIP providers should not be allowed to use their OCNs for billing purposes due to concerns about "misbilling" and "complexity," but should be required to bill for intercarrier compensation solely through their wholesale partners. NTCA expresses concerns about potential problems with phantom traffic.

68. We find that concerns about potential intercarrier compensation issues are speculative and that they do not constitute sufficient grounds to delay authorizing direct access to numbers for interconnected VoIP providers. Bandwidth and NTCA fail to provide any data or evidence of problems with call completion or phantom traffic resulting from the trial, and the *Direct Access Trial Report* did not identify any such problems. Moreover, the vast majority of the issues raised, *i.e.*, concerns about incorrect billing, phantom traffic, and call completion, were raised by commenters before the limited trial occurred, and such potential problems never materialized. For these reasons, we decline to delay our action here based on billing and intercarrier compensation concerns expressed in the record. We find that, on balance, authorizing interconnected VoIP providers to access numbers directly will serve the Commission's "express goal of facilitating industry progression to all-IP networks." If, in the future, billing or intercarrier compensation issues related to interconnected VoIP providers having direct access to numbering resources arise, we will address them at that time.

d. Call Routing and Termination

69. The Commission also sought comment generally on whether authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators would hinder or prevent call routing or tracking, and how the Commission can prevent or minimize such complications. The Commission sought comment on whether marketplace solutions are adequate to properly route calls by interconnected VoIP providers, absent a VoIP interconnection agreement, and whether the Commission should require interconnected VoIP providers to maintain carrier partners to ensure that calls are routed properly. The Commission also sought comment on the routing limitations that interconnected VoIP providers currently experience as a result of having to partner with a carrier in order to get numbers, and on the role and scalability of various industry databases in routing VoIP traffic directly to the interconnected VoIP provider over IP

links. The Commission also asked how numbering schemes and databases integral to the operations of PSTN call routing will need to evolve to operate well in IP-based Networks.

70. The record reflects that authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators will facilitate, rather than hinder, call routing and tracking. Further, based on the record, we have no reason to assume that marketplace solutions like those described in the *Direct Access (NPRM)* will not be adequate to properly route calls to and from interconnected VoIP providers, or that changes to the numbering databases are necessary as a result of this Order. We also find, in light of comments in the record and based on lessons learned from our technical trial that, as a technical matter, it is not necessary for interconnected VoIP providers to use a carrier partner to obtain numbers or complete calls. We agree with Telcordia and do not anticipate ''any database-related call routing or tracking problems arising from allowing VoIP providers to have direct access to numbers.'' We disagree with commenters who assert that direct access to numbers for interconnected VoIP providers will raise significant routing issues, or that the Commission must mandate changes to the numbering databases at this time. We also disagree with commenters asserting that the Commission should require interconnected VoIP providers to have a carrier partner for routing purposes. We agree with Intelepeer that ''adopting an interim solution as a permanent requirement presumes that such arrangements will be necessary indefinitely, which consequently discourages the industry from continuing to pursue and develop better alternatives.'' Further, no trial participant reported any routing failures or billing or compensation disputes as a result of direct access to numbers for interconnected VoIP provider trial participants. Based upon this result, we conclude that further regulatory intervention is not needed at this time to ensure that routing works from a technical perspective. As Neustar and Telcordia noted, the numbering databases can accommodate a wide range of scenarios involving interconnected VoIP providers, whether those providers have direct access to numbers or obtain numbers through a carrier partner. We expect that interconnected VoIP providers will continue to route traffic consistent with existing guidelines and practices.

71. We observe that in January 2014, the Commission initiated a proceeding inviting interested providers to submit detailed proposals to test real-world applications of planned changes in technology that are likely to have tangible effects on consumers. These voluntary service-based experiments will examine the impacts of replacing existing customer services with IP-based alternatives in discrete geographic areas or ways. As part of this proceeding and subsequent experiments, the Commission will evaluate any issues that may arise with call routing. In addition, the Commission held a workshop to facilitate the design and development of a Numbering Testbed to enable research into numbering in an all-IP network in March 2014. Thus, given the Commission's ongoing examination of issues relating to the transition to IP-based networks, including call routing issues, we conclude that the Commission's open proceedings addressing systematic reform are the most appropriate venue to address any call routing concerns stemming from interconnected VoIP providers obtaining numbers directly from the Numbering Administrators. However, as underscored in Commission orders, any call delivery failures have significant public interest ramifications. Therefore, the Commission stands ready to address any problems associated with interconnected VoIP providers' direct access to numbers that negatively affect the integrity of routing and call delivery processes.

6. Transitioning to Direct Access

72. In the *Direct Access (NPRM)*, the Commission recognized that allowing direct access to numbers by entities lacking state certification could affect existing revenue streams for companies that currently provide wholesale services to interconnected VoIP providers. The Commission also recognized that transferring numbers from one provider to another could potentially present logistical challenges, at least if the volume of numbers to be transferred in a rate center is large. The Commission therefore sought comment on whether any adopted changes should be made on a gradual or phased-in basis and, if so, what would be appropriate timeframes and limits for a graduated transition. In addition, the Commission sought comment on other steps it should take to ensure that any transition to direct access to numbers by interconnected VoIP providers occurs without unnecessary disruption to consumers or the industry.

73. Few commenters addressed this issue or advocated that the rules should provide for a graduated or staged-in implementation. Level 3, expressing concerns about the orderliness and timeline of the transition and possible logistical challenges of transferring large volume of numbers, urged that the rules not take effect until at least 90 days after adoption. Intelepeer contended that the rules could be implemented within 18 months after issuance of the NPRM, and within six months after the trial ended.

74. After analyzing the record and lessons learned from the Direct Access Trial, we conclude that we need not phase in the rule changes that allow interconnected VoIP providers to obtain numbers directly from the Numbering Administrators. The industry has had ample opportunity to prepare for this change. The *Direct Access (NPRM)* was issued in April 2013 and the Direct Access Trial concluded more than a year ago. The Numbering Administrators and the industry will have even more time to transition to the new numbering regime, since interconnected VoIP providers must still apply for, and obtain, Commission authorization after this *Order* is adopted. With regard to possible logistical issues in that transition, the Direct Access Trial gave the Numbering Administrators and participants an opportunity to test the technical feasibility of providing interconnected VoIP providers direct access to numbering resources. Finally, because interconnected VoIP providers may not request more numbers than they are able to use (due to our utilization requirements), and because our porting rules provide additional time to accommodate requests for complex ports, we expect that the Numbering Administrators' will be able to handle number requests from interconnected VoIP providers without the need for a slowed or graduated implementation.

Scope of Commission's Decision

75. In the *Direct Access (NPRM),* the Commission proposed to allow interconnected VoIP providers to obtain direct access to numbers and sought comment on whether it should expand direct access to numbers to other types of entities that use numbers indirectly. In particular, the Commission sought comment on whether it should expand access to numbers to all VoIP providers (interconnected and one-way) and on the types of services and applications that use numbers today, and that are likely to do so in the future.

76. Our decision today applies solely to interconnected VoIP providers. We find that permitting interconnected VoIP providers to request and receive numbers directly from the Numbering Administrators is, in itself, a significant

step that has the potential to benefit a large number of consumers. According to the *2014 FCC Local Competition Report*, the number of residential interconnected VoIP subscribers increased from 19.7 million subscribers in December 2008 to 37.7 million subscribers in December 2013. As the transition from legacy circuit-switched to broadband networks and IP-based connections for voice progresses, we expect Americans' reliance on VoIP service to increase.

77. While the Commission may consider permitting other types of entities to obtain numbers directly from the Numbering Administrators in the future, we decline to do so now. The bulk of the record focuses on the benefits and risks associated with extending direct access to numbers to interconnected VoIP providers. In addition, the technical trial was limited to interconnected VoIP providers. We thus find that we have sufficient information to establish appropriate terms and conditions for interconnected VoIP providers in light of the record and the trial. However, other types of entities might warrant different conditions for obtaining numbers, and we lack an adequate record on what such conditions should be. Thus, we reject proposals to expand direct access to numbers to entities other than interconnected VoIP providers at this time.

Legal Authority To Extend Numbering Requirements to Interconnected VoIP Providers That Choose Direct Access

78. Section 251(e)(1) of the Act, which was enacted by the Telecommunications Act of 1996 (1996 Act), gives the Commission ''exclusive jurisdiction'' over that portion of the North American Numbering Plan (NANP) that pertains to the United States, and provides that such numbers must be ''available on an equitable basis.'' The Commission retains ''authority to set policy with respect to all facets of numbering administration in the United States.'' The Commission has concluded that its numbering authority allows it to extend numbering-related requirements to interconnected VoIP providers that utilize telephone numbers. Nothing in section 251(e)(1) limits access to numbers to ''telecommunications carriers'' or ''telecommunications services,'' and thus in defining the underlying policies regarding access to and use of numbers, we conclude that we can provide such access directly to interconnected VoIP providers, without regard to whether they are carriers. Moreover, the obligation to ensure that numbers are available on an equitable basis is reasonably understood to include not only how numbers are made available but to whom, and on what terms and conditions. Thus, we conclude that the Commission has authority under section 251(e)(1) to extend to interconnected VoIP providers both the rights and obligations associated with using telephone numbers.

79. Some commenters assert that the Commission must classify interconnected VoIP providers as telecommunications carriers in order to authorize them access numbers directly from the Numbering Administrators, asserting that to do otherwise would allow interconnected VoIP providers the benefits of Title II classification without actually classifying interconnected VoIP providers as Title II telecommunications carriers and subjecting them to all of the requirements to which competing telecommunications carriers are subject. NARUC and Bandwidth assert that the Commission lacks authority to extend the benefits and obligations of number portability to providers that are not telecommunications carriers and do not offer telecommunications services. They assert that the authority granted to the Commission in section 251(e)(1) of the Act over ''those portions of the North American Numbering Plan that pertain to the United States'' must be read in conjunction with section 251(e)(2), which requires that the costs of both number administration and number portability be borne by ''all telecommunications carriers.'' NARUC and Bandwidth assert that the broader power to administer numbers cannot be applied in a way that conflicts directly with the more specific requirements and duties specified in sections 251(b), 251(e), 153(37), and 153(51), and in particular, the number portability obligations in the Act that apply to telecommunications carriers.

80. We disagree. Nothing in section 251(e) restricts the Commission's jurisdiction to telecommunications carriers. In contrast, sections 251(a)–(c) pertain expressly to telecommunications carriers, local exchange carriers, and incumbent local exchange carriers, respectively. It is a well understood rule of statutory construction that, when Congress includes a term in one portion of the statute but not another, it did so intentionally. Congress's limitation in sections 251(a) through (c) shows that where—in the same statutory section—Congress wanted to limit certain rights or obligations just to telecommunications carriers or telecommunications services, it knew how to do so. The absence of any such express limitation in section 251(e)(1) supports our finding that Congress did not intend to limit the Commission's flexibility to extend direct access to numbers to non-carrier interconnected VoIP providers.

81. Further, we do not find that extending direct access to numbers to interconnected VoIP providers conflicts with the specific provisions to which commenters cite. In particular, telecommunications carriers (and more particularly, their end-user customers) generally benefit from the telephone network, including not only the ability of the carriers' end-user customers to receive calls placed to the telephone numbers assigned to them, but also their ability to place calls to numbers assigned to other end users, whether those end users are customers of traditional voice telecommunications carriers or interconnected VoIP providers. Thus, authorizing interconnected VoIP providers to obtain numbers directly from the Numbering Administrators under section 251(e) does not conflict with the fact that recovery of the costs of numbering administration is focused on telecommunications carriers under section 251(e)(2). Further, as the Commission found in the *VoIP LNP Order*, the language in section 251(e)(2), which phrases the obligation to contribute to the costs of numbering administration as applying to ''all telecommunications carriers,'' reflects Congress's intent to ensure that no telecommunications carriers were omitted from the contribution obligation, and does not preclude the Commission from exercising its authority to require other providers of comparable services to make such contributions.

82. Nor does authorizing direct access to numbers for interconnected VoIP providers under section 251(e) conflict with the fact that section 251(b)(2) addresses LECs' obligation to allow customers to port numbers when switching from one telecommunications carrier to another. We believe that section 251(b)(2) is reasonably understood simply as reflecting a requirement that Congress anticipated as necessary to promote competition in local markets, rather than reflecting any inherent Congressional judgment regarding the universe of entities that might have direct access to telephone numbers. And in any case, the Commission has required service providers that have not been found to be LECs, but that are expected to compete against LECs, to comply with the LNP obligations set forth in section 251(b)(2). Thus, because we conclude that the Commission has authority under section

251(e)(1) to extend the numbering requirements discussed above to interconnected VoIP providers, we find it unnecessary to first determine the classification of interconnected VoIP service, and decline to do so here.

Enabling Direct Access to p-ANI Codes for VoIP Positioning Center Providers

83. Under the Commission's rules, applicants for p-ANI codes, like applicants for numbers, must provide evidence that they are authorized to provide service in the area in which they are requesting codes. As discussed above, telecommunications carriers are typically required to provide either (1) a Commission license or (2) a CPCN issued by a state regulatory commission in order to obtain numbers from the Numbering Administrators. However, in October 2008, as part of its implementation of the NET 911 Act, the Commission granted interconnected VoIP providers the right to obtain p-ANI codes without such authorization, for the purpose of providing E911 services. The Commission did not, in that *Order*, extend this right to VPC providers; it sought comment on this issue instead in the *Direct Access (NPRM).* Specifically, the Commission sought comment on whether allowing VPC providers access to p-ANI codes would enhance public safety by further ensuring that emergency calls are properly routed to trained responders of the PSAPs, and whether there are any unique technical characteristics of p-ANI codes that make them different from the numbers currently included in section 52.15(g)(2)(i). The Commission also sought comment on whether permitting VPCs direct access to p-ANI codes would encourage the continued growth of interconnected VoIP services. At the same time, the Commission granted Telecommunication Systems, Inc. (TCS), a VPC provider, a limited waiver of section 52.15(g)(2)(i) of the Commission's rules so that it could obtain p-ANI codes in South Carolina and in other states where it could not obtain state certification to show that it was authorized to provide service. The Commission limited the scope and duration of the waiver to such time as it addresses whether section 52.15(g)(2)(i) should be modified to allow all providers of VPC service to directly obtain p-ANI codes.

84. As we discuss below, and based upon the record, we find that public safety and efficient p-ANI administration considerations necessitate a revision of our rules to permit VPC providers to obtain direct access to p-ANI codes for use in the delivery of E911 services in those states where VPC providers cannot obtain certification. We disagree with TCS's assertions that requiring VPC providers to obtain state certifications serves no purpose, and that state certification procedures are simply not designed to determine the suitability of a VPC that typically does not provide retail service and over whom the state commissions have little or no jurisdiction. Rather, we agree with Intrado and recognize the importance of state commissions in certifying and regulating 911 service providers. As such, we decline to adopt TCS's proposals to waive the authorization requirement in section 52.15(g)(2)(i) in states that do offer certification, or to provide a national authorization for VPCs. Instead, we revise our rules to permit VPC's to request p-ANI codes from the RNA for public safety purposes in states where a provider of VPC service can demonstrate that it cannot obtain state certification because the state does not certify providers of VPC service.

85. Public interest considerations necessitate this modification of our rules. The record demonstrates that the inability to obtain p-ANI codes to provide VPC services may disrupt E911 service. As TCS explains, it supports approximately 50 percent of all U.S. wireless E911 calls, serving over 140 million wireless and IP-enabled devices. One of the main purposes of its VPC service is to provide call routing instructions to the VoIP service provider's softswitch so that E911 calls can be routed to the appropriate PSAP. P–ANI codes provide the means for that communication. TCS asserts that after extensive and expensive testing of each p-ANI code by the VPC provider, the code is assigned to a unique PSAP. The VPC provider then tests these p-ANI codes with a gateway service provider to make sure that the codes route to the proper PSAP. TCS further explains that it obtains p-ANI codes from a fixed pool that is shared by multiple VPC softswitches. Approximately ten p-ANI codes are assigned per PSAP. Once tested, these codes can be used simultaneously by multiple service providers. TCS argues that if it were unable to obtain its own p-ANI codes, nomadic VoIP providers would have to obtain, test, manage, and deploy their own p-ANI codes, requiring each PSAP to test p-ANI codes, at considerable time and expense, with ''dozens (or hundreds)'' of nomadic interconnected VoIP service providers that might never actually use the p-ANI codes assigned to them. This process, it predicts, would potentially exhaust the reservoir of assignable p-ANI codes and create disruption, confusion, and even danger to our E911 system. TCS asserts that allowing VPCs access to p-ANI codes would enhance public safety by ensuring that emergency calls are properly routed to the appropriate PSAPs, and help to encourage the continued growth of VoIP services by making it easier for small interconnected VoIP service providers to rely on VPCs.

86. We acknowledge TCS's assertion that not providing a federal regulatory backstop in cases where state certification is unavailable runs counter to the public interest by making it more difficult for TCS to fulfill its regulatory obligations to provide E911 capabilities to interconnected VoIP service providers. Further, we agree that the alternative of continuing to require every small interconnected VoIP service provider to undertake the time and expense to secure p-ANIs themselves in states that do not certify VPCs is unnecessary and would only serve to hamper their operations. We concur with TCS that requiring interconnected VoIP providers to obtain p-ANI codes they might never use would be inefficient and would accelerate the exhaust of this valuable resource. While we are skeptical that ''dozens (or even hundreds)'' of individual VoIP service providers would individually undertake to deploy their own multi-jurisdictional, p-ANI-based positioning solutions, we do recognize the economies of scale and the efficient use of limited numbering resources that result when a VPC's pool of p-ANIs is shared among multiple VoIP service providers.

87. We decline to establish a separate Commission certification process to allow VPC providers direct access to p-ANI codes where states do not offer their own certification process for VPCs, as suggested by Intrado. TCS's comments reflect that, at the time of filing, it had obtained certification in 40 states. To date, we have not received additional requests from TCS or any other VPC provider under the temporary waiver. Therefore, we do not find that the benefits of establishing and requiring a separate certification process for VPCs outweigh the burdens of doing so at this time. Further, we also observe that, as p-ANIs are ''non-dialable'' numbers with unique technical characteristics that make them different from the numbers currently included in section 52.15(g)(2), granting VPCs direct access to p-ANI codes in states where certification is not available would not affect the pool of ''dialable'' numbers and would thus not affect number exhaust. Today's modification to our rules—which allow a VPC provider

unable to demonstrate authorization to provide service in a state to demonstrate instead that the state does not certify VPC providers in order to request p-ANI codes directly from the Numbering Administrators for purposes of providing E–911 service—is limited. It only applies to circumstances in which a VPC provider demonstrates that it cannot obtain p-ANI codes in a particular state because the state does not certify VPC providers. A VPC provider may make this showing, for example, by providing the RNA with a denial from a state commission with the reason for the denial being that the state does not certify VPC providers, or a statement from the state commission or its general counsel that it does not certify VPC providers. Unlike the limited waiver granted to TCS in the *Direct Access NPRM*, we require the VPC provider to make this showing directly to the RNA. Upon such a showing to the RNA, the VPC provider may obtain p-ANI codes in that particular state.

IV. Procedural Matters

Regulatory Flexibility Analysis

88. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Direct Access NPRM.* The Commission sought written public comment on the proposals in the *Direct Access NPRM*, including comment on the IRFA. The Commission did not receive any comments on the *Direct Access NPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Final Rules

89. Section 52.15(g)(2) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The Commission has interpreted this rule as requiring evidence of either a state certificate of public convenience and necessity (CPCN) or a Commission license. As a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the Numbering Administrators. Neither authorization is typically available in practice to interconnected VoIP providers because state commissions may lack jurisdiction to certify VoIP providers and they are not eligible for a Commission license. Also, the Commission has preempted state entry regulation of certain interconnected VoIP services to the extent that it interferes with important federal objectives.

90. *Establishing a Commission Authorization Process.* The *Report and Order* (Order) finds that a state or Commission authorization is necessary to protect against number exhaust and to ensure a level competitive playing field among traditional telecommunications carriers and interconnected VoIP providers. As such, today's *Order* establishes a Commission authorization process that will enable interconnected VoIP service providers to voluntarily request and obtain telephone numbers directly from the Numbering Administrators, subject to several conditions designed to minimize number exhaust and preserve the integrity of the numbering system. This nationwide authorization will fulfill the requirement under the Commission's rules that entities must furnish evidence of authorization in order to provide service. The Order directs and delegates authority to the Wireline Competition Bureau to implement and maintain the authorization process. Once an interconnected VoIP provider has Commission authorization to obtain numbers, it may request them directly from the Numbering Administrators. We believe that this approach will provide a uniform, streamlined process while ensuring that the integrity of our numbering system is not jeopardized. The process also provides an opportunity for states to offer their unique perspective regarding numbering resources within their states, while acting consistent with national numbering policy.

91. As part of the Commission authorization process, applicants must: (1) Comply with applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements (in particular, filing Numbering Resource Utilization Forecast (NRUF) Reports), comply with guidelines and procedures adopted pursuant to numbering authority delegated to the states, and comply with industry guidelines and practices applicable to telecommunications carriers with regard to numbering; (2) file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators; (3) provide contact information for personnel qualified to address issues relating to Commission rules, compliance, 911, and law enforcement; (4) provide proof of compliance with the Commission's ''facilities readiness'' requirement in section 52.15(g)(2) of the rules; (5) certify that the applicant complies with its Universal Service Fund obligations under 47 CFR part 54, subpart H, its Telecommunications Relay Service contribution obligations under 47 CFR section 64.604(c)(5)(iii), its NANP and LNP administration contribution obligations under 47 CFR section 52.17 and 52.32, its obligations to pay regulatory fees under 47 CFR section 1.1154, and its 911 obligations under 47 CFR part 9; and (6) certify that the applicant has the requisite technical, managerial, and financial capacity to provide service. This certification must include the name of applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order. We believe that these requirements will allow interconnected VoIP providers to obtain numbers with minimal burden or delay while simultaneously preventing providers from obtaining numbers without first demonstrating that they can deploy and properly utilize such resources.

92. The *Order* finds that these terms and conditions appropriately reflect the unique circumstances that pertain to interconnected VoIP providers and are designed to expand the type of entities that can obtain numbers without unduly straining that limited resource. Requiring interconnected VoIP providers that obtain numbers directly from the Numbering Administrators to comply with the same numbering requirements and industry guidelines and practices as telecommunications carriers will help alleviate many concerns about number exhaust, ensure competitive neutrality among providers of voice services, and offer greater visibility into number utilization. Requiring proof of compliance with the Commission's facilities readiness requirement will also ensure that only interconnected VoIP providers that are prepared to provide service can gain direct access to numbers, and help to account for the unique circumstances of interconnected VoIP providers within the market for voice services while also ensuring that calls are interconnected with the PSTN and terminated properly.

93. The 30-day notice required as a condition of authorization will allow the states to monitor number usage and raise any concerns about the request with the provider, the Commission, and the Numbering Administrators. It will

further contribute to the efficient utilization of numbering resources by allowing state commissions to advise interconnected VoIP providers as to which rate centers have excess blocks of numbers available. This notice period also gives state commissions the opportunity to determine, as they currently do with carriers, whether the request is problematic for any reason, such as the provider's failure to submit timely NRUF reports or meet the utilization threshold necessary to obtain additional numbers. We do not, however, require 30-days' notice be provided to the Commission, as the Commission will have access to this information once it is made available to the Numbering Administrators.

94. This authorization process will remove regulatory barriers to efficient use of numbers and will further facilitate the creation and dissemination of innovative services and technologies that will benefit both consumers and providers. In addition, we expect that allowing interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators will increase visibility and accuracy of number utilization and improve responsiveness in the number porting process by eliminating the extra time, complexity, and potential for confusion associated with the existing processes. This process will also increase the transparency of call routing, which will in turn enhance carriers' ability to ensure that calls are being completed properly. This enhanced ability is of value in addressing concerns about rural call completion. We expect that interconnected VoIP provider use of numbers obtained directly from the Numbering Administrators will enable more expedient troubleshooting of problematic calls to rural LECs that may originate from interconnected VoIP providers. We also expect that, to the extent that it facilitates direct IP interconnection, the authorization process established in the Order will result in the expansion of the broadband infrastructure necessary to support VoIP, and will further the Commission's goals of accelerating broadband deployment and ensuring that more people have access to higher quality broadband service. Further, permitting interconnected VoIP providers direct access to numbers can improve competition and benefit consumers by increasing demand for interconnected VoIP services and giving providers a greater incentive to expand their offerings to new service areas.

95. *Procedure for Requesting Commission Authorization.* In order to streamline the processing of interconnected VoIP providers' Numbering Authorization Applications, the Order establishes a mechanism for these applications within the Commission's Electronic Comment Filing System (ECFS). The Order delegates authority to the Bureau to oversee this mechanism and the processing of these applications. The mechanism established includes a ''Submit a Non-Docketed Filing'' module that facilitates filing of these applications into a single docket where all such applications must be filed. When making its submission, the applicant must select ''VoIP Numbering Authorization Application'' from the ''Submit a Non-Docketed Filing'' module within ECFS, or successor online-filing mechanism. The filing must include the application, as well as any attachments.

96. Bureau staff will first review VoIP Numbering Authorization Applications for conformance with procedural rules. Assuming that the applicant satisfies this initial procedural review, Bureau staff will assign the application its own case-specific docket number and release an ''Accepted-For-Filing Public Notice'' seeking comment on the application. The Public Notice will be associated with the docket established for the application. All subsequent filings by the applicant and interested parties related to this application must be submitted via ECFS in this docket. Parties wishing to submit comments addressing the request for authorization should do so as soon as possible, but no later than 15 days after the Commission releases an Accepted-For-Filing Public Notice, unless the Public Notice sets a different deadline. On the 31st day after an ''Accepted-For-Filing Public Notice'' is released, the application will be deemed granted unless the Bureau notifies the applicant that the grant will not be automatically effective. The Bureau may halt this auto-grant process if (1) an applicant fails to respond promptly to Commission inquiries; (2) an application is associated with a non-routine request for waiver of the Commission's rules; (3) timely-filed comments on the application raise public interest concerns that necessitate further Commission review; or (4) the Bureau determines that the request requires further analysis to determine whether grant of an authorization would serve the public interest. To enable this process, the Order also delegates authority to the Bureau to make inquiries and compel responses from an applicant regarding the applicant and its principals' past compliance with applicable Commission rules. Once a Numbering Authorization Application is granted or deemed granted, the applicant can immediately proceed to provide states from which it intends to request numbers the required 30-days' notice. If the Bureau issues a public notice announcing that the application for authorization will not be automatically granted, the interconnected VoIP provider may not provide 30-days' notice and obtain numbers until the Bureau announces in a subsequent order or public notice that the application has been granted. We believe that this process strikes a proper balance between expeditiously authorizing interconnected VoIP provider requests for direct access to numbers while providing an adequate opportunity to consider more fully those requests that raise concerns.

97. *Additional Requirements to Obtain Direct Access to Numbers.* In order to improve efficiency and utilization data while facilitating better predictions of number exhaust, the Commission also requires interconnected VoIP providers to furnish accurate regulatory and numbering contact information to the relevant state commission(s) when they request numbers in that state and to update this information whenever it becomes outdated. This requirement will help states to effectively and readily address matters relating to regulatory compliance, provision of 911 service, and law enforcement. It will also enable state regulators to monitor local numbering issues, which will, in turn, assist the Commission in its overall efforts to conserve numbers.

98. The *Order* also requires interconnected VoIP providers to utilize their own unique Operating Company Numbers (OCN) (as opposed to the OCNs of their carrier affiliates or partners) when obtaining numbers directly from the Numbering Administrators. Requiring each interconnected VoIP provider to use its own unique OCN follows the same procedure required for carriers who are already getting direct access to numbers. Additionally, requiring each interconnected VoIP service provider to show which numbers are in its own inventory—as opposed to in a carrier affiliate's or partner's inventories—will improve number utilization data used to predict number exhaust and enable states to more easily identify the service providers involved when porting issues arise.

99. To balance state commission concerns about customers' expectation of access to all active N11 dialing arrangements as VoIP services become a replacement for traditional carrier

service and the industry concerns about the technical feasibility of providing N11, we require interconnected VoIP providers, as a condition of maintaining their authorization for direct access to numbers, to continue to provide their customers with the ability to access 911 and 711, the Commission-mandated N11 numbers that interconnected VoIP providers are required to provide regardless of whether they obtain numbers directly or through a numbering partner. We also require interconnected VoIP providers to give their customers access to Commission-designated N11 numbers in use in a given rate center where an interconnected VoIP provider has requested numbering resources, to the extent that the provision of these dialing arrangements is technically feasible.

100. We expect that interconnected VoIP providers will notify consumers and state commissions if they cannot provide access to a particular N11 code due to technical difficulties. These requirements will allow the potential availability of these dialing arrangements until the Commission has concluded its pending rulemaking addressing the technical feasibility of interconnected VoIP providers' offering of these codes. Absent continued access to these numbers, their availability will diminish as consumers increasingly favor VoIP services over traditional telecommunications services.

101. The *Order* declines to adopt other proposals in the record calling for additional restrictions and conditions on interconnected VoIP providers' obtaining numbers, which are not imposed on telecommunications carriers. The Commission finds these additional restrictions to be unnecessary, with the potential to significantly disadvantage interconnected VoIP providers relative to competing carriers offering voice services. The record also does not demonstrate the need to impose additional restrictions at this time. We believe that the measures taken in the Order will sufficiently promote efficient number utilization and protect against number exhaust.

102. *Local Number Portability Obligations.* The Commission intends that users of VoIP services should enjoy the benefits of local number portability (LNP) without regard to whether the interconnected VoIP provider obtains numbers directly or through a carrier partner. As such, the Order requires telecommunications carriers that receive a valid porting request to or from an interconnected VoIP provider to take all steps necessary to initiate or allow a port-in or port-out without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number. The Order also requires interconnected VoIP providers that obtain numbers directly from the Numbering Administrators and which do not utilize the services of a numbering partner for LNP purposes to port telephone numbers to and from a wireline or wireless carrier.

103. The Commission declines to articulate specific geographic limits on ports between an interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators and a wireline or wireless carrier at this time. Instead, the Commission directs the North American Numbering Council (NANC) to examine and address any specific considerations for interconnected VoIP provider porting both to and from wireline, wireless, and other interconnected VoIP providers. In particular, the Commission directs the NANC to examine any rate center or geographic considerations implicated by porting directly to and from interconnected VoIP providers, including the implications of rate center consolidation, as well as public safety considerations such as any Public Safety Answering Point (PSAP) and 911 issues that could arise. The *Order* directs the NANC to give the Commission a report addressing these issues, which includes options and recommendations, no later than 180 days from the release date of the *Order.*

104. *Enabling Direct Access to p-ANI Codes for VPCs.* The Order also finds that that public safety and efficient p-ANI administration considerations also necessitate a revision of our rules to permit VoIP Positioning Center (VPC) providers to obtain direct access to p-ANI codes for use in the delivery of E911 services in those states where VPC providers cannot obtain certification. Under section 52.15(g)(2) of our rules, applicants for p-ANI codes, like applicants for numbers, must provide evidence that they are authorized to provide service in the area in which they are requesting codes. We revise our rules to permit VPC's to request p-ANI codes from the Routing Number Administrator (RNA) for public safety purposes in states where a provider of VPC service can demonstrate that it cannot obtain state certification because the state does not certify providers of VPC service. A VPC provider may make this showing, for example, by providing the RNA with a denial from a state commission with the reason for the denial being that the state does not certify VPC providers, or a statement from the state commission or its general counsel that it does not certify VPC providers. Unlike the limited waiver granted to Telecommunication Systems, Inc. (TCS) in the *Direct Access NPRM*, we require the VPC provider to make this showing directly to the RNA. Upon such a showing to the RNA, the VPC provider may obtain p-ANI codes in a particular state.

105. The record shows that the inability to obtain p-ANI codes to provide VPC services may disrupt E911 service. TCS supports approximately 50 percent all of U.S. wireless E911 calls, serving over 140 million wireless and IP-enabled devices. One of the main purposes of its VPC service is to provide call routing instructions to the VoIP service provider's softswitch so that E911 calls can be routed to the appropriate PSAP. P-ANI codes provide the means for that communication. After extensive and expensive testing of each p-ANI code by the VPC provider, the code is assigned to a unique PSAP. The VPC provider then tests these p-ANI codes with a gateway service provider to make sure that the codes route to the proper PSAP. Approximately ten p-ANI are assigned per PSAP, which allows ten different calls from a variety of IP-enabled voice service providers to be processed simultaneously. Once tested, these codes can be used simultaneously by multiple service providers.

106. The *Order* acknowledges TCS's assertion that not providing a federal regulatory backstop in cases where state certification is unavailable runs counter to the public interest by making it more difficult for TCS to fulfill its regulatory obligations to provide E911 capabilities to interconnected VoIP service providers. Further, the Commission agrees that the alternative of continuing to require every small interconnected VoIP service provider to undertake the time and expense to secure p-ANIs themselves in states that do not certify VPCs is unnecessary and would only serve to hamper their operations. The Order concurs with TCS that requiring interconnected VoIP providers to obtain p-ANI codes they might never use would be inefficient and would accelerate the exhaust of this valuable resource. While we are skeptical that "dozens (or even hundreds)" of individual VoIP service providers would individually undertake to deploy their own multi-jurisdictional, p-ANI-based positioning solutions, we do recognize the economies of scale and the efficient use of limited numbering resources that result when a VPC's pool of p-ANIs is shared among multiple VoIP service providers.

107. The *Order* declines to establish a separate Commission certification

process to allow VPC providers direct access to p-ANI codes where states do not offer their own certification process for VPCs, as suggested by Intrado. TCS's comments reflect that, at the time of filing, it had obtained certification in 40 states. To date, the Commission has not received additional requests from TCS or any other VPC provider under the temporary waiver. Therefore, the Commission does not find that the benefits of establishing and requiring a separate certification process for VPCs outweigh the burdens of doing so at this time. Further, as p-ANIs are ''non dialable'' numbers with unique technical characteristics that make them different from the numbers currently included in section 52.15(g)(2), granting VPCs direct access to p-ANI codes in states where certification is not available would not affect the pool of ''dialable'' numbers and would thus not impact number exhaust.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

108. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are addressed throughout the Order.

3. Description and Estimate of the Number of Small Entities To Which the Rules Would Apply

109. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

a. Total Small Business

110. A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

b. Internet Access Service Providers

111. *Internet Access Service Providers.* The rules adopted in the *Order* apply to Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled ''broadband.'' The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. For the second category, the data show that 1,274 firms operated for the entire year. Of those, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities that may be affected by the rules adopted in this *Order.*

112. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service.

113. *Internet Publishing and Broadcasting and Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

c. Wireline Providers

114. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

115. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules adopted in the *Order.*

116. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.

According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the *Order.*

117. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

118. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by rules adopted pursuant to the *Order.*

119. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by rules adopted pursuant to the *Order.*

120. *Operator Service Providers (OSPs).* Although we did not include Operator Service Providers (OSPs) as part of our Initial Regulatory Flexibility Analysis in the *Direct Access NPRM*, after further analysis we conclude that some such providers may be affected by the rules adopted in this *Order.* We therefore include them as part of this Final Regulatory Flexibility Analysis. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by rules adopted pursuant to the *Order.*

121. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted in this *Order.*

122. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

123. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

d. Wireless Providers—Fixed and Mobile

124. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

125. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for Wireless

Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

126. *Paging (Private and Common Carrier).* In the IRFA that was incorporated in the *Direct Access NPRM*, we included Paging (Private and Common Carrier) providers as one of the categories of small entities to which the proposed rules might have applied. Based on further analysis, we do not believe that the rules adopted in this Order will have an effect on this category of private entities. We therefore do not include them in our Final Regulatory Flexibility Analysis.

e. Satellite Service Providers

127. *Satellite Telecommunications Providers.* Although we did not include Satellite Telecommunications Providers as part of our Initial Regulatory Flexibility Analysis in the *Direct Access NPRM*, after further analysis we conclude that some such providers may be affected by the rules adopted in this *Order.* We therefore include them as part of this Final Regulatory Flexibility Analysis.

128. Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

129. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 495 firms had annual receipts of under $50 million, and 17 firms had receipts of over $50 million. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

130. The second category of All Other Telecommunications comprises, *inter alia*, ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category: That size standard is $30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,305 establishments had annual receipts of under $10 million and 78 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

f. Cable Service Providers

131. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 2,694 firms had annual receipts of under $10 million, and 504 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small and may be affected by rules adopted pursuant to the *Order.*

132. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there are 660 cable operators in the country. Of this total, all but eleven cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

133. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

g. All Other Information Services

134. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The

SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

135. In the *Order*, the Commission establishes a voluntary authorization process to enable interconnected VoIP providers that seek direct access to numbers and that are without a state certification to demonstrate that they are authorized to provide service under our rules. Once granted, this Commission authorization permits an interconnected VoIP provider to request numbers directly from the Numbering Administrators. The Commission expects that interconnected VoIP providers will continue to use carrier partners in some instances, and today's *Order* does not prohibit those partner relationships.

136. To the extent that an interconnected VoIP provider voluntarily seeks to obtain direct access to numbers through a Commission authorization, the Commission imposes, as a condition of this authorization, the same requirements to which traditional telecommunications carriers are subject, as well as several unique conditions of access that reflect the particular circumstances of interconnected VoIP providers.

137. In order to apply for Commission authorization, interconnected VoIP providers must (1) comply with applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements (in particular, filing NRUF Reports), comply with guidelines and procedures adopted pursuant to numbering authority delegated to the states, and comply with industry guidelines and practices applicable to telecommunications carriers with regard to numbering; (2) file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators on an on-going basis; (3) provide contact information for personnel qualified to address issues relating to Commission rules, compliance, 911, and law enforcement; (4) provide proof of compliance with the Commission's ''facilities readiness'' requirement in section 52.15(g)(2) of the rules; (5) certify that the applicant complies with its Universal Service Fund obligations under 47 CFR part 54, subpart H, its Telecommunications Relay Service contribution obligations under 47 CFR 64.604(c)(5)(iii), its NANP and LNP administration contribution obligations under 47 CFR 52.17 and 52.32, its obligations to pay regulatory fees under 47 CFR 1.1154, and its 911 obligations under 47 CFR part 9; and (6) certify that the applicant has the requisite technical, managerial, and financial capacity to provide service. This certification must include the name of the applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that none of the identified personnel are being or have been investigated by the Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order.

138. Among other things, NRUF reporting requires carriers to report how many of their numbers have been designated as ''assigned'' or ''intermediate.'' This designation affects the utilization percentage, *e.g.*, the percentage of the total numbering inventory that is assigned to customers for use, of the reporting carrier. An ''intermediate'' number is one that is made available for use by another telecommunications carrier or non-carrier, but has not necessarily been assigned to an end-user or customer. An ''assigned'' number is one that has been assigned to a specific end-user or customer. The *Order* clarifies that numbers provided to carriers, interconnected VoIP providers, or other non-carrier entities by numbering partners should be reported as ''intermediate,'' and that such entities do not qualify as ''end users'' or ''customers'' as those terms are used in the definition of ''assigned numbers'' in section 52.15(f)(1)(iii) of the Commission's rules. We find that this clarification is necessary to provide consistency and accuracy in number reporting and to limit telephone number exhaust.

139. The *Order* also requires interconnected VoIP providers who obtain a Commission authorization to file notices of intent to request numbers with the relevant state commissions, on an ongoing basis, at least 30 days prior to requesting numbers from the Numbering Administrators.

140. Under section 52.15(g)(2) of our rules, a provider must demonstrate that it ''is or will be capable of providing service within sixty (60) days of the numbering resources activation date.'' The *Order* requires interconnected VoIP providers that request numbers directly from the Numbering Administrators to comply with this ''facilities readiness'' requirement, consistent with the requirements imposed on other providers of competitive voice services. The *Order* permits an interconnected VoIP provider that has obtained Commission authorization to request numbers directly to demonstrate proof of facilities readiness by (1) providing a combination of an agreement between the interconnected VoIP provider and its carrier partner and an interconnection agreement between that carrier and the relevant LEC, or (2) proof that the interconnected VoIP provider obtains interconnection with the PSTN pursuant to a tariffed offering or a commercial arrangement (such as a TDM-to-IP or VoIP interconnection agreement) that provides access to the PSTN.

141. In order to streamline the processing of an interconnected VoIP provider's Numbering Authorization Application, the Order establishes a ''Submit a Non-Docketed Filing'' module within the Commission's ECFS that facilitates filing of such applications into a single docket where all such applications must be filed. The applicants will be required to select ''Numbering Authorization Application'' from the ''Submit a Non-Docketed Filing'' module within ECFS, or successor online-filing mechanism. The filing must include the application, as well as any attachments. Once an interconnected VoIP provider's authorization application is granted or deemed granted, the applicant can immediately proceed to provide states from which it intends to request numbers the required 30-days' notice. Interconnected VoIP providers who apply for and receive Commission authorization for direct access to numbers are subject to, and acknowledge Commission enforcement authority.

142. In addition to these requirements, interconnected VoIP providers seeking direct access must, as a condition of maintaining their authorization for direct access to numbers (1) provide accurate regulatory and numbering contact information to the relevant state commission(s) when they request numbers in that state and update this information whenever it becomes outdated; (2) use their own unique OCNs (as opposed to the OCNs of their carrier affiliates or partners) when obtaining numbers directly from the Numbering Administrators; and (3)

continue to provide their customers with the ability to access 911 and 711, the Commission-mandated N11 numbers that interconnected VoIP providers are required to provide regardless of whether they obtain numbers directly or through a numbering partner, as well as give their customers access to Commission-designated N11 numbers in use in a given rate center where an interconnected VoIP provider has requested numbering resources, to the extent that the provision of these dialing arrangements is technically feasible.

143. The *Order* further imposes an affirmative obligation on telecommunications carriers to facilitate a valid porting request to or from an interconnected VoIP provider. Carriers are obligated to take all steps necessary to initiate or allow a port-in or port-out itself without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number. An interconnected VoIP provider that has obtained its numbers directly from the Numbering Administrators and is not utilizing the services of a numbering partner for LNP purposes must port telephone numbers to and from a wireline or wireless carrier.

144. The *Order* also permits VPC providers to obtain direct access to p-ANI codes for use in the delivery of E911 services in those states where a VPC provider can demonstrate that it cannot obtain state certification because the state does not certify providers of VPC service. A VPC provider may make this showing, for example, by providing the RNA with a denial from a state commission with the reason for the denial being that the state does not certify VPC providers, or a statement from the state commission or its general counsel that it does not certify VPC providers. Unlike the limited waiver granted to TCS in the *Direct Access NPRM*, we require the VPC provider to make this showing directly to the RNA. Upon such a showing to the RNA, the VPC provider may obtain p-ANI codes in a particular state.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

145. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

146. The Commission is aware that some of the rules adopted in this *Order* will impact small entities by imposing costs and administrative burdens. For this reason, in reaching its final conclusions and taking action in this proceeding, the Commission has taken a number of measures to minimize or eliminate the costs and burdens generated by compliance with the adopted regulations.

147. Interconnected VoIP providers are not required to seek Commission authorization—the *Order* establishes a voluntary process designed to allow interconnected VoIP providers that seek direct access to obtain it. Telecommunications carriers in like positions must similarly seek state certification or a Commission license. The *Order* only requires those interconnected VoIP providers seeking a Commission authorization to request numbers directly from the Numbering Administrators to comply with the applicable Commission rules related to numbering, including, among others, numbering utilization and optimization requirements, complying with guidelines and procedures adopted pursuant to numbering authority delegated to the states, and complying with industry guidelines and practices applicable to telecommunications carriers with regard to numbering. Although the *Order* requires such providers to submit specific documentation as a condition of obtaining Commission authorization, the Commission has attempted to minimize this burden by streamlining the application process as much as possible. For instance, to ease the administrative burden on small entities of producing and submitting a Numbering Authorization Application, the Commission has established within its own ECFS a module that facilitates filing of applications online.

148. While the *Order* adopts several requirements that interconnected VoIP providers must fulfill as a condition of receiving Commission authorization, the Commission declined to adopt several other proposals that would have placed a greater monetary and administrative burden on small entities, including proposals in the record that, as a condition of direct access, an interconnected VoIP provider be required to (1) transfer all of the numbers it has obtained from its numbering partners to the interconnected VoIP provider's new OCN, and (2) take numbers from certain rate centers chosen by the state commissions in more populous areas or in blocks of less than 1000 numbers. The Commission also declined to revise its current reporting requirements and adopt as requirements additional voluntary commitments imposed in the Direct Access Trial, as some commenters suggested. The Commission concluded that additional restrictions beyond those adopted are unnecessary and would significantly burden and disadvantage small interconnected VoIP providers relative to competing carriers offering voice services. The Commission also considered, and ultimately declined to adopt further rules or take further action, pertaining to VoIP interconnection obligations, intercarrier compensation obligations, or call routing and tracking. We believe that the measures taken in this *Order* will promote efficient number utilization and protect against number exhaust without the need for further restrictions and regulations at this time.

149. We find also that the establishment of a Commission authorization process to enable interconnected VoIP providers to obtain direct access to numbers may lower costs for interconnected VoIP providers in some instances, by allowing them to obtain telephone numbers directly from the Numbering Administrators without having to retain the services of a carrier partner. In its comments, Vonage asserts that doing so will improve competition in the voice services market, broadening the options for consumers and reducing costs by eliminating the middleman for telephone numbers. Thus, the regulations promulgated in the *Order* may benefit small entities financially by eliminating inefficiencies and the associated expenses.

6. Report to Congress

150. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Act of 1995 Analysis

151. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

152. In this document, we establish a process to authorize interconnected VoIP providers to obtain telephone numbers directly from the Numbering Administrators, rather than through carrier affiliates or partners. We have assessed the effects of these rules and find that any burden on small businesses and other small entities will be minimal because the decision to apply for Commission authorization to obtain numbers directly from the Numbering Administrators is strictly voluntary. Interconnected VoIP providers, including small businesses, may continue to obtain numbers through numbering partners. Moreover, the Commission has attempted to ease the administrative burden on small entities that do decide to submit Numbering Authorization Applications by streamlining the application process as much as possible, including the establishment of a module within the Electronic Comment Filing System that facilitates filing of applications electronically.

Congressional Review Act

153. The Commission will send a copy of this Report and *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A).

Accessible Formats

154. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

V. Ordering Clauses

155. Accordingly, *it is ordered* that pursuant to Sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 153, 154, 201–205, 251, 303(r), the Report and Order hereby *is adopted* and part 52 of the Commission's rules, 47 CFR part 52, *is amended* as set forth in Appendix B of this Report and Order. The Report and Order shall become effective November 30, 2015, except for 47 CFR 52.15(g)(2) through(g)(3), which contains information collection requirements that have not be approved by OMB, the Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

156. *It is further ordered* that, pursuant to the authority contained in sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 153, 154, 201–205, 251, 303(r), the Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules, filed February 20, 2007 in CC Docket No. 99–200, and the Petition of Vixxi Solutions, Inc. for Limited Waiver of Number Access Restrictions, filed September 8, 2008 in CC Docket No. 99–200 are denied to the extent set forth herein, effective upon release.

157. *It is further ordered* that pursuant to the authority contained in sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 153, 154, 201–205, 251, 303(r), the Petitions for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources filed in CC Docket No. 99–200 by RNK Inc. on February 4, 2005; Nuvio Corporation on February 15, 2005; Dialpad Communications, Inc. on March 1, 2005; UniPoint Enhanced Services d/b/a PointOne on March 2, 2005; VoEX, Inc. on March 4, 2005; Vonage Holdings Corp. on March 4, 2005; Qwest Communications Corporation on March 29, 2005; CoreComm-Voyager, Inc. on April 22, 2005; Net2Phone Inc. on May 5, 2005; WilTel Communications, LLC on May 9, 2005; Constant Touch Communications on May 23, 2005; Frontier Communications of America, Inc. on August 29, 2006, SmartEdgeNet, LLC on March 6, 2012; Millicorp, LLC on March 14, 2012, and Bandwidth.com, Inc. on June 13, 2012 *are dismissed as moot*, effective upon release.

158. *It is further ordered* that, pursuant to sections 1, 4(i), 4(j), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i)–(j), 251, 303(r), and sections 52.11(b) and 52.25(d) of the Commission's rules, 47 CFRs 52.11(b), 52.25(d), the North American Numbering Council shall submit its recommendations to the Commission within 180 days of the release date of this Report and Order, as discussed in paragraph 60 of this Report and Order.

159. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, and 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

■ 2. Revise § 52.5 to read as follows:

§ 52.5 Central office code administration.

(a) *Incumbent local exchange carrier.* With respect to an area, an ''incumbent local exchange carrier'' is a local exchange carrier that:

(1) On February 8, 1996, provided telephone exchange service in such area; and

(2)(i) On February 8, 1996, was deemed to be a member of the exchange carrier Association pursuant to § 69.601(b) of this chapter (47 CFR 69.601(b)); or

(ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (a)(2)(i) of this section.

(b) *Interconnected Voice over Internet Protocol (VoIP) service provider.* The term ''interconnected VoIP service provider'' is an entity that provides interconnected VoIP service, as that term is defined in 47 U.S.C. Section 153(25).

(c) *North American Numbering Council* (NANC). The ''North American Numbering Council'' is an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C., App (1988), to advise the Commission and to make recommendations, reached through consensus, that foster efficient and impartial number administration.

(d) *North American Numbering Plan* (NANP). The ''North American Numbering Plan'' is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, Sint Maarten, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands).

(e) *Service provider.* The term ''service provider'' refers to a telecommunications carrier or other entity that receives numbering resources from the NANPA, a Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing telecommunications service. For the purposes of this part, the term ''service provider'' includes an interconnected VoIP service provider.

(f) *State.* The term ''state'' includes the District of Columbia and the Territories and possessions.

(g) *State commission.* The term ''state commission'' means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers.

(h) *Telecommunications.* ''Telecommunications'' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(i) *Telecommunications carrier or carrier.* A ''telecommunications carrier'' or ''carrier'' is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)). For the purposes of this part, the term ''telecommunications carrier'' or ''carrier'' includes an interconnected VoIP service provider.

(j) *Telecommunications service.* The term ''telecommunications service'' refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. For purposes of this part, the term ''telecommunications service'' includes interconnected VoIP service as that term is defined in 47 U.S.C. 153(25).

Subpart B—Administration

■ 3. Amend § 52.15 by revising paragraphs (g)(1) and (g)(2), redesignate paragraphs (g)(3) through (g)(5) as paragraphs (g)(4)through (g)(6), and add new paragraph (g)(3) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(1) *General requirements.* An applicant for numbering resources must include in its application the applicant's company name, company headquarters address, OCN, parent company's OCN(s), and the primary type of business in which the numbering resources will be used.

(2) *Initial numbering resources.* An applicant for initial numbering resources must include in its application evidence that the applicant is authorized to provide service in the area for which the numbering resources are requested; and that the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date. A provider of VoIP Positioning Center (VPC) services that is unable to demonstrate authorization to provide service in a state may instead demonstrate that the state does not certify VPC service providers in order to request pseudo-Automatic Numbering Identification (p-ANI) codes directly from the Numbering Administrators for purposes of providing 911 and E–911 service.

(3) *Commission authorization process.* A provider of interconnected VoIP service may show a Commission authorization obtained pursuant to this paragraph as evidence that it is authorized to provide service under paragraph (g)(2) of this section.

(i) *Contents of the application for interconnected VoIP provider numbering authorization.* An application for authorization must reference this section and must contain the following:

(A) The applicant's name, address, and telephone number, and contact information for personnel qualified to address issues relating to regulatory requirements, compliance with Commission's rules, 911, and law enforcement;

(B) An acknowledgment that the authorization granted under this paragraph is subject to compliance with applicable Commission numbering rules; numbering authority delegated to the states; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C) An acknowledgement that the applicant must file requests for numbers with the relevant state commission(s) at least 30 days before requesting numbers from the Numbering Administrators;

(D) Proof that the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date in accordance with paragraph (g)(2) of this section;

(E) Certification that the applicant complies with its Universal Service Fund contribution obligations under 47 CFR part 54, subpart H, its Telecommunications Relay Service contribution obligations under 47 CFR 64.604(c)(5)(iii), its NANP and LNP administration contribution obligations under 47 CFR 52.17 and 52.32, its obligations to pay regulatory fees under 47 CFR 1.1154, and its 911 obligations under 47 CFR part 9; and

(F) Certification that the applicant possesses the financial, managerial, and technical expertise to provide reliable service. This certification must include the name of applicant's key management and technical personnel, such as the Chief Operating Officer and the Chief Technology Officer, or equivalent, and state that none of the identified personnel are being or have been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule, or order; and

(G) Certification pursuant to Sections 1.2001 and 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. *See* 21 U.S.C. 862.

(ii) An applicant for Commission authorization under this section must file its application electronically through the ''Submit a Non-Docketed Filing'' module of the Commission's Electronic Comment Filing System (ECFS). Once the Commission reviews the application and assigns a docket number, the applicant must make all subsequent filings relating to its application in this docket. Parties may file comments addressing an application for authorization no later than 15 days after the Commission releases a public notice stating that the application has been accepted for filing, unless the public notice specifies a different filing date.

(iii) An application under this section is deemed granted by the Commission on the 31st day after the Commission releases a public notice stating that the application has been accepted for filing, unless the Wireline Competition Bureau (Bureau) notifies the applicant that the grant will not be automatically effective. The Bureau may halt this auto-grant process if;

(A) An applicant fails to respond promptly to Commission inquiries,

(B) An application is associated with a non-routine request for waiver of the Commission's rules,

(C) Timely-filed comments on the application raise public interest concerns that require further Commission review, or

(D) The Bureau determines that the application requires further analysis to determine whether granting the application serves the public interest. The Commission reserves the right to request additional information after its initial review of an application.

(iv) *Conditions applicable to all interconnected VoIP provider numbering authorizations.* An interconnected VoIP provider authorized to request numbering resources directly from the Numbering Administrators under this section must adhere to the following requirements:

(A) Maintain the accuracy of all contact information and certifications in its application. If any contact information or certification is no longer accurate, the provider must file a correction with the Commission and each applicable state within thirty (30) days of the change of contact information or certification. The Commission may use the updated information or certification to determine whether a change in authorization status is warranted;

(B) Comply with the applicable Commission numbering rules; numbering authority delegated to the states; and industry guidelines and practices regarding numbering as applicable to telecommunications carriers;

(C) File requests for numbers with the relevant state commission(s) at least thirty (30) days before requesting numbers from the Numbering Administrators;

(D) Provide accurate regulatory and numbering contact information to each state commission when requesting numbers in that state.

(4) *Growth numbering resources.* (i) Applications for growth numbering resources shall include:

(A) A Months-to-Exhaust Worksheet that provides utilization by rate center for the preceding six months and projected monthly utilization for the next twelve (12) months; and

(B) The applicant's current numbering resource utilization level for the rate center in which it is seeking growth numbering resources.

(ii) The numbering resource utilization level shall be calculated by dividing all *assigned numbers* by the total numbering resources in the applicant's inventory and multiplying the result by 100. Numbering resources activated in the Local Exchange Routing Guide (LERG) within the preceding 90 days of reporting utilization levels may be excluded from the utilization calculation.

(iii) All service providers shall maintain no more than a six-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.

(iv) The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an OCN. The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm or overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination of compliance with the reporting and numbering resource application requirements herein.

(5) *Non-compliance.* The NANPA shall withhold numbering resources from any U.S. carrier that fails to comply with the reporting and numbering resource application requirements established in this part. The NANPA shall not issue numbering resources to a carrier without an Operating Company Number (OCN). The NANPA must notify the carrier in writing of its decision to withhold numbering resources within ten (10) days of receiving a request for numbering resources. The carrier may challenge the NANPA's decision to the appropriate state regulatory commission. The state commission may affirm, or may overturn, the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has complied with the reporting and numbering resource application requirements herein. The state commission also may overturn the NANPA's decision to withhold numbering resources from the carrier based on its determination that the carrier has demonstrated a verifiable need for numbering resources and has exhausted all other available remedies.

(6) *State access to applications.* State regulatory commissions shall have access to service provider's applications for numbering resources. The state commissions should request copies of such applications from the service providers operating within their states, and service providers must comply with state commission requests for copies of numbering resource applications. Carriers that fail to comply with a state commission request for numbering resource application materials shall be denied numbering resources.

§ 52.16 [Amended]

■ 4. Amend § 52.16 by removing paragraph (g).

§ 52.17 [Amended]

■ 5. Amend § 52.17 by removing paragraph (c).

§ 52.21 [Amended]

■ 6. Amend § 52.21 by removing paragraph (h) and redesignating paragraphs (i) through (w) as paragraphs (h) through (v).

§ 52.32 [Amended]

■ 7. Amend § 52.32 by removing paragraph (e).

■ 8. Amend § 52.33 by revising paragraph (b) to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

* * * * *

(b) All telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

* * * * *

■ 9. Amend § 52.34 by adding paragraph (c) to read as follows:

§ 52.34 Obligations regarding local number porting to and from interconnected VoIP or Internet-based TRS providers.

* * * * *

(c) Telecommunications carriers must facilitate an end-user customer's valid number portability request either to or from an interconnected VoIP or VRS or IP Relay provider. "Facilitate" is defined as the telecommunication carrier's affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

§ 52.35 [Amended]

■ 10. Amend § 52.35 by removing paragraph (e)(1) and redesignating paragraphs (e)(2) and (e)(3) as (e)(1) and (e)(2).

§ 52.36 [Amended]

■ 11. Amend § 52.36 by removing paragraph (d).

[FR Doc. 2015–20900 Filed 10–28–15; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 80, No. 209

Thursday, October 29, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–2208; Directorate Identifier 2015–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Type Certificate Previously Held by AlliedSignal Inc., Garrett Turbine Engine Company) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Honeywell International Inc. TFE731–4, –4R, –5AR, –5BR, and –5R turbofan engines. This proposed AD was prompted by a report of certain interstage turbine transition (ITT) ducts failing to meet containment capability requirements. This proposed AD would require replacing certain ITT ducts. We are proposing this AD to prevent failure of the ITT duct, which could lead to an uncontained part release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 28, 2015

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* 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 Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Honeywell International Inc., 111 S 34th Street Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut/.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–2208; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–2208; Directorate Identifier 2015–NE–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

While the Honeywell Aerospace Olomouc facility in the Czech Republic was reworking certain ITT ducts, forgings that were not properly heat treated were installed on the affected engines. The heat treatment is necessary for the ITT ducts, part number (P/N) 3075292–4, to meet mechanical properties and the containment capability requirements of the ITT duct design. ITT ducts with unacceptable containment capability, if not corrected, could result in an uncontained part release, damage to the engine, and damage to the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Honeywell Service Bulletin (SB) No. TFE731–72–3789, dated March 23, 2015. The SB describes procedures for removing affected ITT ducts. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This NPRM would require replacing certain ITT ducts, P/N 3075292–4.

Costs of Compliance

We estimate that this proposed AD affects 47 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. We estimate that replacement parts would cost $15,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $712,990. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc. (Type Certificate previously held by AlliedSignal Inc., Garrett Turbine Engine Company): Docket No. FAA–2015–2208; Directorate Identifier 2015–NE–19–AD.

(a) Comments Due Date

We must receive comments by December 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Honeywell International Inc. TFE731–4, –4R, –5AR, –5BR, and –5R turbofan engines with an interstage turbine transition (ITT) duct, part number (P/N) 3075292–4, installed, with a serial number (S/N) listed in Table 2 of Honeywell Service Bulletin (SB) No. TFE731–72–3789, dated March 23, 2015.

(d) Unsafe Condition

This AD was prompted by a report of certain ITT ducts failing to meet containment capability requirements. We are issuing this AD to prevent failure of the ITT duct, which could lead to an uncontained part release, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) At the next removal of the ITT duct from the engine not to exceed 2,600 hours time-in-service after the effective date of this AD, remove the affected ITT duct and replace with a part eligible for installation.

(2) Reserved.

(f) Definitions

For the purpose of this AD a part eligible for installation is an ITT duct with an S/N that is not listed in Table 2 of Honeywell SB No. TFE731–72–3789, dated March 23, 2015 or, if listed in Table 2 of this SB, was reworked using Honeywell SB No. TFE731–72–3789, dated March 23, 2015.

(g) Installation Prohibition

After the effective date of this AD, do not install any ITT duct with an S/N listed in Table 2 of Honeywell SB No. TFE731–72–3789, dated March 23, 2015, onto any engine, unless the ITT duct is marked with the overhaul/repair instructions number ''P35864'' near the ITT duct P/N and S/N markings.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(2) For service information identified in this AD contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut/.*

(3) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on October 22, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–27555 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4803; Directorate Identifier 2015–CE–034–AD]

RIN 2120–AA64

Airworthiness Directives; B–N Group Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes that would supersede AD 2014–03–18. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damage of the cable sliding end assembly and installation of the incorrect end fitting on engine control cable assemblies. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 14, 2015.

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

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

For service information identified in this proposed AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2015–4803.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4803; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–3047; email: *raymond.johnston@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–4803; Directorate Identifier 2015–CE–034–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On February 6, 2014, we issued AD 2014–03–18, Amendment 39–17755 (79 FR 10340; February 25, 2014). That AD required actions intended to address an unsafe condition on B–N Group Ltd. BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country.

Since we issued AD 2014–03–18, it was found that the service information did not correctly identify the parts to be inspected on the Trislander (BN2A MK III) series airplanes. The service information has been revised to correctly identify the parts to be inspected on those airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2015–0184, dated September 1, 2015 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Britten-Norman Aircraft Limited was made aware of two occurrences where a failure of engine control cable assemblies has caused engine control difficulties. In both reported cases, the cable sliding end assemblies were in poor condition and in both cases, an incorrect end-fitting was installed, which may have contributed to the failures.
>
> This condition, if not detected and corrected, could result in reduced engine control, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Britten-Norman Aircraft issued Service Bulletin (SB) 334 to provide inspection instructions, and EASA issued AD 2013–0215 to require a one-time inspection and functional test of the engine control cables and, depending on findings, replacement of the cables.
>
> Subsequently, as it was found that BN2 ''Islander'' aeroplanes were mistakenly omitted from the AD applicability, EASA issued AD 2013–0263, retaining the requirements of EASA AD 2013–0215, which was superseded, and extending the applicability to BN2 aeroplanes.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4803.

Related Service Information Under 1 CFR Part 51

We reviewed Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013, and Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015. The service information describes procedures for inspection and replacement if necessary of the engine control cable assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 96 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,160 or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $6,000), for a cost of $6,850 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–17755 (79 FR 10340; February 25, 2014), and adding the following new AD:

B–N Group Ltd.: Docket No. FAA–2015–4803; Directorate Identifier 2015–CE–034–AD.

(a) Comments Due Date

We must receive comments by December 14, 2015.

(b) Affected ADs

This AD supersedes AD 2014–03–18, Amendment 39–17755 (79 FR 10340; February 25, 2014).

(c) Applicability

This AD applies to B–N Group Ltd. Models BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 76: Engine Controls.

(e) Reason

This AD was prompted by possible damage of the cable sliding end assembly and installation of the incorrect end fitting on engine control cable assemblies. We are issuing this proposed AD to detect and correct damage of the cable sliding end assembly (cracking, distortion, corrosion) and incorrect end fittings on the engine control assemblies, which could lead to reduced engine control with consequent loss of control, and to incorporate revised service information with updated information on applicability and on the identity of parts to be inspected on some airplanes.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(6) of this AD:

(1) *For all airplanes except the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3:* Within the next 6 months after April 1, 2014 (the effective date retained from AD 2014–03–18), do a one-time inspection of the engine control cable assemblies, part number (P/N) 137835, P/N 172449–1, P/N 172450, and P/N 172451, and surrounding areas for damage (cracking, distortion, corrosion); for the correct cable end-fitting; and to assure the wire locking is intact following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013, or Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(2) *For the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes:* Within the next 3 months after the effective date of this AD, do a one-time inspection of the engine control cable assemblies, P/N 80468 and P/N NB–45–2883, and surrounding areas for damage (cracking, distortion, corrosion); for the correct cable end-fitting; and to assure the wire locking is intact following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(3) *For all airplanes except the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3:* If no discrepancies are found during the inspection required in paragraph (f)(1) of this AD, before further flight, inspect the control linkages for proper adjustment and make any necessary changes following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013, or Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(4) *For the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes:* If no discrepancies are found during the inspection required in paragraph (f)(2) of this AD, before further flight, inspect the control linkages for proper adjustment and make any necessary changes following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(5) *For all airplanes except the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3:* If any discrepancies are found during the inspection required in paragraph (f)(1) of this AD and/or the control linkages cannot be properly adjusted as specified in paragraph (f)(3) of this AD, before further flight, replace the engine control cable assembly with a serviceable unit following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 1, dated August 30, 2013, or Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(6) *For the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes:* If any discrepancies are found during the inspection required in paragraph (f)(2) of this AD and/or the control linkages cannot be properly adjusted as specified in paragraph (f)(4) of this AD, before further flight, replace the engine control cable assembly with a serviceable unit following Britten-Norman Aircraft Limited Service Bulletin No. SB 334, Issue 2, dated July 17, 2015.

(7) *For all airplanes except the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3:* After April 1, 2014 (the effective date retained from AD 2014–03–18), do not install on any airplane engine control cable assemblies, P/N 137835, P/N 172449–1, P/N 172450, and P/N 172451, unless they are new or have been inspected as required in paragraphs (f)(1) and (f)(3) of this AD and found free of any discrepancies and have proper adjustment.

(8) *For the Trislander Models BN2A MK. III, BN2A MK. III–2, and BN2A MK. III–3 airplanes:* After the effective date of this AD, do not install on any airplane engine control cable assemblies P/N 80468 and/or P/N NB–45–2883, unless they are new or have been inspected as required in paragraphs (f)(2) and (f)(4) of this AD and found free of any discrepancies and have proper adjustment.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Raymond Johnston, Aerospace Engineer, FAA, Small Airplane Directorate,

901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4159; fax: (816) 329–3047; email: *raymond.johnston@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2015–0184, dated September 1, 2015; for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–4803. For service information related to this AD, contact Britten-Norman Aircraft Limited, Commodore House, Mountbatten Business Centre, Millbrook Road East, Southampton SO15 1HY, United Kingdom; telephone: +44 20 3371 4000; fax: +44 20 3371 4001; email: *info@bnaircraft.com;* Internet: *http://www.britten-norman.com/customer-support/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri on October 22, 2015.

Melvin Johnson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–27571 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109370–10]

RIN 1545–BJ34

Allocable Cash Basis and Tiered Partnership Items; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–109370–10) that was published in the **Federal Register** on Monday, August 3, 2015 (80 FR 45905). The proposed regulations are regarding the determination of a partner's distributive share of certain allocable cash basis items and items attributable to an interest in a lower-tier partnership during a partnership taxable year in which a partner's interest changes.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking published at 80 FR 45905, August 3, 2015, are still being accepted and must be received by November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Benjamin H. Weaver at (202) 317–6850 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–109370–10) that is the subject of these corrections is under section 706 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–109370–10) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–109370–10), that was the subject of FR Doc. 2015–18817, is corrected as follows:

■ 1. On page 45906, in the preamble, first column, the third line from the top of the column, the language ''section 706(d)(2)(C)(i) to a person who '' is corrected to read ''section 706(d)(2)(D)(i) to a person who''.

■ 2. On page 45910, in the preamble, first column, the eleventh line from the top of the column, the language ''extraordinary items in § 1.706–4(d)(2)'' is corrected to read ''extraordinary items in § 1.706–4(e)(2)''.

■ 3. On page 45913, third column, the first line of the signature block, the language ''Karen L. Schiller,'' is corrected to read ''Karen M. Schiller,''.

§ 1.706–0 [Corrected]

■ 4. On Page 45910, third column, the section heading for the entry § 1.706–2 should read ''§ 1.706–2 Certain allocable cash basis items.''.

■ 5. On page 49510, third column, the section heading for the entry § 1.706–3 should read ''§ 1.706–3 Items attributable to interest in lower-tier partnership.''.

§ 1.706–2 [Corrected]

■ 6. On page 45911, first column, the section heading should read ''§ 1.706–2 Certain allocable cash basis items.''.

■ 7. On Page 49511, first column, paragraph (a)(2)(iii), the last line of the paragraph, the language ''in § 1.706–4(d)); '' is corrected to read ''in § 1.706–4(e));''.

§ 1.706–4 [Corrected]

■ 8. On page 45913, paragraph (e)(4) *Example 3.,* remove the language ''2015'' and add the language ''2016'' wherever it appears.

■ 9. On page 45913, second column, paragraph (e)(4) *Example 3.* (iii), sixth line from the top of the paragraph, the language ''15, 2016, and PRS determines that the'' is corrected to read ''15, 2017, and PRS determines that the''.

Martin V. Franks,

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

[FR Doc. 2015–27609 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–155164–09]

RIN 1545–BJ48

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–155164–09) that was published in the **Federal Register** on Wednesday, September 2, 2015 (80 FR 53058). The proposed rules are regarding the treatment as United States property of property held by a controlled foreign corporation in connection with certain transactions involving partnerships.

DATES: Written or electronic comments and request for a public hearing for the notice of proposed rulemaking at 80 FR 53058, September 2, 2015, are still being accepted and must be received by December 1, 2015.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins, at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under sections 954 and 956 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–155164–09) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking, that is the subject of FR Doc. 2015–21572, is corrected as follows:

■ 1. On page 53059, in the preamble, third column, sixth line of the second full paragraph, the language ''in Part I.B of this preamble for'' is corrected to read ''in Part 1.B of this preamble for''.

■ 2. On page 53061, in the preamble, third column, fourth line from the top of the column, the language ''determined under § 1.956–4(b).'' is corrected to read ''determined under proposed § 1.956–4(b).''.

§ 1.956–4 [Corrected]

■ 3. On page 53067, third column, second line of paragraph (c)(4) *Example 2.* (i), the language ''same as in paragraph (i) of Example 1, except'' is corrected to read ''same as in Example 1, except''.

■ 4. On page 53068, paragraph (f), remove the language ''[DATE OF PUBLICATION OF FINAL RULE]'' and add the language ''the date of publication in the **Federal Register** of the Treasury Decision adopting this rule as a final regulation'' wherever it appears.

Martin V. Franks,

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

[FR Doc. 2015–27601 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–BF29

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 111

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

ACTION: Notice of availability of amendment to fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 111 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to the Secretary of Commerce (Secretary) for review. Amendment 111 to the FMP would reduce bycatch limits, also known as Prohibited Species Catch (PSC) limits, by specific amounts in four groundfish sectors: the Amendment 80 sector (non-pollock trawl catcher/processors); the BSAI trawl limited access sector (all non-Amendment 80 trawl fishery participants); the BSAI non-trawl sector (primarily hook-and-line catcher/processors); and the Western Alaska Community Development Quota Program (CDQ Program, also referred to as the CDQ sector). This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Submit comments on or before December 28, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2015–0092, by any one 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-2015-0092,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802.

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. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) confidential business information, or otherwise sensitive information voluntarily submitted by the commenter will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

Electronic copies of Amendment 111 to the FMP, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action, and the Finding of No Significant Impact (FONSI) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://www.alaskafisheries/noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Alice McKeen, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Council has submitted Amendment 111 to the FMP to the Secretary for review. If approved, Amendment 111 would reduce bycatch limits, also known as prohibited species catch (PSC) limits, of Pacific halibut in the Bering Sea Aleutian Islands (BSAI) groundfish fisheries by specific amounts in four groundfish sectors: the Amendment 80 sector; the BSAI trawl limited access; the BSAI non-trawl sector; and the CDQ sector. Amendment 111 is necessary to minimize halibut bycatch in the BSAI groundfish fisheries to the extent practicable and to achieve, on a continuing basis, optimum yield from the BSAI groundfish fisheries. Amendment 111 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a document in the **Federal Register** announcing that the amendment is available for public review and comment. This document announces that proposed Amendment 111 to the FMP is available for public review and comment.

If approved, Amendment 111 would reduce the halibut PSC limits for the Amendment 80 sector by 25 percent, from 2,325 mt to 1,745 mt; for the BSAI trawl limited access fisheries by 15 percent, from 875 mt to 745 mt.; for the BSAI non-trawl sector, by 15 percent, from 833 mt to 710 mt.; and for the CDQ sector by 20 percent, from 393 mt to 315 mt.

In submitting Amendment 111 to the Secretary, the Council and NMFS considered all the National Standards in section 301 of the Magnuson-Stevens Act, but four national standards figured prominently in their consideration of Amendment 111: National Standard 1, National Standard 4, National Standard

8, and National Standard 9. Amendment 111 would minimize halibut bycatch to the extent practicable, consistent with National Standard 9, while achieving, on a continuing basis, optimum yield from the BSAI groundfish fisheries, consistent with National Standard 1. Amendment 111 does not discriminate between residents of different states and assigns allocations of halibut PSC limits in manner that is fair and equitable consistent with National Standard 4. Amendment 111 takes into account the impact of its provisions on fishing communities in order to provide for the sustained participation of those communities and, to the extent practicable, to minimize adverse economic impacts on such communities, consistent with National Standard 8. Amendment 111 may provide additional opportunities for directed commercial halibut fishing, if the International Pacific Halibut Commission increases the commercial catch limit for the directed halibut fishery in response to this action.

In addition to reducing the BSAI halibut PSC limits, Amendment 111 would change two features of current halibut PSC management. First, Amendment 111 would establish the PSC limit for the CDQ sector as a separate limit. Under current FMP provisions, the PSC limit for the CDQ sector is taken partly from the overall trawl PSC limit and the overall non-trawl PSC limit. Second, Amendment 111 would change a feature of the halibut PSC limit for the Amendment 80 sector. Within the Amendment 80 sector, the halibut PSC limit is divided annually between Amendment 80 cooperatives and the Amendment 80 limited access fishery, which consists of vessels that choose that year to fish outside of an Amendment 80 cooperative. In the current regulation, any halibut PSC that is not assigned to an Amendment 80 cooperative is assigned to the Amendment 80 limited access fishery. Under Amendment 111, if any Amendment 80 vessels fish in the Amendment 80 limited access fishery, NMFS would reduce the halibut PSC in the Amendment 80 limited access fishery for that year by 20 percent compared to the PSC amount that NMFS would have allocated to cooperatives for that year if those vessels had fished through cooperatives.

Amendment 111 would amend Section 3.6.2.1.4 of the FMP to specify the BSAI halibut PSC limits for the four groundfish sectors; amend Section 3.7.4.6 of the FMP and specify a separate PSC limit for the CDQ sector; amend Section 3.7.5.2 so that it would establish the halibut PSC limit for the Amendment 80 sector as 1,745 mt and the halibut PSC limit for the BSAI trawl limited access sector as 745 mt; and amend Section 3.7.5.2 so that it establishes an additional 20 percent reduction in the halibut PSC limit for the Amendment 80 vessels that participate in the Amendment 80 limited access fishery. Amendment 111 would make two minor revisions to Table ES–2 to include the revised halibut PSC limits and would amend Appendix A to note the revisions that Amendment 111 would make to the halibut PSC limits adopted under Amendment 80 to the FMP (72 FR 52668, September 14, 2007).

NMFS is soliciting public comments on proposed Amendment 111 through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 111, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. All comments received by the end of the comment period on Amendment 111, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 111. Comments received after that date may not be considered in the approval/disapproval decision on Amendment 111. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: October 26, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–27608 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 209

Thursday, October 29, 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 Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) invites comments on this information collection for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by December 28, 2015.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Fax: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB as a revision to an existing collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5164, 1400 Independence Avenue SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: 7 CFR part 1786, Prepayment of Rural Utilities Service Guaranteed and Insured Loans to Electric and Telephone Borrowers.

OMB Control Number: 0572–0088.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Utilities Service relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper RE Act purposes. These financial statements are audited by a certified public accountant to provide independent assurance that the data being reported are properly measured and fairly presented.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.00 hours per response.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 38.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Annual Burden on Respondents: 76 hours.

Copies of this information collection can be obtained from Rebecca Hunt, Program Development and Regulatory Analysis, at (202) 205–3660, Fax: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: October 22, 2015.

Brandon McBride,

Administrator, Rural Utilities Service.

[FR Doc. 2015–27602 Filed 10–28–15; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE
[10/7/2015 through 10/22/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Bonamar Corporation	7990 NW. 53rd Street, Suite 336, Doral, FL 33166.	10/22/2015	The firm manufactures crabmeat using a process that consists of pasteurizing/cooking and packing the crabmeat.
Hastings Irrigation Pipe Co	1801 East South Street, Hastings, ND 68901.	10/22/2015	The firm manufactures alumimun pipe.
Automation Systems, LLC	2001 N. 17th Avenue, Melrose Park, IL 60160.	10/22/2015	The firm manufactures bolt, screw, and washer assembled components for the automotive and commercial markets.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: October 22, 2015.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2015–27423 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–68–2015]

Foreign-Trade Zone (FTZ) 102—St. Louis, Missouri; Notification of Proposed Production Activity; H–J Enterprises, Inc./H–J International, Inc. (Electrical Transformer Bushing Assemblies); High Ridge, Missouri

The St. Louis County Port Authority, grantee of FTZ 102, submitted a notification of proposed production activity to the FTZ Board on behalf of H–J Enterprises, Inc./H–J International, Inc. (H–J), located at two sites in High Ridge, Missouri. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on October 20, 2015.

A separate application for subzone designation at the H–J facilities is planned and will be processed under Section 400.31 of the FTZ Board's regulations. The facilities are used for the production of electrical transformer bushing assemblies for utility companies. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt H–J from customs duty payments on the foreign-status components used in export production. On its domestic sales, H–J would be able to choose the duty rates during customs entry procedures that apply to porcelain and epoxy electrical transformer bushing assemblies (duty rates 2.7% and 3%, respectively) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Rubber bushing plugs; iron/steel bolts, screws, studs and washers; steel ground pads; copper tubes, studs and terminals; brass washers, bolts, screws, nuts, studs and terminals; aluminum/steel bushing inserts and caps; aluminum clamps and plugs; steel hinges, steel/brass fittings and connectors; copper/brass/steel drain valves; steel/brass inserts and bushing caps; bayonet fuses; porcelain/epoxy bushing assemblies; fuse end bells; electrical leads; porcelain insulators; and level gauges (duty rates range from 1.8% to 8.5%).

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 December 8, 2015.

A copy of the notification 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 Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: October 22, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–27620 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Business Directory Survey

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Opportunity to participate in the RE3 app.

SUMMARY: The U.S. Departments of State, Commerce, and Energy (the ''Interagency Team'') announce an opportunity for U.S.-based suppliers and providers of clean energy, smart grid, and energy efficiency solutions to participate in the launch of an interactive directory of renewable energy and energy efficiency solutions. The Interagency Team has developed the beta version of an interactive app to serve as a mobile business directory for U.S. clean energy exporters. The app will highlight deployments of sustainable technologies and systems at U.S. diplomatic missions and provide potential business partners around the world with a searchable interface to find information on potential U.S. technology and service providers. The app will showcase a diverse array of

clean energy goods and services, including renewable energy equipment (solar, wind, geothermal), biofuels, fuel cell power, smart grid technologies, and energy efficiency solutions, as well as U.S.-based services critical to the deployment of clean energy supplies. U.S. clean energy and energy efficiency exporters interested in registering to be part of the interactive directory and provide information on their company's solutions to be included in the app are requested to send an email to *reee@trade.gov* by no later than December 31, 2015.

Who will use the app?

Target users include Foreign Service Officers and Foreign Commercial Service Officers and their energy sector stakeholders in international markets. The app will enable users to easily demonstrate U.S. clean energy and energy efficiency solutions available in foreign markets and provide a tool to facilitate commercial partnerships that drive the deployment of U.S. technologies and services globally. Through the app, a global audience, as well as the American public, will be invited to learn more about environmental diplomacy efforts overseas, and the innovative U.S. companies powering them.

Disclaimer

The information submitted to the directory and displayed on the app is intended to inform users about U.S. clean energy and energy efficiency solutions. All U.S.-based businesses in these industries that meet the criteria requested in the online form will be eligible for the directory and app. The Interagency Team will perform due diligence on submissions to the Directory and expects that submitting parties will perform their own due diligence, investigation, and background research before entering into a commercial relationship with any listed business or business contact facilitated through the product. A listing in the directory does not constitute endorsement of the business or its products, services or technology by the Interagency Team. The Interagency Team assumes no responsibility or liability for the actions users may take based on the information provided and reserves the right not to list any particular business.

ADDRESSES: To provide information for use in the app, send an email to *reee@trade.gov* by no later than December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Helaina Matza, Office of Innovation and Eco-Diplomacy, United States Department of State; 202.647.0716; *sustainability@state.gov;* or Andrew Bennett, Office of Energy and Environmental Industries, United States Department of Commerce; 202–482–5235; *reee@trade.gov.*

Dated: October 2, 2015.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2015–27579 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–DR–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: Transshipment Requirements under the Western and Central Pacific Fisheries Convention (WCPFC).

OMB Control Number: 0648–0649.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 214.

Average Hours per Response: Transshipment report, 1 hour; High Seas Transshipment or Emergency Transshipment and Notice of Entry or Exit for Eastern Special Management Area, 15 minutes each; Purse Seine Discard Report, 30 minutes; Daily Fish Aggregating Device Report, 10 minutes; Pre-trip Notification for Observer Placement, 1 minute.

Burden Hours: 2,350.

Needs and Uses: This request is for an extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) has issued regulations under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*) to carry out the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission). The regulations include requirements for the owners and operators of U.S. vessels to: (1) Complete and submit a Pacific Transshipment Declaration form for each transshipment that takes place in the Convention Area of highly migratory species caught in the Convention Area, (2) submit notice to the WCPFC Executive Director containing specific information at least 36 hours prior to each transshipment on the high seas in the Convention Area, (3) in the event that a vessel anticipates a transshipment where an observer is required, provide notice to NMFS at least 72 hours before leaving port of the need for an observer, (4) submit a notice to the WCPFC Executive Director containing specific information six hours prior to entry or exit of the Eastern High Seas Special Management Area, (5) complete and submit a U.S. Purse Seine Discard form within 48 hours after any discard, and (6) submit a FAD Report within 24 hours at the end of each day that the vessel is on a fishing trip in the Convention Area.

The information collected from these requirements is used by NOAA and the Commission to help ensure compliance with domestic laws and the Commission's conservation and management measures, and are necessary in order for the United States to satisfy its obligations under the Convention.

Affected Public: Business or other for-profit institutions; individuals or households.

Frequency: On occasion.

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: October 26, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–27569 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE276

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold a seven-day public meeting to consider actions affecting West Coast fisheries in the exclusive economic zone.

DATES: Advisory entities to the Pacific Council will meet beginning at 8 a.m. Friday, November 13, 2015 through Thursday November 19, 2015 as listed in the Schedule of Ancillary Meetings. The Pacific Council general session will begin on Saturday, November 14, 2015 at 8 a.m., reconvening each day through Thursday November 19, 2015. All meetings are open to the public, except a closed session will be held at 3:30 p.m. on Wednesday, November 18 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Council and its advisory entities will be held at the Hyatt Regency Orange County, 11999 Harbor Blvd., Garden Grove, CA 92840; telephone (714) 750–1234. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council; telephone: (503) 820–2280 or (866) 806–7204 toll free. Access the Pacific Council Web site, *http://www.pcouncil.org/council-operations/council-meetings/current-meeting/* for the current meeting location, proposed agendas, and meeting briefing materials.

SUPPLEMENTARY INFORMATION:

Live Stream Broadcast

Saturday, November 14, 2015 at 8 a.m. Through Thursday November 19, 2015

The general session of the Pacific Fishery Management Council will be streamed live on the internet beginning at 8 a.m. Pacific Time (PT) on Saturday, November 14, 2015 at 8 a.m. through Thursday November 19, 2015. The broadcast will end daily at 6 p.m. PT or when business for the day is complete. Only the audio portion, and portions of the presentations displayed on the screen at the Council meeting, will be broadcast. The audio portion is listen-only; you will be unable to speak to the Council via the broadcast. Join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar*, enter the Webinar ID for this meeting, which is 145–232–603, and enter your email address as required. It is recommended that you use a computer headset as GoToMeeting allows you to listen to the meeting using your computer headset and speakers. If you do not have a headset and speakers, you may use your telephone for the audio portion of the meeting by dialing this toll number 1–951–266–6126 (not a toll free number); entering the phone audio access code 925–719–732; and then entering your Audio Pin which will be shown to you after joining the webinar. The webinar is broadcast in listen-only mode.

Agenda

Saturday, November 14, 2015 at 8 a.m. Through Thursday November 19, 2015

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''(Final Action)'' refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and meeting rooms, is described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be available in the advance November 2015 briefing materials and posted on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Thursday, October 29, 2015.

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Executive Director's Report
  4. Approve Agenda
B. Open Comment Period
  1. Comments on Non-Agenda Items
C. Enforcement Issues
  1. Tri-State Enforcement Report
  2. Vessel Movement Monitoring Alternatives
D. Salmon Management
  1. National Marine Fisheries Service Report
  2. Salmon Methodology Review
  3. Salmon Management Schedule for 2016
E. Habitat
  1. Current Habitat Issues
F. Administrative Matters
  1. Briefing on Recusals and Financial Interest Disclosures
  2. Legislative Matters
  3. Approval of Council Meeting Record
  4. Fiscal Matters
  5. Membership Appointments and Council Operating Procedures
  6. Future Council Meeting Agenda and Workload Planning
G. Highly Migratory Species Management
  1. National Marine Fisheries Service Report
  2. Swordfish Management Policy Connections
H. Coastal Pelagic Species Management
  1. Pacific Sardine Distribution Workshop
  2. 2016 Exempted Fishing Permits Notice of Intent
  3. Anchovy General Status Overview
  4. 2016 Methodology Review Preliminary Topic Selection including Data-Limited Assessment Methods
I. Groundfish Management
  1. National Marine Fisheries Service Report
  2. Preliminary exempted Fishing Permit Approval
  3. Final Approval of Stock Assessments
  4. Biennial Harvest Specifications for 2017–18 Groundfish Management Including Final Overfishing Limits and Acceptable Biological Catches (Final Action)
  5. Whiting Electronic Monitoring Final Alternative and Regulations (Final Action)
  6. Blackgill-Slope Complex Final Reallocation and Accumulation Limits (Final Action)
  7. Stock Assessment Prioritization for the 2019–20 Management Cycle
  8. Consideration of Inseason Adjustments (Final Action)
  9. Biennial Management Measures for 2017–18
J. Pacific Halibut Management
  1. Final 2016 Catch Sharing Plan and Management Measures, and Preliminary Sablefish Fishery Incidental Landing Regulations (Final Action)

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Council agenda for this meeting, and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Council Web site *http://www.pcouncil.org/council-operations/council-meetings/current-briefing-book/* no later than Thursday, October 29, 2015.

Schedule of Ancillary Meetings

Friday, November 13, 2015

Coastal Pelagic Species Advisory Subpanel convening at 8 a.m.;

Coastal Pelagic Species Management Team convening at 8 a.m.;
Groundfish Electronic Monitoring Policy and Technical Advisory Committees convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Highly Migratory Species Advisory Subpanel convening at 8 a.m.;
Highly Migratory Species Management Team convening at 8 a.m.;
Scientific and Statistical Committee convening at 8 a.m.;
Habitat Committee convening at 8:30 a.m.;
Legislative Committee convening at 1 p.m.;
Budget Committee convening at 2 p.m.

Saturday, November 14, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.;
Coastal Pelagic Species Advisory Subpanel convening at 8 a.m.;
Coastal Pelagic Species Management Team convening at 8 a.m.;
Enforcement Consultants convening at 8 a.m.;
Groundfish Advisory Subpanel convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Highly Migratory Species Advisory Subpanel convening at 8 a.m.;
Highly Migratory Species Management Team convening at 8 a.m.;
Scientific and Statistical Committee convening at 8 a.m.;
Annual Awards Banquet convening at 6 p.m.

Sunday, November 15, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.;
Groundfish Advisory Subpanel convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Enforcement Consultants convening on an ad hoc basis;
Stock Assessment Briefing convening at 7 p.m.

Monday, November 16, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.;
Groundfish Advisory Subpanel convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Enforcement Consultants convening on an ad hoc basis.

Tuesday, November 17, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.;
Groundfish Advisory Subpanel convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Enforcement Consultants convening on an ad hoc basis.

Wednesday, November 18, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.;
Groundfish Advisory Subpanel convening at 8 a.m.;
Groundfish Management Team convening at 8 a.m.;
Enforcement Consultants convening on an ad hoc basis.

Thursday, November 19, 2015

California State Delegation convening at 7 a.m.;
Oregon State Delegation convening at 7 a.m.;
Washington State Delegation convening at 7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kristopher Kleinschmidt at least five days prior to the meeting date by: telephone (503) 820–2280; at the Council office (see **ADDRESSES**); or by email at *kris.kleinschmidt@noaa.gov*.

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

Dated: October 26, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–27591 Filed 10–28–15; 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 Recreational Charter Vessel Guide and Owner Data Collection.

OMB Control Number: 0648–0647.

Form Number(s): None.

Type of Request: Regular (reinstatement without change of a previously approved information collection).

Number of Respondents: 560.

Average Hours per Response: Mail survey, 90 minutes; follow-up telephone survey, 6 minutes.

Burden Hours: 260.

Needs and Uses: Numerous management measures have recently been proposed or implemented that affect recreational charter boat fishing for Pacific halibut off Alaska. On January 5, 2010, NMFS issued a final rule establishing a limited entry permit system for charter vessels in the guided halibut sport fishery in International Pacific Halibut Commission Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) (75FR554). This permit system is intended to address concerns about the growth of fishing capacity in this fishery sector, which accounts for a substantial portion of the overall recreational halibut catch in Alaska. On March 16, 2011, a size limit on Pacific halibut caught while charter boat fishing in Area 2C for the 2011 fishing season was established (76FR14300). In addition, a Halibut Catch Sharing Plan (76FR44156) was implemented in 2014 that altered the way Pacific halibut is allocated between the guided sport (*i.e.,* the charter sector) and the commercial halibut fishery.

To assess the effect of regulatory restrictions (currently in place or potential) on charter operator and owner behavior and welfare, it is necessary to obtain a better general understanding of the Alaska recreational charter boat industry. Some information useful for this purpose is already collected from existing sources, such as charter vessel logbooks administered by the Alaska Department of Fish and Game (ADF&G). In addition, a voluntary survey under this OMB Control Number administered to collect economic information for three fishing seasons (2011–2013) from business owners in the charter fleet was administered between 2012 and 2014. It collected information on vessel and crew characteristics, services offered to clients, spatial and temporal aspects of their operations and fishing behavior, and costs and earnings information for the three fishing seasons prior to implementation of the Halibut Catch Sharing Plan. These data were collected directly from the industry since they are not available from other existing data sources. A description of the previously-fielded survey and a summary of the results are available in a NOAA Technical Memorandum that can be accessed at *http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-299.pdf.*

To evaluate changes in the charter sector associated with the Halibut Catch Sharing Plan, the National Marine Fisheries Service's (NMFS) Alaska Fisheries Science Center proposes to continue the implementation of the survey of charter vessel owners to collect annual cost, earnings, and employment data that will supplement logbook data collected by ADF&G. The proposed data collection will provide another three years of basic economic information about the charter sector beyond the 2011 to 2013 data that was collected previously, including revenues produced from different products and services provided to clients, fixed and variable operating costs, and locations of purchases. These data will support improved analysis and of the effects of fisheries regulations on the charter fishing industry, information that is increasingly needed by the North Pacific Fishery Management Council and NMFS to more completely understand ongoing halibut allocation issues and other fishery management issues involving the charter industry. The survey will have minor changes, including, possibly, a small set of questions about how charter vessels have been impacted by a new management program)

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

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: October 26, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–27570 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE275

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 Joint Skate Advisory Panel & Committee Meeting 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, November 12, 2015 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000; fax: (401) 732–9309.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Skate Committee and Advisory Panel will review Plan Development Team work on alternatives under consideration and impacts of these alternatives in Framework Adjustment 3 and select preferred alternatives. They will also discuss other business as necessary.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 26, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–27598 Filed 10–28–15; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Designated Contract Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of 2015 schedule of fees.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association, a registered futures association, and the designated contract markets. The calculation of the fee amounts charged for 2015 by this notice is based upon an average of actual program costs incurred during fiscal year (''FY'') 2012, FY 2013, and FY 2014.

DATES: *Effective date:* Each self-regulatory organization is required to remit electronically the applicable fee on or before December 28, 2015.

FOR FURTHER INFORMATION CONTACT: Mary Jean Buhler, Chief Financial Officer, Commodity Futures Trading Commission; (202) 418–5089; Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming; (202) 418–5034; Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations [1] and designated contract markets (''DCM''), each of which is a self-regulatory organization (''SRO'') regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.[2] The fees are set each year based on direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, and then charges the lower of the two.[3]

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs generally consist of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 161 percent for FY 2012, 181 percent for FY 2013, and 180 percent for FY 2014.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years. The formula for calculating the second factor is: 0.5a + 0.5 vt = current fee. In this formula, ''a'' equals the average annual costs, ''v'' equals the percentage of total volume across DCMs over the last three years, and ''t'' equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

	Actual total costs			3-Year average actual costs	3-Year percent of volume	Volume adjusted costs	2015 Assessed fee
	FY 2012	FY 2013	FY 2014				
CBOE Futures	$29,278	$235,567	$—	$88,282	0.98	$50,853	$50,853
Chicago Board of Trade	238,392	164,974	55,515	152,960	30.02	281,079	152,960
Chicago Mercantile Exchange	757,347	391,917	225,701	458,322	44.93	535,344	458,322
ELX Futures	34,593	134,267	....	56,287	0.026	28,320	28,320
ICE Futures U.S.	221,813	360,223	81,176	221,071	8.56	168,880	168,880
Kansas City Board of Trade	34,335	559	....	11,631	0.12	6,615	6,615
Minneapolis Grain Exchange	60,897	220,975	47,648	109,840	0.04	55,225	55,225
NADEX North American	11,293	101,252	980	37,842	0.033	19,147	19,147
New York Mercantile Exchange	7,411	135,316	225,672	122,800	14.69	161,480	122,800
NYSE LIFFE US	71,317	24,802	....	32,039	0.34	18,354	18,354
One Chicago	55,755	128,599	31,196	71,850	0.241	37,568	37,568
Subtotal	1,522,431	1,898,451	667,888	1,362,924	100	1,362,865	1,119,044
National Futures Association	487,328	186,499	292,102	321,976	....	....	321,976
Total	2,009,759	2,084,950	959,990	1,684,900	....	....	1,441,020

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

a. Actual three-year average costs equal $152,960.

b. The alternative computation is: (.5) ($152,960) + (.5) (.30) ($1,347,041) = $278,695.

c. The fee is the lesser of a or b; in this case $152,960.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2012 through 2014 was $321,976. The fee to be paid by the NFA for the current fiscal year is $321,976.

[1] National Futures Association is the only registered futures association.

[2] *See* Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

[3] 58 FR 42643, Aug. 11, 1993, and 17 CFR part 1, app. B.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

	3-Year average actual cost	3-Year percent of volume	2015 Fee lesser of actual or calculated fee
CBOE Futures	$88,282	0.98	$50,853
Chicago Board of Trade	152,960	30.02	152,960
Chicago Mercantile Exchange	458,322	44.93	458,322
ELX Futures	56,287	0.03	28,320
ICE Futures U.S.	221,071	8.56	168,880
Kansas City Board of Trade	11,631	0.12	6,615
Minneapolis Grain Exchange	109,840	0.04	55,225
NADEX North American	37,842	0.03	19,147
New York Mercantile Exchange	122,800	14.69	122,800
NYSE LIFFE US	32,039	0.34	18,354
One Chicago	71,850	0.2412	37,568
Subtotal	1,362,924	100	1,119,044
National Futures Association	321,976		321,976
Total	1,684,900		1,441,020

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds. *See* 31 U.S.C. 3720. For information about electronic payments, please contact Jennifer Fleming at (202) 418–5034 or *jfleming@cftc.gov,* or see the CFTC Web site at *www.cftc.gov,* specifically, *www.cftc.gov/cftc/cftcelectronicpayments.htm.*

(Authority: 7 U.S.C. 16a)

Issued in Washington, DC, on October 23, 2015, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2015–27535 Filed 10–28–15; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2015–0046]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to renew the Office of Management and Budget's (OMB) approval for an existing information collection titled, ''Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.''

DATES: Written comments are encouraged and must be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or social security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *PRA@cfpb.gov.* Please do not submit comments to this mailbox.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for Information on Compliance Costs and Other Effects of Regulations.

OMB Control Number: 3170–0032.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private Sector.

Estimated Number of Respondents: 8,150.

Estimated Total Annual Burden Hours: 9,008.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act requires or authorizes the Consumer Financial Projection Bureau to implement new consumer protections in certain sectors of financial markets, including the mortgage and remittance industries. The information collected is required in order to effectively incorporate information from financial services providers concerning compliance costs and other effects of regulations into potential rulemakings.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

Dated: October 23, 2015.

Linda F. Powell,

Chief Data Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2015–27576 Filed 10–28–15; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–54]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–54 with attached Policy Justification.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

OCT 05 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-54, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Spain for defense articles and services estimated to cost $243 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 15–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(l) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Government of Spain

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 80 million
Other	$163 million
TOTAL	$243 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Four (4) MQ–9 Block 5 Remotely Piloted Aircraft

Twenty (20) Embedded Global Positioning System/Inertial Guidance Unit

(EGI) (3 per aircraft, and 8 spares)

Two (2) Mobile Ground Control Stations (MGCS)

Five (5) Multi-Spectral Targeting Systems (MTS–B) (1 per aircraft, 1 spare)

Five (5) Synthetic Aperture Radar, Lynx AN/APY–8 (1 per aircraft, 1 spare)

Also provided are a unique and common spares package, support equipment, United States Air Force (USAF) technical orders, country specific technical orders, Contractor Logistics Support for two (optional three) years, contractor provided aircraft components, spares, and accessories, personnel training, and other related elements of logistical and program support.

(iv) *Military Department:* Air Force (X8–D–SAA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 05 Oct 2015

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Spain—MQ–9 Block 5 aircraft

The Government of Spain requested a possible sale of:

Major Defense Equipment (MDE):

Four (4) MQ–9 Block 5 Remotely Piloted Aircraft

Twenty (20) Embedded Global Positioning System/Inertial Guidance Unit (EGI)

(3 per aircraft, and 8 spares)

Two (2) Mobile Ground Control Stations (MGCS)

Five (5) Multi-Spectral Targeting Systems (MTS–B) (1 per aircraft, 1 spare)

Five (5) Synthetic Aperture Radar, Lynx AN/APY–8 (1 per aircraft, 1 spare)

Also provided are a unique and common spares package, support equipment, United States Air Force (USAF) technical orders, country specific technical orders, Contractor Logistics Support for two (optional three) years, contractor provided aircraft components, spares, and accessories, personnel training, and other related elements of logistical and program support. The estimated MDE cost is $80 million. The estimated total cost is $243 million.

This proposed sale enhances the intelligence, surveillance, and reconnaissance (ISR) capability of the Spanish military in support of national, North Atlantic Treaty Organization (NATO), United Nations, and other coalition operations. Commonality of ISR capabilities increases interoperability between U.S. and Spanish forces and provides a common interface with other MQ–9 NATO operators, including the United Kingdom, France, and Italy. The Spanish Air Force intends to use the MQ–9s for homeland security, peacekeeping, peace enforcement, counterinsurgency, and counterterrorism operations. The proposed sale improves Spain's ability to meet current and future threats by providing improved ISR coverage that promotes increased battlefield situational awareness, anticipates enemy intent, augments combat search and rescue, and provides ground troop support.

Spain requests these capabilities to provide for the defense of its deployed troops, regional security, and interoperability with the United States. Spain will have no difficulty absorbing this additional capability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be General Atomics Aeronautical Systems, Inc. in San Diego, California. Other sole source requests identified in the Letter of Request are Raytheon Company in McKinney, Texas, and L-3 Communications Systems—West in Salt Lake City, Utah. The purchaser requested offsets. At this time, offset agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale may require multiple trips for U.S. contractor representatives to Spain and potentially deployed locations to provide initial launch, recovery, and maintenance support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale. All defense articles and services have been approved for release by the USAF foreign disclosure office.

Transmittal No. 15–54

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The MQ–9 is a long-endurance, high-altitude Remotely Piloted Aircraft (RPA) used for surveillance, military reconnaissance, and targeting missions. MQ–9 is capable of performing real-time and pre-programmed flight missions. Real-time missions are flown under the control of a pilot in a Ground Control Station (GCS). A data link is maintained that uplinks control commands and downlinks video with telemetry data. The data link can be a Line-of-Sight (LOS) C-Band communication or Beyond Line-of-Sight (BLOS) Ku-Band Satellite Communication (SATCOM). Missions are preprogrammed by pilots in the GCS or hand flown under the control of an onboard suite of redundant computers, controls, and sensors. A pilot initiates a pre programmed mission once the aircraft is airborne and lands the aircraft when the mission is completed. Pilots can change preprogrammed mission parameters as often as required. The aircraft can also be handed off to other strategically placed ground- or sea-based GCSs.

The MQ–9 is designed to carry 800 pounds of internal payload with maximum fuel and can carry multiple mission payloads aloft. The following payloads are being integrated into the MQ–9 being prepared for offer to Spain as part of this proposed sale: Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), and laser designators.

a. The equipment proposed for the Spanish MQ–9 (Reaper) Letter of Request (LOR) is classified up to Secret.

2. The Spanish MQ–9 system includes the following components:

a. A secure Mobile Ground Control Station (MGCS) with workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data.

b. The Raytheon Multi-Spectral Targeting System (MTS–B with Laser Target Designation) and multi-use ElectroOptical (EO)/Infra-Red (IR) sensor provides long-range surveillance, high-altitude target acquisition, tracking, and range-finding.

c. Modified Weaponization Kit (UHK16205–1) is a hardware kit built into the aircraft at the time of production to include the necessary cables, mission kits, module assemblies, and switching modules that are critical in allowing mating, powering, and communicating with weapons that might be desired and authorized for use on the platform in the future. The Weaponization Kit to be provided under this proposed sale will not include the other necessary hardware required to employ weapons (aircraft pylons, bomb racks, weapons-specific components of the country specific technical orders (CSTOs) and airworthiness documents). Additionally, weapons employment will require software enhancement to the GCS prior to employment.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, any information gleaned from exploitation of hardware, publications and software could be used to develop countermeasures (electronic, infrared, or other types) as well as offensive and defensive counter-tactics and allow an adversary to exploit those vulnerabilities during combat.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national

security objectives outlined in the Policy Justification.

[FR Doc. 2015–27503 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0112]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 28, 2015

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the DLA Logistics Information Services, ATTN: Mr. Robert A Burrow, DLIS–LAE, 74 Washington Ave. N., Suite 7, Battle Creek MI 49037–3084, or call Mr. Robert A Burrow at (269)-961–4410.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; And OMB Number: Department of Defense Electronic Mall Web site; OMB Control Number 0704–XXXX.

Needs And Uses: Each user of the DoD EMALL Web site must complete registration information in order to receive DoD EMALL access. Only authorized personnel of Federal, State, and Local government are able to register and log into the DoD EMALL Web site to shop, search, order, and make purchases.

Affected Public: Not-for-profit institutions; State, local or Tribal governments.

Annual Burden Hours: 8,344.75.

Number of Respondents: 33,379.

Responses per Respondent: 1

Annual Responses: 33,379.

Average Burden per Response: 15 minutes

Frequency: On occasion.

DoD EMALL is an Internet-based Electronic Mall, which allows customers to search for an order items from the government and commercial sources. DoD EMALL is a Department of Defense program operated by the Defense Logistics Information Service (DLIS). All users are required to register and be authenticated and authorized by a DLIS Access Administrator.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27508 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Travel Management Office.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Defense Travel Management Office is publishing Civilian Personnel Per Diem Bulletin Number 299. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States when applicable. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 299 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: *Effective Date:* November 1, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Sonia Malik, 571–372–1276.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Defense Travel Management Office for non-foreign areas outside the contiguous United States. It supersedes Civilian Personnel Per Diem Bulletin Number 298. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. Civilian Bulletin 299 includes updated rates for Puerto Rico.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
[OTHER]						
01/01 - 12/31	110		99		209	03/01/2015
ADAK						
11/01 - 03/31	150		70		220	03/01/2015
04/01 - 10/31	192		74		266	03/01/2015
ANCHORAGE [INCL NAV RES]						
05/16 - 09/30	339		126		465	07/01/2015
10/01 - 05/15	99		102		201	07/01/2015
BARROW						
01/01 - 12/31	177		78		255	03/01/2015
BARTER ISLAND LRRS						
01/01 - 12/31	110		99		209	04/01/2015
BETHEL						
01/01 - 12/31	179		94		273	03/01/2015
BETTLES						
01/01 - 12/31	175		79		254	03/01/2015
CAPE LISBURNE LRRS						
01/01 - 12/31	110		99		209	03/01/2015
CAPE NEWENHAM LRRS						
01/01 - 12/31	110		99		209	03/01/2015
CAPE ROMANZOF LRRS						
01/01 - 12/31	110		99		209	03/01/2015
CLEAR AB						
01/01 - 12/31	90		82		172	10/01/2006
COLD BAY LRRS						
01/01 - 12/31	110		99		209	03/01/2015
COLDFOOT						
01/01 - 12/31	165		70		235	10/01/2006
COPPER CENTER						
05/15 - 09/15	130		79		209	03/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ MEALS AND INCIDENTALS RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/16 - 05/14	89	75	164	03/01/2015
CORDOVA				
01/01 - 12/31	95	77	172	03/01/2015
CRAIG				
04/01 - 09/30	129	77	206	06/01/2014
10/01 - 03/31	85	72	157	06/01/2014
DEADHORSE				
01/01 - 12/31	170	70	240	05/01/2014
DELTA JUNCTION				
05/01 - 09/30	169	60	229	03/01/2015
10/01 - 04/30	139	57	196	03/01/2015
DENALI NATIONAL PARK				
06/01 - 08/31	185	89	274	03/01/2015
09/01 - 05/31	109	82	191	03/01/2015
DILLINGHAM				
05/15 - 10/15	185	111	296	01/01/2011
10/16 - 05/14	169	109	278	01/01/2011
DUTCH HARBOR-UNALASKA				
01/01 - 12/31	135	79	214	03/01/2015
EARECKSON AIR STATION				
01/01 - 12/31	90	77	167	06/01/2007
EIELSON AFB				
05/15 - 09/15	154	85	239	03/01/2015
09/16 - 05/14	75	77	152	03/01/2015
ELFIN COVE				
01/01 - 12/31	225	68	293	03/01/2015
ELMENDORF AFB				
05/16 - 09/30	339	126	465	07/01/2015
10/01 - 05/15	99	102	201	07/01/2015
FAIRBANKS				
05/15 - 09/15	154	85	239	03/01/2015
09/16 - 05/14	75	77	152	03/01/2015
FOOTLOOSE				
01/01 - 12/31	175	18	193	10/01/2002

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
FORT YUKON LRRS						
01/01 - 12/31	110		99		209	03/01/2015
FT. GREELY						
05/01 - 09/30	169		60		229	03/01/2015
10/01 - 04/30	139		57		196	03/01/2015
FT. RICHARDSON						
05/16 - 09/30	339		126		465	07/01/2015
10/01 - 05/15	99		102		201	07/01/2015
FT. WAINWRIGHT						
05/15 - 09/15	154		85		239	03/01/2015
09/16 - 05/14	75		77		152	03/01/2015
GAMBELL						
01/01 - 12/31	133		59		192	03/01/2015
GLENNALLEN						
09/16 - 05/14	89		75		164	03/01/2015
05/15 - 09/15	130		79		209	03/01/2015
HAINES						
01/01 - 12/31	107		101		208	01/01/2011
HEALY						
06/01 - 08/31	185		89		274	03/01/2015
09/01 - 05/31	109		82		191	03/01/2015
HOMER						
05/01 - 09/30	159		91		250	03/01/2015
10/01 - 04/30	89		84		173	03/01/2015
JB ELMENDORF-RICHARDSON						
05/16 - 09/30	339		126		465	07/01/2015
10/01 - 05/15	99		102		201	07/01/2015
JUNEAU						
10/01 - 04/30	135		88		223	03/01/2015
05/01 - 09/30	159		90		249	03/01/2015
KAKTOVIK						
01/01 - 12/31	165		86		251	10/01/2002
KAVIK CAMP						
01/01 - 12/31	250		71		321	03/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENAI-SOLDOTNA						
05/01 - 10/31	194		107		301	03/01/2015
11/01 - 04/30	84		96		180	03/01/2015
KENNICOTT						
01/01 - 12/31	229		102		331	03/01/2015
KETCHIKAN						
04/01 - 10/01	140		90		230	03/01/2015
10/02 - 03/31	99		85		184	03/01/2015
KING SALMON						
10/02 - 04/30	125		81		206	10/01/2002
05/01 - 10/01	225		91		316	10/01/2002
KING SALMON LRRS						
01/01 - 12/31	110		99		209	03/01/2015
KLAWOCK						
10/01 - 03/31	85		72		157	06/01/2014
04/01 - 09/30	129		77		206	06/01/2014
KODIAK						
05/01 - 09/30	180		82		262	03/01/2015
10/01 - 04/30	100		74		174	03/01/2015
KOTZEBUE						
01/01 - 12/31	219		95		314	03/01/2015
KULIS AGS						
05/16 - 09/30	339		126		465	07/01/2015
10/01 - 05/15	99		102		201	07/01/2015
MCCARTHY						
01/01 - 12/31	229		102		331	03/01/2015
MCGRATH						
01/01 - 12/31	160		82		242	07/01/2014
MURPHY DOME						
09/16 - 05/14	75		77		152	03/01/2015
05/15 - 09/15	154		85		239	03/01/2015
NOME						
01/01 - 12/31	165		108		273	03/01/2015
NUIQSUT						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	233		69		302	03/01/2015
OLIKTOK LRRS						
01/01 - 12/31	110		99		209	03/01/2015
PETERSBURG						
01/01 - 12/31	110		99		209	03/01/2015
POINT BARROW LRRS						
01/01 - 12/31	110		99		209	03/01/2015
POINT HOPE						
01/01 - 12/31	181		81		262	06/01/2014
POINT LAY						
01/01 - 12/31	265		72		337	07/01/2014
POINT LAY LRRS						
01/01 - 12/31	265		72		337	04/01/2015
POINT LONELY LRRS						
01/01 - 12/31	110		99		209	03/01/2015
PORT ALEXANDER						
01/01 - 12/31	155		61		216	03/01/2015
PORT ALSWORTH						
01/01 - 12/31	135		88		223	10/01/2002
PRUDHOE BAY						
01/01 - 12/31	170		70		240	05/01/2014
SELDOVIA						
10/01 - 04/30	89		84		173	03/01/2015
05/01 - 09/30	159		91		250	03/01/2015
SEWARD						
05/01 - 09/30	207		104		311	03/01/2015
10/01 - 04/30	169		100		269	03/01/2015
SITKA-MT. EDGECUMBE						
05/15 - 09/15	200		99		299	03/01/2015
09/16 - 05/14	139		93		232	03/01/2015
SKAGWAY						
04/01 - 10/01	140		90		230	03/01/2015
10/02 - 03/31	99		85		184	03/01/2015
SLANA						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
10/01 - 04/30	99		55		154	02/01/2005
05/01 - 09/30	139		55		194	02/01/2005
SPARREVOHN LRRS						
01/01 - 12/31	110		99		209	03/01/2015
SPRUCE CAPE						
10/01 - 04/30	100		74		174	03/01/2015
05/01 - 09/30	180		82		262	03/01/2015
ST. GEORGE						
01/01 - 12/31	220		68		288	03/01/2015
TALKEETNA						
01/01 - 12/31	100		89		189	10/01/2002
TANANA						
01/01 - 12/31	165		108		273	03/01/2015
TATALINA LRRS						
01/01 - 12/31	110		99		209	03/01/2015
TIN CITY LRRS						
01/01 - 12/31	110		99		209	03/01/2015
TOK						
05/15 - 09/30	100		72		172	03/01/2015
10/01 - 05/14	79		70		149	03/01/2015
UMIAT						
01/01 - 12/31	350		80		430	03/01/2015
VALDEZ						
09/17 - 04/15	109		90		199	03/01/2015
04/16 - 09/16	189		98		287	03/01/2015
WAINWRIGHT						
01/01 - 12/31	175		83		258	01/01/2011
WASILLA						
05/01 - 09/30	125		92		217	03/01/2015
10/01 - 04/30	90		89		179	03/01/2015
WRANGELL						
04/01 - 10/01	140		90		230	03/01/2015
10/02 - 03/31	99		85		184	03/01/2015
YAKUTAT						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	105		94		199	01/01/2011
AMERICAN SAMOA						
AMERICAN SAMOA						
01/01 - 12/31	139		69		208	06/01/2015
GUAM						
GUAM (INCL ALL MIL INSTAL)						
01/01 - 12/31	159		87		246	07/01/2015
JOINT REGION MARIANAS (ANDERSEN)						
01/01 - 12/31	159		87		246	07/01/2015
JOINT REGION MARIANAS (NAVAL BASE)						
01/01 - 12/31	159		87		246	07/01/2015
HAWAII						
[OTHER]						
01/01 - 12/31	142		108		250	06/01/2015
CAMP H M SMITH						
01/01 - 12/31	177		117		294	06/01/2015
EASTPAC NAVAL COMP TELE AREA						
01/01 - 12/31	177		117		294	06/01/2015
FT. DERUSSEY						
01/01 - 12/31	177		117		294	06/01/2015
FT. SHAFTER						
01/01 - 12/31	177		117		294	06/01/2015
HICKAM AFB						
01/01 - 12/31	177		117		294	06/01/2015
HONOLULU						
01/01 - 12/31	177		117		294	06/01/2015
ISLE OF HAWAII: HILO						
01/01 - 12/31	142		108		250	06/01/2015
ISLE OF HAWAII: OTHER						
01/01 - 12/31	189		142		331	06/01/2015
ISLE OF KAUAI						
01/01 - 12/31	305		146		451	06/01/2015
ISLE OF MAUI						
01/01 - 12/31	259		146		405	06/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ISLE OF OAHU						
01/01 - 12/31	177		117		294	06/01/2015
JB PEARL HARBOR-HICKAM						
01/01 - 12/31	177		117		294	06/01/2015
KEKAHA PACIFIC MISSILE RANGE FAC						
01/01 - 12/31	305		146		451	06/01/2015
KILAUEA MILITARY CAMP						
01/01 - 12/31	142		108		250	06/01/2015
LANAI						
01/01 - 12/31	229		103		332	06/01/2015
LUALUALEI NAVAL MAGAZINE						
01/01 - 12/31	177		117		294	06/01/2015
MCB HAWAII						
01/01 - 12/31	177		117		294	06/01/2015
MOLOKAI						
01/01 - 12/31	157		86		243	06/01/2015
NAS BARBERS POINT						
01/01 - 12/31	177		117		294	06/01/2015
PEARL HARBOR						
01/01 - 12/31	177		117		294	06/01/2015
PMRF BARKING SANDS						
01/01 - 12/31	305		146		451	06/01/2015
SCHOFIELD BARRACKS						
01/01 - 12/31	177		117		294	06/01/2015
TRIPLER ARMY MEDICAL CENTER						
01/01 - 12/31	177		117		294	06/01/2015
WHEELER ARMY AIRFIELD						
01/01 - 12/31	177		117		294	06/01/2015
MIDWAY ISLANDS						
MIDWAY ISLANDS						
01/01 - 12/31	125		81		206	06/01/2015
NORTHERN MARIANA ISLANDS						
[OTHER]						
01/01 - 12/31	99		102		201	07/01/2015

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ROTA						
01/01 - 12/31	130		107		237	07/01/2015
SAIPAN						
01/01 - 12/31	140		98		238	07/01/2015
TINIAN						
01/01 - 12/31	99		102		201	07/01/2015
PUERTO RICO						
[OTHER]						
01/01 - 12/31	109		112		221	06/01/2012
AGUADILLA						
01/01 - 12/31	171		84		255	11/01/2015
BAYAMON						
01/01 - 12/31	195		128		323	09/01/2010
CAROLINA						
01/01 - 12/31	195		128		323	09/01/2010
CEIBA						
01/01 - 12/31	139		92		231	10/01/2012
CULEBRA						
01/01 - 12/31	150		98		248	03/01/2012
FAJARDO [INCL ROOSEVELT RDS NAVSTAT]						
01/01 - 12/31	139		92		231	10/01/2012
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]						
01/01 - 12/31	195		128		323	09/01/2010
HUMACAO						
01/01 - 12/31	139		92		231	10/01/2012
LUIS MUNOZ MARIN IAP AGS						
01/01 - 12/31	195		128		323	09/01/2010
LUQUILLO						
01/01 - 12/31	139		92		231	10/01/2012
MAYAGUEZ						
01/01 - 12/31	109		112		221	09/01/2010
PONCE						
01/01 - 12/31	149		89		238	09/01/2012
RIO GRANDE						

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	MEALS AND INCIDENTALS RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
01/01 - 12/31	169		123		292	06/01/2012
SABANA SECA [INCL ALL MILITARY]						
01/01 - 12/31	195		128		323	09/01/2010
SAN JUAN & NAV RES STA						
01/01 - 12/31	195		128		323	09/01/2010
VIEQUES						
01/01 - 12/31	175		95		270	03/01/2012
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	247		110		357	06/01/2015
12/15 - 04/14	299		116		415	06/01/2015
ST. JOHN						
05/01 - 12/03	170		107		277	08/01/2015
12/04 - 04/30	230		113		343	08/01/2015
ST. THOMAS						
01/01 - 12/31	240		112		352	08/01/2015
WAKE ISLAND						
WAKE ISLAND						
01/01 - 12/31	173		66		239	07/01/2014

[FR Doc. 2015–27506 Filed 10–28–15; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0112]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records notice DMDC 05, entitled ''Joint Duty Assignment Management Information System (JDAMIS)'' to enable consolidated tracking of joint experiences for the purpose of awarding joint qualification experience and training, and to provide an annual report to Congress as required by Title 10, Chapter 38, Section 667. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571)372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in the **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, were submitted on October 23, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 05

SYSTEM NAME:

Joint Duty Assignment Management Information System (JDAMIS) (March 15, 2011, 76 FR 13992).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''All military officers of the Armed Forces who: Are serving or have served in billets designated as joint duty assignment positions; are attending or have completed joint professional military education schools; are designated as joint qualified at various levels of qualification; or are eligible to be nominated and designated at various joint qualification levels; and have earned approved joint experience or discretionary points.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Information on individuals includes first name, last name, Social Security Number (SSN), date of birth, gender, date of rank, military branch, occupation, duty station, joint professional military education status, pay grade, race, ethnicity, joint qualification level, skill code, departure reason, and DoD email address. Also includes information on billets such as service, unit identification code, tour length, rank, job title, and critical billet code.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. Chapter 38, Joint Officer Management; 10 U.S.C. Chapter 107, Professional Military Education; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Chairman of the Joint Chiefs of Staff Instruction 1330.05, Joint Officer Management Program Procedures; DoD Instruction 1300.19, DoD Joint Officer Management (JOM) Program; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To enable consolidated tracking of joint experiences for the purpose of awarding joint qualification experience and training, and to provide an annual report to Congress as required by Title 10, Chapter 38, Section 667. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD blanket routine uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Electronic records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures such as periodic security audits and regular monitoring of users' security practices. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of the Common Access Card (CAC), intrusion detection system (IDS), encryption and firewalls.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Signed, written requests should contain the requester's first name, last name, SSN, current address and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain the name and number of this system of records notice along with the requester's first name, last name, SSN, current address and telephone number.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''DMDC Active Duty and Reserve Component flat files, Defense Enrollment Eligibility Reporting System database, the Military Services, and the Joint Staff.''

* * * * *

[FR Doc. 2015–27528 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0113]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to add a new System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to add a new system of records, DUSDA 15, entitled ''AT&L External Account Creation System (EACS)'' to validate eligibility, and maintain an official registry that identifies individuals who apply for, and are granted access privileges to AT&L products, services and electronic information systems.

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 23, 2015, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDA 15

SYSTEM NAME:

AT&L External Account Creation System (EACS)

SYSTEM LOCATION:

Pentagon, 1400 Defense Pentagon, Arlington, VA 20301–1400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD and other U.S. Federal Government agency military and civilian personnel, and contractors; researchers of colleges or universities funded by DoD or other U.S. Federal Government agencies; students and employees of specifically qualifying educational institutions, groups, and programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name, title, DoD Identification number, employment type (civilian, contractor, military), work contact information (address, phone number, and email address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L); DoD Instruction (DoDI) 5200.01, DoD Information Security Program and Protection of Sensitive Compartmented Information; and DoDI 8520.02, Public Key Infrastructure (PKI) and Public Key (PK) Enabling.

PURPOSE(S):

To validate eligibility, and maintain an official registry that identifies individuals who apply for, and are granted access privileges to AT&L products, services and electronic information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 552a(b)(3) as follows:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsindex/BlanketRoutineUses.aspx.*

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored areas. Access is restricted to database and system administrators with trusted credentials and security clearances. System access is password protected and Common Access Card (CAC) enabled. Physical entry by unauthorized persons is restricted through the use of locks, guards, and passwords. Archived data is stored on discs or magnetic tapes which are kept in a locked or controlled access area. Access to personal information is limited to those individuals who have a need-to-know to perform their official assigned duties.

RETENTION AND DISPOSAL:

Destroy when superseded or obsolete of the authorization document or on transfer, separation, or relief of the individual concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Director, eBusiness Center, 4800 Mark Center Drive, Alexandria, VA 22311–3604.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves may address their inquiries to Director, eBusiness Center, 4800 Mark Center Drive, Alexandria, VA 22311–3604.

Signed, written requests should contain the full name of the individual, current work address, telephone number and email address.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name of the individual, current work address, telephone number, email address, and the number of this system of records notice.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense (OSD) rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–27529 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 0L–15]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 0L–15 with attached Policy Justification.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

OCT 05 2015

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 0L-15. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 08-101 of 26 September 2008.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 0L–15

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser:* Kingdom of Saudi Arabia

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 08–101

Date: 26 September 2008

Military Department: Navy

(iii) *Description:* On 26 September 2008, Congress was notified by Congressional Notification Transmittal Number 08–101, of the possible sale under Section 36(b)(1) of the Arms Export Control Act (AECA) of eighty (80) Link 16 Multifunctional Information Distribution System/Low Volume Terminals (MIDS/LVT–1) to be installed on Kingdom of Saudi Arabia Typhoon aircraft, data transfer devices, installation, testing, spare and repair parts, support equipment, personnel training, training equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost was $31 million. Major Defense Equipment (MDE) constituted $30 million of this total.

This transmittal reports the addition of seventy-six (76) Link 16 MIDS/LVT–1 to be installed on Saudi Arabia's Tornado aircraft, SAAB 2000 Erieye Airborne Early Warning and Control (AEW&C) aircraft, and Tactical Airborne Surveillance System (TASS) aircraft data transfer devices. Also included are installation, testing, spare and repair parts, support equipment, personnel training, training equipment, contractor engineering and technical support, and other related elements of program support. This notification will result in an increase in major defense equipment (MDE) of $30 million, for a total estimated MDE value of $60 million, and a total overall value of $61 million.

(iv) *Significance:* This notification is being provided to increase the quantity of MIDS/LVT–1 on platforms other than those notified in Transmittal number 08–101 on 26 Sep 2008. The expansion of MIDS to other platforms continues a modernization program that has been ongoing since 2008. Overall, the ability for these additional platforms to support Link 16 operations provides added interoperability with U.S. forces and for conducting coordinated operations.

(v) *Justification:* This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

(vi) *Date Report Delivered to Congress:* 05 Oct 2015.

[FR Doc. 2015–27502 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0111]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is DC3I 01, Joint Reserve Intelligence Planning Support System (JRIPSS) (November 20, 1997, 62 FR 62002).

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

* Mail: Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.*

The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

DC3I 01

Joint Reserve Intelligence Planning Support System (JRIPSS) (November 20, 1997, 62 FR 62002).

Reason: This system of records was divested to the Military Services and records are covered by the individual Service systems of records notices listed: F036 AF PC Q, Personnel Data System (PDS) (June 11, 1997, 62 FR 31793); A0600–8–104 AHRC, Army Personnel System (APS) (July 30, 2013, 78 FR 45914); M01040–3, Marine Corps Manpower Management Information System Records (April 29, 2010, 75 FR 22570); and N01080–3, Reserve Command Management Information (February 22, 1993 58 FR 10706). Therefore, DC3I 01, Joint Reserve Intelligence Planning Support System (JRIPSS) can be deleted.

[FR Doc. 2015–27513 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–68]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–68 with attached Policy Justification.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

OCT 1[illegible] 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-68, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $11.25 billion. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 15–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 4.30 billion
Other	$ 6.95 billion
TOTAL	$11.25 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Saudi Arabia has requested a comprehensive naval modernization program referred to as the Saudi Naval Expansion Program II (SNEP–II). This notification of the next phase of that program will include Multi-Mission Surface Combatant (MMSC) ships and program office support. The MMSC will consist of the following Major Defense Equipment (MDE):

Four (4) MMSC ships (a derivative of the Freedom Variant of the U.S. Navy Littoral Combat Ship (LCS) Class) that incorporate five (5) COMBATSS–21 Combat Management Systems (four (4) installed, one (1) spare) with five (5) TRS–4D Radars (four (4) installed, one (1) spare)

Five (5) Identification Friend or Foe (IFF) (Mode 4- and Mode 5-capable)

UPX–29 (four (4) installed, one (1) spare)

Five (5) Compact Low Frequency Active Passive Variable Depth Sonar (four (4) installed, one (1) spare)

Eight (8) MK–41 Vertical Launch Systems (VLS) (two (2) eight-cell assemblies per ship for 16 cells per hull)

Five-hundred thirty-two (532) tactical RIM–162 Evolved Sea Sparrow Missiles (ESSM) (one hundred twenty-eight (128) installed, twenty (20) test and training rounds, three hundred eighty-four (384) spares)

Five (5) AN/SWG–l (V) Harpoon Ship Command Launch Control Systems (four (4) installed (one (1) per ship), one (1) spare)

Eight (8) Harpoon Shipboard Launchers (two (2) installed four-tube assemblies per ship)

Forty-eight (48) RGM–84 Harpoon Block II Missiles (thirty-two (32) installed, sixteen (16) test and training rounds)

Five (5) MK–15 Mod 31 SeaRAM Close-In Weapon System (CIWS) (four (4) installed, one (1) spare)

One-hundred eighty-eight (188) RIM 116C Block II Rolling Airframe Missiles (RAM) (forty-four (44) installed, twelve (12) test and training rounds, one hundred thirty-two (132) spares)

Five (5) MK–75 76mm OTO Melara Gun Systems (four (4) installed, one (1) spare)

Forty-eight (48) 50-caliber machine guns (forty (40) installed (ten (10) per ship), eight (8) spares); ordnance; and Selective Availability Anti-Spoofing Module (SAASM) Global Positioning System/Precise Positioning Service (GPS/PPS) navigation equipment

Also included in this sale in support of the MMSC are: study, design and construction of operations; support and training facilities; spare and repair parts; support and test equipment; communications equipment employing Link 16 equipment; Fire Control System/Ceros 200 Sensor and Illuminator; 20mm Narwhal Gun; Nixie AN/SLQ–25A Surface Ship Torpedo Defense System; MK–32 Surface Vessel Torpedo Tubes; WBR–2000 Electronic Support Measure and Threat Warning System; Automatic Launch of Expendables (ALEX) Chaff and Decoy-Launching System; ARC–210 Radios; Combined Enterprise Regional Information Exchange System (CENTRIXS); Automated Digital Network System; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

In addition, this case will provide overarching program office support for the SNEP II to include: U.S. Government and contractor engineering, technical and logistics support, and other related elements of program support to meet necessities for program execution.

(iv) *Military Department:* Navy (SBV, GBZ)

(v) *Prior Related Cases, if any:* SBU—$1.9 billion—20 May 2015

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 19 Oct 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Government of Saudi Arabia—Multi-Mission Surface Combatant (MMSC) Ships

The Government of Saudi Arabia has requested a naval modernization program to include the sale of Multi-Mission Surface Combatant (MMSC) ships and program office support. The Multi-Mission Surface Combatant program will consist of:

Four (4) MMSC ships (a derivative of the Freedom Variant of the U.S. Navy Littoral Combat Ship (LCS) Class) that incorporate five (5) COMBATSS–21 Combat Management Systems (four (4) installed, one (1) spare) with five (5) TRS–4D Radars (four (4) installed, one (1) spare)

Five (5) Identification Friend or Foe (IFF) (Mode 4- and Mode 5-capable) UPX–29 (four (4) installed, one (1) spare)

Five (5) Compact Low Frequency Active Passive Variable Depth Sonar (four (4) installed, one (1) spare)

Eight (8) MK–41 Vertical Launch Systems (VLS) (two (2) eight-cell assemblies per ship for 16 cells per hull)

Five-hundred thirty-two (532) tactical RIM–162 Evolved Sea Sparrow Missiles (ESSM) (one hundred twenty-eight (128) installed, twenty (20) test and training rounds, three hundred eighty-four (384) spares)

Five (5) AN/SWG–l (V) Harpoon Ship Command Launch Control Systems (four (4) installed (one (1) per ship), one (1) spare)

Eight (8) Harpoon Shipboard Launchers (two (2) installed four-tube assemblies per ship)

Forty-eight (48) RGM–84 Harpoon Block II Missiles (thirty-two (32) installed, sixteen (16) test and training rounds)

Five (5) MK–15 Mod 31 SeaRAM Close-In Weapon System (CIWS) (four (4) installed, one (1) spare)

One-hundred eighty-eight (188) RIM 116C Block II Rolling Airframe Missiles (RAM) (forty-four (44) installed, twelve (12) test and training rounds, one hundred thirty-two (132) spares)

Five (5) MK–75 76mm OTO Melara Gun Systems (four (4) installed, one (1) spare)

Forty-eight (48) 50-caliber machine guns (forty (40) installed (ten (10) per ship), eight (8) spares); ordnance; and Selective Availability Anti-Spoofing Module (SAASM) Global Positioning System/Precise Positioning Service (GPS/PPS) navigation equipment

Also included in this sale in support of the MMSC are: study, design and construction of operations; support and training facilities; spare and repair parts; support and test equipment; communications equipment employing Link 16 equipment; Fire Control System/Ceros 200 Sensor and Illuminator; 20mm Narwhal Gun; Nixie AN/SLQ–25A Surface Ship Torpedo Defense System; MK–32 Surface Vessel Torpedo Tubes; WBR–2000 Electronic Support Measure and Threat Warning System; Automatic Launch of Expendables (ALEX) Chaff and Decoy-Launching System; ARC–210 Radios; Combined Enterprise Regional Information Exchange System (CENTRIXS); Automated Digital Network System; publications and technical documentation; personnel training and training equipment; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistical and program support.

In addition, this case will provide overarching program office support for the SNEP II to include: U.S. Government and contractor engineering, technical and logistics support, and other related elements of program support to meet necessities for program execution. The estimated value of MDE is $4.3 billion. The total estimated cost is $11.25 billion.

This proposed sale will contribute to the foreign policy and national security goals of the United States by helping to improve the security of a strategic regional partner, which has been, and continues to be, an important force for political stability and economic progress in the Middle East. This acquisition will enhance the stability and maritime security in the sea areas around the Arabian Peninsula and support strategic objectives of the United States.

The proposed sale will provide Saudi Arabia with an increased ability to meet current and future maritime threats from enemy weapon systems. The Multi-Mission Surface Combatant ships will provide protection-in-depth for critical industrial infrastructure and for the sea lines of communication. Saudi Arabia will use the enhanced capability to keep pace with the rapid advances in technology and to remain a viable U.S. coalition partner in the region.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor for the Multi-Mission Surface Combatant will be Lockheed Martin Corporation of Bethesda, Maryland. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require the assignment of additional U.S. Government and/or contractor representatives to Saudi Arabia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology*

1. The Multi-Mission Surface Combatant (MMSC) Ship, a derivative of the U.S. Navy Freedom Class Littoral Combat Ship, will provide Saudi Arabia with an increased ability to identify, engage, and defeat maritime security threats in the open waters of the Arabian Gulf and the Red Sea. These vessels will deliver protection-in-depth for Saudi Arabia industrial infrastructure and for the sea lines of communication. The MMSC carries several sensors and data links to enhance its ability to work in a network centric battle group. The mission equipment subsystem consists of the following sensors and subsystems: TRS–40 Radar, Identification Friend or Foe (IFF) interrogator, Compact Low Frequency Active Passive Variable Depth Sonar, and Electronic Support Measures (ESM). The MMSC processes sensor data and transmits data via Link 16 equipment. The MMSC is capable of carrying Harpoon Block II missiles and Evolved Sea Sparrow missiles, as well as, Mk 46 or Mk 54 torpedoes to engage surface and sub-surface targets. (Note that the MMSC will include provisions for both the Mk 46 and the Mk 54 light weight torpedoes but torpedoes are not included in this sale.) The MMSC weapons system is classified up to SECRET. Unless otherwise noted below, MMSC hardware and support equipment, test equipment and maintenance spares are UNCLASSIFIED except when electrical power is applied to hardware containing volatile data storage. Technical data and documentation for MMSC weapons systems (to include sub-systems and weapons listed below) are classified up to SECRET. The sensitive technologies include:

a. COMBATSS–21 is the ship's battle management system, which is produced by Lockheed Martin and derived from the U.S. Navy's latest Aegis surface combatants. The COMBATSS–21 Combat Management System is the backbone of the Freedom-variant self-defense suite and integrates the radar, electro-optical infrared cameras, gun fire control system, countermeasures and short-range anti-air missiles. COMBATSS–2l provides a flexible, reliable next generation defense system classified to the level of SECRET.

b. TRS 4D Radar is a three-dimensional, air volume surveillance radar with fast target alert, which provides target designation to combat management system for anti-air warfare (AAW) and anti-surface warfare (ASuW). It provides sensor support for surface gun fire control with splash detection, ship-controlled helicopter approach support, jammer detection, tracking and suppression, cued search with enhanced detection performance for a dedicated sector, cued track with high-accuracy target tracking for missile guidance, and target classification, integrated IFF, and is integrated with the combat management system. The system is available internationally through Airbus Defense and Space. The TRS 4D radar system is UNCLASSIFIED and does not contain classified data. However, when connected to COMBATSS–21, the TRS 4D radar is classified SECRET.

c. Fire Control System/Ceros 200 Sensor and Illuminator supports engagements with either main gun battery or semi-active surface-to-air missile systems. The Ceros 200 Illuminator is a fully stabilized radar and optronic tracking system, which when working in combination with a missile and gun fire control system provides tracking and illumination functions against advanced sea-skimming missiles and asymmetric surface threats in littoral environments. When installed in a continuous wave illumination configuration with the surface to air missile control module, the system provides an X-band channel for continuous wave illumination of a target to support guidance of the semi-active surface-to-air missile. The Ceros 200 Illuminator can also be combined with gun fire control and SAM modules to provide precision control for any naval gun or a semi-active surface-to-air missile system. The CEROS 200 is available internationally through Saab. A separate gyro cam EO/IR camera/laser illuminator can also provide additional, independent situational awareness and cue an engagement to the fire control system. When connected to COMBATSS–21, the fire control system/Ceros 200 Sensor and Illuminator is classified SECRET.

d. SeaRAM Anti-Ship Missile Defense System engages multiple, high-performance, air and surface threats, from subsonic to supersonic. SeaRAM blends capabilities from the Phalanx Close-In Weapon System (CIWS) and the RIM-l16C Block II Rolling Airframe Missile (RAM) Guided Weapon System. An 11-missile RAM launcher assembly provides extended range and high maneuverability missiles paired with the Phalanx Block 1B's high resolution search-and-track sensor systems and quick-response capability. SeaRAM is an end-to-end track-to-engage system and contains classified algorithms, up to a level of SECRET.

e. MK–4 l Vertical Launch System (VLS) is a multi-cell, vertical missile launcher that accommodates multiple VLS capable missiles, including the Evolved Sea Sparrow Missile (ESSM), Standard Missile 2 (SM–2), and Vertical Launch Anti-Submarine Rocket (ASROC) Lightweight Hybrid Torpedo. This case only provides tactical VLS capability for ESSM. Guidance data exchanged with COMBATSS–21 will be classified to the level of SECRET.

f. Evolved Sea Sparrow Missile (ESSM) is a medium-range, semi-active, homing missile that provides reliable ship self-defense capability against agile, high-speed, low-altitude, anti-ship cruise missiles, low velocity air threats, such as helicopters, and high-speed maneuverable surface threats. ESSM's tracking performance and agile kinematics result from S and X-band midcourse uplinks, high average velocity and tail control. The MK 25 quad pack canister is used for MK–41 VLS-equipped ships. ESSM is part of a 10-nation international cooperative development program between the United States, North Atlantic Treaty Organization (NATO) partner nations, and Australia and is a kinematic upgrade to the RIM–7P Sea Sparrow Missile that leverages U.S. guidance technology. This case will provide a VLS configuration that supports only tactical ESSM employment. Guidance data exchanged with COMBATSS–21 will be classified to the level of SECRET.

g. The MK–75 76mm Super Rapid (SR) Gun Mount is a multi-mission, rapid-fire naval gun for primary defense against air and surface threats and for employment in naval fire support missions. The MK–75 76mm provides an accurate, sustained firing rate from 1 to 120 rounds per minute, and is capable against subsonic, anti-ship missiles. Optional add-ons provide capabilities to reduce the impact of gun radar cross-section, improve gun accuracy, and facilitate automated gun feed of multiple ammunition types on the fly. The system is available internationally through OTO Melara. When the 76mm gun is connected to the gun fire control system, which is in-tum connected to COMBATSS–21, it is classified SECRET.

h. The 20mm Narwhal gun is a gyro-stabilized mount armed with a 20mm automatic cannon, an electro-optic, charge-coupled device camera, and a closed loop, fire-control system, which can be controlled remotely to enable system operation, target acquisition and tracking, and fire opening by the gun operator. Optional add-ons include a thermal camera, laser rangefinder, and target automatic tracking video system. The 20mm gun has a firing rate of 800 rounds per minute of NATO standard ammunition, and is produced by the French Government-owned Nexter Systems. When connected to COMBATSS–21 for cueing, the Narwhal gun will be classified SECRET.

i. The Browning M2 50 caliber machine gun is an air-cooled, belt-fed machine gun that fires from a closed bolt, operated on the short recoil principle. The M2 is a secondary weapon for anti-boat defense on large naval vessels (corvettes, frigates, destroyers, cruisers, etc.). The M2 Heavy Barrel (HB), air-cooled ground gun has a cyclical rate of 450–575 rounds per minute with an effective stabilized range of 2000 yards (significantly shorter unstabilized). The Browning machinegun is UNCLASSIFIED.

j. Harpoon Block II is based on the Harpoon, which is an all-weather, over-the-horizon, sea skimming, anti-ship missile system. Harpoon Block II (RGM–84L) improvements include the inertial measurement unit from the Joint Direct Attack Munitions (JDAM) program and software, computer, Global Positioning System (GPS)/inertial navigation system and GPS antenna/receiver from SLAM Expanded Response (SLAM–ER). Block II Harpoon has improved targeting capabilities, a larger engagement envelope, and higher resistance to electronic countermeasures, and consequently, provides a littoral, anti-ship capability. Data exchanged with COMBATSS–21 will be classified to the level of SECRET.

k. The Nixie AN/SLQ–25A Surface Ship Torpedo Defense System is a torpedo countermeasures system that is a digitally controlled, modular design, electro-acoustic soft kill countermeasure decoy system capable of countering wake homing torpedoes, acoustic homing torpedoes, and wire guided torpedoes. The SLQ–25A provides active/passive detection, location, threat identification of torpedoes and other acoustic targets. The SLQ–25's towed body, the decoy which diverts the threat from the ship, connects to the management system using fiber optic cable to control the signals emitted by the decoy. The data are classified to the level of SECRET.

l. Compact Low Frequency Active Passive Variable Depth Sonar is a key sensor technology for identifying conventional, diesel-powered submarines operating in difficult sonar environments such as littoral waters. The Compact Low Frequency Active Passive Variable Depth Sonar offers a single winch to tow both the transmit tow body and the receive array. The system has a transmit array providing 360-degree bearing, omni-directional transmission and a receive array that instantly resolves right/left ambiguity issues. When connected to COMBATSS–21 data up to the level of SECRET are exchanged.

m. MK–32 Surface Vessel Torpedo Tubes (SVTT) handle the MK–46 and Mk-54 torpedo subsurface warfare weapons on a variety of surface combatants. It is an ASW-launching system that pneumatically launches torpedoes over-the-side of the ship using weatherproof, triple-tube sets that can be rotated or trained to face a target. Launching is powered by compressed air in a rear flask and the torpedoes are fire-and-forget weapons. The MK–46 Torpedo is a high-speed, deep-running, acoustic-homing, anti-submarine weapon. SVTT launches torpedoes under local control or remote control from an ASW fire control system. The tubes are also capable of storing torpedoes for long periods, but this is only practical with regular maintenance. When connected to COMBATSS–21 data exchange is classified to the level of SECRET.

n. WBR–2000 is an electronic support measure and threat warning system designed for smaller surface naval combatants and for coastal surveillance. Radar signals, received by the antenna assembly through an omni-directional antenna and an array of directional antennas, are passed to the receiver/processor unit where frequency and angle of arrival of each radar pulse are measured and digitized. The data then passes to a signal processor that associates all pulses received from an individual radar with each other, measures the pulse train modulation characteristics, and forms a report characterizing the radar. These reports are compared with an organic, stored library of radar parameters to identify the type of radar and the platform normally associated with the intercepted radar signal. The emitter is reported parametrically whether or not it is in the library. A computer workstation is used to store the reports and display the data to the operator. The contents of the library are typically classified CONFIDENTIAL or SECRET.

o. The Automatic Launch of Expendables (ALEX) is a chaff and decoy-launching system. Off-board decoys provide the lowest risk and offer the most cost effective method to aid in ship survival. It is a mortar-tube launching system consisting of two or more launchers, each containing six tubes arranged in two parallel rows of either all 45-degree tubes, or a mixture of 45 and 60-degree tubes depending on the specific launcher variant installed. RF, IR, RF–IR rounds and some specialty decoys are capable of being launched from the ALEX system depending on the particular threat. Decoys are launched from the bridge launcher control in the pilothouse or master control panel located in the mission control center. Launchers must be manually loaded/re-loaded, when required, from ready service storage lockers located in the vicinity of the launchers. When connected to WBR–2000 data up to the level of SECRET is exchanged.

p. The ARC–210 is a family of radios for military aircraft that provides two-way, multi-mode voice and data communications over a Very High Frequency (VHF) I Ultra High Frequency (UHF) frequency range. ARC–210 radios contain embedded sensitive encryption algorithms and keying material. ARC–210 hardware is UNCLASSIFIED. When electrical power is applied and mission data loaded, the ARC–210 is classified up to SECRET.

q. Combined Enterprise Regional Information Exchange System (CENTRIXS) enables ship-to-ship operational dialogue, often encrypted, between vessels of other nations in both text and web based formats.

r. Identification, Friend or Foe (IFF) Mode 4 (5 Capable) is an identification system designed for command and control. It enables military and national (civilian air traffic control) interrogation systems to identify aircraft, vehicles or forces as friendly. Mode 5 provides a cryptographically secured version of Mode S and ADS–8 GPS position. Data can be classified up to SECRET.

s. Global Command and Control System-Joint (GCCS–J) is a command, control, communications, computers, and intelligence system consisting of hardware, software (commercial-off-the shelf and government off-the-shelf), procedures, standards, and interfaces that provide an integrated near real-time picture of the battlespace necessary to conduct joint and multinational operations. Data can be classified up to SECRET.

t. GPS/PPS/SAASM -Global Positioning System (GPS) provides a space-based Global Navigation Satellite System (GNSS) that has reliable location and time information in all weather and at all times and anywhere on or near the Earth when and where there is an unobstructed line of sight to four or more GPS satellites. Selective Availability/Anti-Spoofing Module (SAASM) (AN/PSN–11) is used by military GPS receivers to allow decryption of precision GPS coordinates. The GPS hardware is UNCLASSIFIED. When electrical power is applied, the system is classified up to SECRET.

u. Automated Digital Network System furnishes autonomous, digital, interoperable, joint and secure LAN/WAN management and control for RF assets on demand aboard ships and at shore sites. It also ensures worldwide communications connectivity, automates all communications systems, and replaces several unique subnetworks with a single integrated network hub.

v. Link 16 equipment is a military tactical data exchange network used by the United States and North Atlantic Treaty Organization (NATO) member nations allowed by the MIDS International Program Office. Its specification is part of the family of tactical data links. With Link 16 equipment, military aircraft as well as ships and ground forces may exchange their tactical picture in near-real time. Link 16 equipment also supports the exchange of text messages, imagery data and provides two channels of digital voice.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to Saudi Arabia.

[FR Doc. 2015–27505 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board; Notice of Federal Advisory Committee Meeting

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness, Defense Language and National Security Education Office (DLNSEO), DoD.

ACTION: Meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal advisory committee meeting of the National Security Education Board will take place. This meeting is open to the public.

DATES: Tuesday, December 8, 2015, from 8:30 a.m. to 4 p.m.

ADDRESSES: 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Alison Patz, telephone (571) 256–0771, *Alison.m.patz.civ@mail.mil,* fax (703) 692–2615.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act 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 the Meeting: The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

Agenda

08:30 a.m.—Ethics Briefing.
09:30 a.m.—Opening Remarks and Key Updates.
10:00 a.m.—Programmatic Updates.
10:30 a.m.—NSEP Agencies with National Security Responsibilities List.
10:45 a.m.—Break.
11:00 a.m.—National Initiatives on Language and Overseas Study.
12:30 p.m.—Working Lunch.
1:30 p.m.—The Flagship Experience.
2:45 p.m.—Break.
3:00 p.m.—Board Discussion.
4:00 p.m.—Adjourn.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Point of Contact: Alison Patz, Alternate Designated Federal Official, (571) 256–0771, *Alison.m.patz.civ@mail.mil.*

Pursuant to 102–3.140 and sections 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Department of Defense National Security Education Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting.

All written statements shall be submitted to the Designated Federal Official for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Official can be obtained from the GSA's FACA Database—*http://facadatabase.gov/.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Official at the address listed in **FOR FURTHER INFORMATION CONTACT** at least five calendar days prior to the meeting that is the subject of this notice. Written statements received after this date may not be provided to or considered by the National Security Education Board until its next meeting.

The Designated Federal Official will review all timely submissions with the National Security Education Board and ensure they are provided to all members of the National Security Education Board before the meeting that is the subject of this notice.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27507 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–66]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sarah A. Ragan or Heather N. Harwell, DSCA/LMO, (703) 604–1546/(703) 607–5339.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–66 with attached Policy Justification.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

OCT 13 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $495 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 15–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment *	$312 million
Other	$183 million
TOTAL	$495 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Nine (9) UH–60M Black Hawk Utility Helicopters

Twenty-one (21) T700–GE–701D Engines (eighteen (18) installed and three (3) spares)

Twenty (20) Embedded Global Positioning Systems with Inertial Navigation System (GPS/INS) (eighteen (18) installed and two (2) spares)

Twelve (12) AN/AAR–57, Common Missile Warning Systems (CMWS) (nine (9) installed and three (3) spares)

Twenty (20) M240H 7.62mm Machine Guns

Also included are the following non-MDE items and support: Aircraft Survivability Equipment; M134 Miniguns; Electro-optical Infrared (EO/IR) system; Dual Mode (normal light/infrared) Controllable Search Lights; Fast Rope Insertion/Extraction System (FRIES); External Electric Hoists; Internal Auxiliary Fuel Tank Systems (IAFS); Dual Patient Litter System; Ballistic Armor Protection System; aircraft warranty; air worthiness support; spare and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; ground support equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Army (ZAD)

(v) *Prior Related Case, if any:*

SR–B–VTW, $372M, 12 Feb 08
SR–B–VNK, $133M, 17 Dec 90
SR–B–VJB, $152M, 30 May 80

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 13 Oct 2015

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—UH–60M Black Hawk Utility Helicopters

The Government of Saudi Arabia has requested a possible sale of:

Major Defense Equipment (MDE):

Nine (9) UH–60M Black Hawk Utility Helicopters

Twenty-one (21) T700–GE–701D Engines (eighteen (18) installed and three (3) spares)

Twenty (20) Embedded Global Positioning Systems with Inertial Navigation System (GPS/INS) (eighteen (18) installed and two (2) spares)

Twelve (12) AN/AAR–57, Common Missile Warning Systems (CMWS) (nine (9) installed and three (3) spares)

Twenty (20) M240H 7.62mm Machine Guns

Also included are the following non-MDE items and support: Aircraft Survivability Equipment; M134 Miniguns; Electro-optical Infrared (EO/IR) system; Dual Mode (normal light/infrared) Controllable Search Lights; Fast Rope Insertion/Extraction System (FRIES); External Electric Hoists; Internal Auxiliary Fuel Tank Systems (IAFS); Dual Patient Litter System; Ballistic Armor Protection System; aircraft warranty; air worthiness support; spare and repair parts; communications equipment; personnel training and training equipment; site surveys; tool and test equipment; ground support equipment; repair and return; publications and technical documentation; Quality Assurance Team (QAT); U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support. The estimated cost is $495 million.

The proposed sale will make a positive contribution to the foreign policy and national security objectives of the United States by helping to improve the security of an important regional partner that has been, and continues to be, a significant U.S. partner for political stability and economic progress in the Middle East.

The Royal Saudi Land Forces Aviation Command (RSLFAC) plans to use these helicopters for search and rescue, disaster relief, humanitarian support, counterterrorism, and combat operations.

The proposed sale will not introduce new technology to or alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft Company in Stratford, Connecticut; and General Electric Aircraft Company (GEAC) in Lynn, Massachusetts. There are no known offset agreements in connection with this potential sale.

Implementation of this sale will require an estimated forty (40) to sixty (60) U.S. Government and contractor representatives to travel to Saudi Arabia for up to sixty (60) months for equipment de-processing, fielding, system checkout, training, and technical logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–66

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The UH–60M Black Hawk Utility Helicopter is a medium lift aircraft which includes two T700–GE–701D Engines and an advanced cockpit that features four multi-function displays, four-axis coupled flight director, digital map, and Dual Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI).

a. Embedded Global Positioning System/Inertial Navigation System (GPS/INS) (EGI)—The EGI is a Selective Availability Anti-Spoofing Module (SAASM) based navigation platform that combines an inertial sensor assembly with a fixed reception pattern antenna GPS receiver. The EGI system is the primary source for position information and is UNCLASSIFIED. The GPS crypto variables needed for the highest GPS accuracy are classified up to SECRET.

b. AN/AAR–57 Common Missile Warning System (CMWS)—The CMWS detects threat missiles in flight, evaluates potential false alarms, declares validity of threat and selects the appropriate Infrared Countermeasure (IRCM). Each platform includes: Electro-Optical Missile Sensors, an Electronic Control Unit (ECU), Sequencer, and the Improved Countermeasures Dispenser (ICMD). The hardware is classified CONFIDENTIAL. Releasable technical manuals for operation and maintenance are classified SECRET. Reverse engineering is not a major concern.

c. AN/APR–39A Radar Warning System—This radar signal detecting set provides warning of a radar directed air defense threat to allow appropriate countermeasures. Hardware is classified CONFIDENTIAL when programmed with U.S. threat data. Releasable technical manuals for operation and maintenance are classified CONFIDENTIAL. Releasable technical data (technical performance) are classified SECRET. The system can be programmed with threat data provided by the purchasing country.

d. AN/AVR–2B, Laser Warning Set—A passive laser warning system that receives, processes, and displays threat information resulting from aircraft illumination by lasers, on the multi-functional display. The hardware is classified CONFIDENTIAL. Releasable technical manuals for operation and maintenance are classified SECRET. Reverse engineering is not a major concern.

2. Software, hardware, and other data/information that is classified or sensitive is reviewed prior to release to protect system vulnerabilities, design data, and performance parameters. Some end-item hardware, software, and other data identified above are classified at the CONFIDENTIAL level.

3. Loss of this hardware, software, documentation and/or data could permit development of information which may lead to a significant threat to future U.S. military operations. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Saudi Arabia can provide substantially the same degree of protection for this technology as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All of the defense articles and services listed in this transmittal have been authorized for release and export to the Kingdom of Saudi Arabia.

[FR Doc. 2015–27504 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0110]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system of records notice is WUSU 19, entitled ''Travel Records'' (February 22, 1993, 58 FR 10920).

DATES: Comments will be accepted on or before November 30, 2015. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The Office of the Secretary of Defense proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

WUSU 19

Travel Records (February 22, 1993, 58 FR 10920)

Reason: Based on a recent review of WUSU 19, Travel Records, it has been determined that this system of records is covered by system of records notice DHRA 08 DoD, Defense Travel System (March 24, 2010, 75 FR 14142); therefore, WUSU 19, Travel Records can be deleted.

[FR Doc. 2015–27514 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2014–0024]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of the Navy (DON) Reasonable Accommodations (RA) Tracker; SECNAV 12306/1T Confirmation of Reasonable Accommodation Request; OMB Control Number 0703–XXXX.

Type of Request: New Collection

Number of Respondents: 100

Responses per Respondent: 1

Annual Responses: 100

Average Burden per Response: 20 minutes

Annual Burden Hours: 33

Needs and Uses: The information collection requirement is necessary to track, monitor, review, and process requests for reasonable accommodations for employees, contractors, and applicants for employment. This information will be collected by DON EEO personnel involved in the Reasonable Accommodation process and data input into the Reasonable Accommodation Tracker (electronic information system) pursuant to Executive Order 13163. Official Reasonable Accommodation case files are secured with access granted on a strictly limited basis.

Affected Public: Individuals or households; contractors and applicants for employment.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: October 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–27527 Filed 10–28–15; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting November 10 and December 9, 2015

Correction

In notice document 2015–26837 beginning on page 63973 in the issue of Thursday, October 22, 2015 make the following correction:

1. On page 63973 in the third column, in the second paragraph, ''The public hearing on November 10, 2015 will begin at 1:30 p.m.'' should read ''The public hearing on November 10, 2015 will begin at 10:30 a.m.''

[FR Doc. C1–2015–26837 Filed 10–28–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–529–000]

Tennessee Gas Pipeline Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Connecticut Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Connecticut Expansion Project, proposed by Tennessee Gas Pipeline Company, L.L.C. (Tennessee) in the above-referenced docket. Tennessee requests authorization to construct and operate certain natural gas pipeline and aboveground facilities along its existing pipeline system in various counties in New York, Massachusetts, and Connecticut to provide an additional 72.1 million cubic feet per day of firm transportation service to three new shippers: Connecticut Natural Gas Corporation, Southern Connecticut Gas Company, and Yankee Gas Services Company.

The EA assesses the potential environmental effects of the construction and operation of the Connecticut Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The New York State Department of Agriculture and Markets participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Connecticut Expansion Project includes the following facilities:

- About 1.4 miles of new 36-inch-diameter natural gas pipeline loop in Albany County, New York;
- about 3.8 miles of new 36-inch-diameter natural gas pipeline loop in Berkshire County, Massachusetts;
- about 8.3 miles of new 24-inch-diameter natural gas pipeline loop in Hampden County, Massachusetts and Hartford County, Connecticut;
- modifications at the existing Agawam Compressor Station (Compressor Station 261) in Hampden County, Massachusetts;
- appurtenant facilities, including a mainline valve, cathodic protection, and pig launchers and receivers; and
- relocation of two existing pig receiver facilities.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before November 23, 2015.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP14–529–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature

on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP14–529). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

[1] See the previous discussion on the methods for filing comments.

Dated: October 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27573 Filed 10–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2380–005]

Duke Energy Progress, Inc., Duke Energy Progress, LLC; Notice of Transfer of Exemption

1. By letter filed September 25, 2015, Duke Energy Progress, LLC (Duke Energy) informed the Commission that the exemption from licensing for the Marshall Hydroelectric Project No. 2380, originally issued February 18, 1983,[1] has been transferred to Duke Energy Progress, LLC. The project is located on the French Broad River in Madison County, North Carolina. The transfer of an exemption does not require Commission approval.

2. Duke Energy Progress, LLC is now the exemptee of the Marshall Hydroelectric Project, No. 2380. All correspondence should be forwarded to: Ms. Tami Styer, Project Manager II, Duke Energy Progress, LLC, c/o Duke Energy Water Strategy & Hydro Licensing, 522 South Church Street, Mail Code EC12Y, Charlotte, NC 28202.

Dated: October 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27572 Filed 10–28–15; 8:45 am]

BILLING CODE 6717–01–P

[1] 22 FERC ¶ 62,211, Notice of Exemption from Licensing (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14425–001]

Liberty University Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14425–001.

c. *Date Filed:* September 1, 2015.

d. *Submitted By:* Liberty University Inc.

e. *Name of Project:* Scott's Mill Dam Hydroelectric Project.

f. *Location:* On the James River, in Amherst and Bedford Counties, Virginia. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Christos Carol, Liberty University, 1972 University Boulevard, Lynchburg, VA 24502; (434) 592–6463; email—*cccarroll2@liberty.edu.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278; or email at *jody.callihan@ferc.gov.*

j. Liberty University Inc. (Liberty) filed their request to use the Traditional Licensing Process on September 1, 2015. Liberty provided public notice of its request on September 28, 2015. In a letter dated October 23, 2015, the Director of the Division of Hydropower Licensing approved Liberty's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation with the Virginia State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Liberty University Inc. as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Liberty University Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). Copies are also available for inspection and reproduction at the

Lynchburg Public Library, 2315 Memorial Avenue, Lynchburg, VA 24501, and the Liberty University Library, DeMoss Dr., Lynchburg, VA 24502.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27575 Filed 10–28–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–549–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed SM–80 MAOP Restoration Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the SM–80 MAOP Restoration Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia Gas) in Wayne County, West Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 14, 2015.

If you sent comments on this project to the Commission before the opening of this docket on September 2, 2015, you will need to file those comments in Docket No. CP15–549–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Columbia Gas provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP15–549–000) with your submission:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Columbia Gas proposes to abandon in place approximately 3.3 miles of 30-inch-diameter pipeline and associated above ground appurtenances located on its existing SM–80 natural gas transmission system located in Wayne County, West Virginia. This section would be abandoned due to its age and condition, and the current Department of Transportation requirements based on increases in population density near the pipeline. Columbia would also construct approximately 3.9 miles of 30-inch-diameter pipe to replace the abandoned pipeline. The new pipeline would be tied-in to the existing SM–80 pipeline at mileposts 0.67 and 4.56 and would be co-located with the existing SM–80 Loop [1] and other existing easements for 3.8 of the 3.9 miles. The 3.3 miles of 30-inch diameter pipeline is located in an area that has undergone an increase in residential development. In order to decrease the potential impacts to this residential development, Columbia Gas proposed to install the 30-inch diameter replacement pipeline to the south and east of the proposed abandonment.

In addition to the above-mentioned pipeline, the SM–80 MAOP Restoration Project would require minor modification to support facilities.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 77.9 acres of land for the aboveground facilities and the pipeline. Following construction, Columbia Gas would maintain about 12.4 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 96 percent of the

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. We may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the ''Document-less Intervention Guide'' under the ''e-filing'' link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP15–549). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Dated: October 23, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–27574 Filed 10–28–15; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Renewal of FASAB Charter

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d),the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that under the authority and in furtherance of the objectives of 31 U.S.C. 3511(d), the Secretary of the Treasury, the Director of OMB, and the Comptroller General (the Sponsors) have agreed to continue an advisory committee to consider and recommend accounting standards and principles for the federal government.

For Further Information, or to Obtain a Copy of the Charter, Contact: Ms. Wendy M. Payne, Executive Director, 441 G St. NW., Mail Stop 6H20, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: October 23, 2015.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2015–27578 Filed 10–28–15; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 15–1130]

Notice of Debarment; Federal Lifeline Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Oscar Enrique Perez-Zumaeta's debarment from the federal Lifeline universal service support mechanism (Lifeline program) for a period of three years. During this debarment period, Mr. Perez-Zumaeta is prohibited from participating in activities associated with or related to the Lifeline program, including the receipt of funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.

DATES: Debarment commences on the date Mr. Perez-Zumaeta receives the debarment letter or October 29, 2015, whichever comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Ms. Celia Lewis, Paralegal Specialist, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A422, 445 12th Street SW., Washington, DC 20554. Celia Lewis may be contacted by telephone at (202) 418–7456 or email at *Celia.Lewis@fcc.gov.* If Ms. Lewis is unavailable, you may contact Mr. Kalun Lee, Deputy Chief, Investigations and Hearings Division, by telephone at (202) 418–0796 or email at *Kalun.Lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debars Mr. Perez-Zumaeta for a period of three years pursuant to 47 CFR 54.8 and 0.111(a)(14). Mr. Perez-Zumaeta's conviction for money laundering in violation of 18 U.S.C. 1957(a) and 18 U.S.C. 2, in connection with fraudulent claims against the Lifeline program is the basis for this debarment. Attached is the Notice of Debarment, DA 15–1130, which was mailed to Mr. Perez-Zumaeta and released on October 5, 2015. The complete text of the Notice of Debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.*

Federal Communications Commission.

Jeffrey J. Gee,

Chief, Investigations and Hearings Division, Enforcement Bureau.

October 5, 2015

DA 15–1130

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Oscar Enrique Perez-Zumaeta
c/o William P. Earley
Federal Public Defender-OKC
215 Dean A McGee Ave
Suite 109
Oklahoma City, OK 73102

Re: Notice of Debarment, File No. EB–IHD–15–00019209

Dear Mr. Perez-Zumaeta:

The Federal Communications Commission (Commission) hereby notifies you that, pursuant to section 54.8 of the Commission's rules, you are prohibited from participating in activities associated with or related to the federal low-income support mechanism (Lifeline program) for three years from either the date of your receipt of this Notice of Debarment or of its publication in the **Federal Register**, whichever comes first (Debarment Date).[1]

On June 8, 2015, the Commission's Enforcement Bureau (Bureau) sent you a notice of suspension and initiation of debarment proceeding (*Notice of Suspension*) that was published in the **Federal Register** on July 9, 2015.[2] The *Notice of Suspension* suspended you from participating in any activities associated with or related to the Lifeline program, including receiving funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.[3] It also described the basis for initiating debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.

As discussed in the *Notice of Suspension,* on November 7, 2014, you were convicted of money laundering in violation of 18 U.S.C. 1957(a) and 18 U.S.C. 2, in connection with fraudulent claims against the federal Lifeline program.[4] You owned and managed PSPS Sales LLC (PSPS), a California entity that recruited low-income individuals to apply for Lifeline telephone service through Icon Telecom, Inc. (Icon).[5] Specifically, you pled guilty to one count of money laundering for depositing a $52,390.00 check from Icon into a PSPS bank account, despite knowing that more

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[1] 47 CFR 54.8(e), (g); 47 CFR 0.111 (delegating to the Bureau authority to resolve universal service suspension and debarment proceedings). In 2007, the Commission extended the debarment rules to apply to all federal universal service support mechanisms, including the Lifeline program. *See Comprehensive Review of the Universal Service Fund Management, Administration, & Oversight,* Report and Order, 22 FCC Rcd 16372, 16410–12 (2007) (*Program Management Order*) (renumbering section 54.521 of the universal service debarment rules as section 54.8 and amending paragraphs (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[2] Letter from Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Oscar Enrique Perez-Zumaeta, Notice of suspension and initiation of debarment proceeding, 30 FCC Rcd 6121 (Enf. Bur. 2015); 80 FR 39430–01, July 9, 2015.

[3] 47 CFR 54.8(a)(1), (d).

[4] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent sentencing in *United States* v. *Perez-Zumaeta,* Criminal Docket No. 5:14–cr–00165–D–1, Plea Agreement (W.D. Okla. filed Nov. 07, 2014) (*Plea Agreement*). *See also Lifeline & Link Up Reform & Modernization,* WC Docket No. 11–42, CC Docket No. 96–45, WC Docket No. 03–109, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) (*Lifeline Reform Order*).

[5] *United States* v. *Perez-Zumaeta,* Criminal Docket No. 5:14–cr–00165–D–1, Indictment at 1–2 (W.D. Okla. filed June 03, 2014) (*Indictment*).

than $10,000.00 of those funds was the result of criminal fraud against the Commission.[6] Pursuant to section 54.8(c) of the Commission's rules, your conviction of criminal conduct in connection with the Lifeline program is the basis for this debarment.[7]

In accordance with the Commission's debarment rules, you were required to file with the Commission any opposition to your suspension or its scope, or to your proposed debarment or its scope, no later than 30 calendar days from either the date of your receipt of the *Notice of Suspension* or of its publication in the **Federal Register**, whichever date occurred first.[8] The Commission received no opposition from you.

For the foregoing reasons, you are debarred from involvement with the Lifeline program for three years from the Debarment Date.[9] During this debarment period, you are excluded from participating in any activities associated with or related to the Lifeline program, including the receipt of funds or discounted services through the Lifeline program, or consulting with, assisting, or advising applicants or service providers regarding the Lifeline program.[10]

Sincerely yours,

Jeffrey J. Gee,

Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email)

Rashann Duvall, Universal Service Administrative Company (via email)

Chris M. Stevens, United States Attorney's Office, Western District of Oklahoma (via email)

Scott E. Williams, United States Attorney's Office, Western District of Oklahoma (via email)

[FR Doc. 2015–27550 Filed 10–28–15; 8:45 am]

BILLING CODE 6712–01–P

[6] *Plea Agreement* at 2; *Indictment* at 16–17; *see also* United States Attorney's Office, Western District of Oklahoma, Press Release, *Final Defendant Sentenced to Serve 42 Months in Prison for Money Laundering in Connection with Federal Wireless Telephone Program Subsidies,* Apr. 23, 2015, *available at http://www.justice.gov/usao-wdok/pr/final-defendant-sentenced-serve-42-months-prison-money-laundering-connection-federal.*

[7] 47 CFR 54.8(c).

[8] *Id.* § 54.8(e)(3)–(4). Any opposition had to be filed no later than July 12, 2015.

[9] 47 CFR 54.8(g).

[10] 47 CFR 54.8(a)(1), (d), (g).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10362, First National Bank of Central Florida, Winter Park, FL

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for First National Bank of Central Florida, Winter Park, FL (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of First National Bank Central Florida on April 29, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: October 26, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–27585 Filed 10–28–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 23, 2015.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Carroll County Bancshares, Inc., Carrollton, Missouri;* to acquire up to 24.99 percent of the voting shares of Adams Dairy Bancshares, Inc., and thereby indirectly acquire Adams Dairy Bank, both in Blue Springs, Missouri.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Community Bank Holdings of Texas, Inc., Corsicana, Texas;* to acquire 100 percent of StarBanc Holding Company, and thereby indirectly acquire Star Bank of Texas, both in Fort Worth, Texas.

Board of Governors of the Federal Reserve System, October 26, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–27590 Filed 10–28–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0192; Docket 2015–0055, Sequence 50]

Submission for OMB Review; Utilization of Small Business Subcontractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding utilization of small business subcontractors. A notice was published in the **Federal Register** at 80 FR 32909 on June 10, 2015. No comments were received on this information collection.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0192, Utilization of Small Business Subcontractors''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0192, Utilization of Small Business Subcontractors'' on your attached document.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F. Street, NW., Washington, DC 20405.

Instructions: Please submit comments only and cite Information Collection 9000–0192, Utilization of Small Business Subcontractors, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, at 703–605–2868 for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 1322 of the Small Business Jobs Act of 2010 (Jobs Act), Public Law 111–240, amends the Small Business Act (15 U.S.C. 637(d)(6)) to require as part of a subcontracting plan that a prime contractor make good faith effort to utilize a small business subcontractor during performance of a contract to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal. If a prime contractor does not utilize a small business subcontractor as described above, the prime contractor is required to explain, in writing, to the contracting officer the reasons why it is unable to do so. The Small Business Administration (SBA) made regulatory changes in its final rule at 78 FR 42391, dated July 16, 2013 to implement the statutory requirements set forth at section 1322. The SBA final rule is being implemented in the FAR at Subpart 19.7 and clause 52.219–9 Small Business Subcontracting Plan through FAR case 2014–003, Small Business Subcontracting Improvements.

B. Annual Reporting Burden

Public reporting burden for the collection of information regarding a contractor's utilization of small business subcontractors to the same degree the prime contractor relied on the small business in preparing and submitting its bid or proposal is estimated to be $202,464. FPDS for FY 2013 lists 5,327 actions with small business subcontracting plans. However, it is estimated that at most 50% of these contracts with subcontracting plans may have instances of the prime contractor not using a small business subcontractor to the same extent used in preparing the bid or proposal. Using this method provides the number of respondents as 2,664. It is estimated that the average time required to read and prepare information for this collection is two hours. It is also estimated that the responses per respondent would be once a year since prime contractors have until 30 days of contract completion to submit the written explanation.

Respondents: 2,664.

Responses per respondent: 1.

Total annual responses: 2,664.

Preparation hours per response: 2.

Total response burden hours: 5,328.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0192, Utilization of Small Business Subcontractors, in all correspondence.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–27510 Filed 10–28–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0006; Docket 2015–0055; Sequence 46]

Submission for OMB Review; Subcontracting Plans/Individual Subcontract Report, SF 294 and ISRS

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve revisions to a previously approved information collection requirement concerning Subcontracting Plans/Individual Subcontract Report (SF) 294. A notice was published in the **Federal Register** at 80 FR 32909, on June 10, 2015. No comments were received on the information collection.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF) 294, and ISRS''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF) 294 and ISRS'' on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF) 294 and ISRS.

Instructions: Please submit comments only and cite Information Collection 9000–0006, Subcontracting Plans/Individual Subcontract Report (SF) 294 and ISRS, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Acquisition Policy, GSA 703–605–2868 or email *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with Federal Acquisition Regulation 19.702, which implements the statutory requirements of Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), contractors receiving a contract for more than the simplified acquisition threshold agree to have small business, small disadvantaged business, women-owned small business, historically underutilized business zone small business, veteran-owned small business, and service-disabled veteran-owned small business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $700,000 ($1,500,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7 and clause 52.219–9.

In conjunction with the subcontracting plan requirements, contractors must submit semi-annual reports of their small business subcontracting progress to the government. With the exception of those contracts noted in FAR 4.606(c)(5) which states ''Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.,* reporting of the information would compromise national security)'', contractors must use the electronic Individual Subcontract Report (ISR) in the Electronic Subcontracting Reporting System (eSRS) in lieu of the Standard Form 294, Subcontracting Report for Individual Contracts.

The ISR is the electronic equivalent of the Standard Form 294. The eSRS streamlines the small business subcontracting program reporting process and provides the data to agencies in a manner that enables them to more effectively manage the program. Those contract actions noted in FAR 4.606(c)(5) will continue to use the Standard Form 294.

The SBA made regulatory changes in its final rule at 78 FR 42391, dated July 16, 2013 regarding subcontracting plan requirements and the associated reporting requirements. The SBA final rule is being implemented in the FAR at subpart 19.7 and clause 52.219–9 Small Business Subcontracting Plan through FAR case 2014–003, Small Business Subcontracting Improvements. FAR case 2014–003 revised the FAR to require a subcontracting plan for modifications of any value if the modification will cause the contract to exceed the threshold for requiring a plan and when subcontracting opportunities exist as well as to give contracting officers the discretion to require a plan when a small business prime contractor rerepresents as an other than small on the contract. These revisions to the FAR required revisions to the existing information collections associated with subcontracting plan requirements and the associated reporting requirements.

B. Annual Reporting Burden

Based on the proposed revisions to the FAR as well as a more accurate basis for estimation, an upward adjustment is being made to the average burden hours for reporting and recordkeeping per response but a downward adjustment is being made to the number of respondents (*i.e.,* subcontracting plans and the individual subcontracting reports associated with them). As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 78 FR 17668, on March 22, 2013.

Respondents: 59,336.

Responses per Respondent: 3.

Total Annual Responses: 178,008.

Average Burden Hours per Response: 13.5.

Total Burden Hours: 2,403,108.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0006, Subcontracting Plans/Individual

Subcontract Report, SF 294, in all correspondence.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–27509 Filed 10–28–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007; Docket 2015–0055; Sequence 59]

Submission for OMB Review; Summary Subcontract Report

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding a revision to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve revisions to a previously approved information collection requirement concerning summary subcontract reports. A notice was published in the **Federal Register** at 80 FR 32909 on June 10, 2015. No comments were received on the information collection.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

• Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0007, Summary Subcontract Report''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0007, Summary Subcontract Report'', on your attached document.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0007, Summary Subcontract Report.

Instructions: Please submit comments only and cite Information Collection 9000–0007, Summary Subcontract Report, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mahruba Uddowla, Procurement Analyst, Office of Governmentwide Acquisition Policy, at 703–605–2868 or via email at *mahruba.uddowla@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with Federal Acquisition Regulation 19.702, any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, small disadvantaged business, historically underutilized business zone (HUBZone) small business, veteran-owned small business, service-disabled veteran-owned small business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. Further, contractors receiving a contract or a modification to a contract expected to exceed $700,000 ($1,500,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

In conjunction with the subcontracting plan requirements, contractors must submit an annual summary of subcontracts awarded by prime and subcontractors for a specific Federal Government agency that required an individual subcontracting plan for the previous fiscal year. This is accomplished through the use of the Summary Subcontract Report (SSR), submitted through the Electronic Subcontracting Reporting System (eSRS). The eSRS streamlines the small business subcontracting program reporting process and provides the data to agencies in a manner that enables them to more effectively manage the program.

The SBA made regulatory changes in its final rule at 78 FR 42391, dated July 16, 2013 regarding subcontracting plan requirements and the associated reporting requirements. The SBA final rule is being implemented in the FAR at Subpart 19.7 and clause 52.219–9 Small Business Subcontracting Plan through FAR case 2014–003, Small Business Subcontracting Improvements. FAR case 2014–003 revised the FAR to require a subcontracting plan for modifications of any value if the modification will cause the contract to exceed the threshold for requiring a plan and when subcontracting opportunities exist as well as to give contracting officers the discretion to require a plan when a small business prime contractor rerepresents as an other than small on the contract. These revisions to the FAR required revisions to the existing information collections associated with subcontracting plan requirements and the associated reporting requirements.

B. Annual Burden Hours

Based on the proposed revisions to the FAR as well as a more accurate basis for estimation, a downward adjustment is being made to the number of respondents (*i.e.*, summary subcontracting reports). Since the proposed revisions to the FAR does not require additional information in the Summary Subcontract Report, the estimated preparation hours per response remains unchanged. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 78 FR 17668, on March 22, 2013.

Respondents: 59,336.

Responses per respondent: 1.

Total responses: 59,336.

Average burden hours per response: 9.0.

Total Burden Hours: 534,024.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2015–27553 Filed 10–28–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0189; Docket No. 2015–0055; Sequence 52]

Submission for OMB Review; Identification of Predecessors

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Identification of Predecessors. A notice was published in the **Federal Register** at 79 FR 71975, on December 4, 2014. Two comments were received.

DATES: Submit comments on or before November 30, 2015.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching for OMB control number 9000–0189, Identification of Predecessors. Select the link ''Submit a Comment'' that corresponds with ''9000–0189; Identification of Predecessors.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''9000–0189; Identification of Predecessors'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0189, Identification of Predecessors.

Instructions: Please submit comments only and cite Information Collection 9000–0189, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Federal Acquisition Policy Division, at 202–219–0202 or email *cecelia.davis@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

This final rule implements section 852 of the National Defense Authorization Act for Fiscal Year 2013 to include in the Federal Awardee Performance and Integrity Information System (FAPIIS), to the extent practicable, identification of any immediate owner or subsidiary, and all predecessors of an offeror that held a Federal contract or grant within the last three years. The objective is to provide a more comprehensive understanding of the performance and integrity of the corporation before awarding a Federal contract.

B. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

A. Summary of Significant Changes in Response to Public Comments

There were no changes made in the final rule in response to the public comments received.

B. Analysis of Public Comments

Comment: One respondent commented that it would be helpful if the relevant FAR provisions and FAR clause 52.204–WW clarified whether the three year ''lookback'' period starts on the effective date of when the predecessor merged or was acquired by the successor or the date the contracts of the predecessor were novated from the predecessor to the successor.

Response: The ''lookback'' period starts on the date the offeror signs the representation. If, within the three years prior to signing the representation, there was a merger or acquisition, it shall be reported. The date of novation is not relevant for purposes of this rule.

Comment: One respondent supported the statute because it requires that information be provided to the contracting officers to aid in making responsibility determinations, and supported the position that the ''further the distance between entities, the less relevant the information is likely to be for establishing responsibility of the offeror.''

Response: Noted.

Comment: One respondent commented that the proposed rule's requirement to report data on all predecessors of the offeror that received a Federal contract or grant within the last three years would apply an undue burden on prospective contractors and not achieve the Government's stated objective of providing a more comprehensive understanding of a potential contractor's performance and integrity. The respondent proposed that publicly traded companies subject to SEC requirements be exempt from this requirement because it instills a burden without benefit to the Government.

Response: The statute does not allow for this exemption.

Comment: One respondent commented that large multi-national organizations many times reorganize business units in order to effectively respond to changing needs of the marketplace. These reorganizations can include alternate legal structures. The assets of one legal entity may pass through three or four more before landing at the new entity. The respondent proposed that where the ultimate owner remains the same before and after a transaction, the contractor be exempted from providing information on predecessor entities. According to the respondent, this is consistent with the Government's exclusion of a ''new offices/divisions of the same company'' from the definition of ''successor.''

Response: This recommendation does not meet the requirements of the statute.

Comment: One respondent commented that contracting officers and their counsel perform a rigorous review and analysis to deal with the novation process and feels that there should be no requirement to identify prior owners within the FAPIIS because the required responsibility determination would have been conducted through novation.

Response: The statute requires collection of information on predecessor, regardless of any novation action by the Government.

Comment: The respondent commented that the reporting of the ultimate owners became effective on November 1, 2014, and believe that agencies should allow contractors and contracting officers time to implement and evaluate the results of this new requirement before adding more requirements that may not aid contracting officers in responsibility and integrity evaluations.

Response: The statute does not allow the Government to delay the implementation of this Act.

Comments: The respondent feels that commercially available off-the-shelf (COTS) items should be excluded from this requirement.

Response: The Administrator of the Office of Federal Procurement Policy has determined that this rule applies to COTS items.

C. Annual Reporting Burden

Respondents: 413,800.
Responses per Respondent: 1.
Total Annual Responses: 413,800.
Hours per Response: .1.
Total Burden Hours: 41,380.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control Number 9000–0189, Identification of Predecessors, in all correspondence.

Edward Loeb,

Acting Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–27554 Filed 10–28–15; 8:45 am]

BILLING CODE 6820–1EP–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: *''Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP).''* 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 August 20, 2015 and allowed 60 days for public comment. No substantive comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by November 30, 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). 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

Online Application Order Form for Products From the Healthcare Cost and Utilization Project (HCUP)

The Healthcare Cost and Utilization Project (HCUP) is a vital resource helping the Agency achieve its mission to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable. HCUP is a family of health care databases and related software tools and products developed through a Federal-State-Industry partnership and sponsored by AHRQ. HCUP includes the largest collection of longitudinal hospital care data in the United States, with all-payer, encounter-level information beginning in 1988. The HCUP databases are annual files that contain anonymous information from hospital discharge records for inpatient care and certain components of outpatient care, such as emergency care and ambulatory surgeries. The project currently releases seven types of databases created for research use on a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the National, State, and local market levels. HCUP also produces a large number of software tools to enhance the use of administrative health care data for research and public health use. Software tools use information available from a variety of sources to create new data elements, often through sophisticated algorithms, for use with the HCUP databases.

HCUP's objectives are to:

• Create and enhance a powerful source of National, State, and all-payer health care data.

• Produce a broad set of software tools and products to facilitate the use of HCUP and other administrative data.

• Enrich a collaborative partnership with statewide data organizations (that voluntarily participate in the project) aimed at increasing the quality and use of health care data.

• Conduct and translate research to inform decision making and improve health care delivery.

This project is being conducted by AHRQ through its primary contractor and subcontractor, Truven Health Analytics and Social & Scientific Systems, Inc., 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

The HCUP releases seven types of databases for public research use:

(1) The National Inpatient Sample (NIS) is the largest all-payer inpatient care database in the United States, yielding national estimates of hospital inpatient stays. The NIS approximates 20 percent of the discharges from all U.S. community hospitals and contains data from approximately 8 million hospital stays each year. NIS data releases are available for purchase from the HCUP Central Distributor for data years beginning in 1988.

(2) The Kids' Inpatient Database (KID) is the only all-payer inpatient care database for children in the United States. The KID was specifically designed to permit researchers to study a broad range of conditions and procedures related to child health issues. The KID contains a sample of 2 to 3 million discharges for children age 20 and younger from more than 3,500 U.S. community hospitals. KID data releases are available every third year starting in 1997.

(3) The Nationwide Emergency Department Sample (NEDS) is the largest all-payer Emergency Department (ED) database in the United States. It is constructed to capture information both on ED visits that do not result in an admission and on ED visits that result in an admission to the same hospital. The NEDS contains more than 25 million unweighted records for ED visits at about 1,000 U.S. community hospitals and approximates a 20-percent stratified sample of U.S. hospital-based EDs. NEDS data releases are available beginning with data year 2006.

(4) The State Inpatient Databases (SID) contains the universe of inpatient discharge abstracts from data organizations in 46 States and the District of Columbia that currently participate in the SID. Together, the SID encompasses approximately 96 percent of all U.S. community hospital discharges. Most States that participate in the SID make their data available for purchase through the HCUP Central Distributor. Files are available beginning with data year 1990.

(5) The State Ambulatory Surgery and Services Databases (SASD) contain encounter-level data from ambulatory surgery and other outpatient services from hospital-owned facilities. In addition, some States provide data for ambulatory surgery and outpatient services from nonhospital-owned facilities. Currently, 34 States participate in the SASD. Files are available beginning with data year 1997.

(6) The State Emergency Department Databases (SEDD) contain data from hospital-owned (ED) for visits that do not result in a hospitalization. Currently, 29 States participate in the SEDD. Currently, 32 States participate in the SEDD. Files are available beginning with data year 1999.

(7) A new database called the Nationwide Readmissions Database (NRD) is planned for release in late 2015. The NRD is designed to support various types of analyses of national readmission rates. This database addresses a large gap in health care data—the lack of nationally representative information on hospital readmissions. The NRD is a calendar-year, discharge-level database constructed from the HCUP State Inpatient Databases (SID).

To support AHRQ's mission to improve health care through health services research, HCUP databases and software tools are disseminated to users outside of the Agency through the HCUP Central Distributor at *https://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp.* The HCUP Central Distributor assists qualified researchers to access uniform research data across multiple states with the use of one application process. The HCUP databases disseminated through the Central distributor are referred to as ''restricted access public release files''; that is, they are publicly available, but only under restricted conditions.

This information collection request is for the activities associated with the HCUP database application process not the collection of health care data for HCUP databases.

The activities associated with this application include:

(1) HCUP Application. All persons requesting access to the HCUP databases must complete an application at *https://distributor.hcup-us.ahrq.gov/.* Applications for HCUP State databases require a brief description of the planned research use to ensure that the intended use is consistent with HCUP policies and with the HCUP Data Use Agreement. Paper versions of all application packages are also available for downloading at *http://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp.*

(2) HCUP Data Use Agreement Training. All persons wanting access to the HCUP databases must complete an online training course. The purpose of the training is to emphasize the importance of data protection, reduce the risk of inadvertent violations, and describe the individual's responsibility when using HCUP data. The training course can be accessed and completed online at *http://www.hcup-us.ahrq.gov/tech_assist/dua.jsp.*

(3) HCUP Data Use Agreement (DUA). All persons wanting access to the HCUP databases must sign a data use agreement. As an example, the DUA for the Nationwide databases is available at *http://www.hcup-us.ahrq.gov/team/NationwideDUA.jsp.*

HCUP databases are released to researchers outside of AHRQ after the completion of required training and submission of an application that includes a signed HCUP DUA. In addition, before restricted access public release state-level databases are released, AHRQ must review and approve the applicant's statement of intended use to ensure that the planned use is consistent with HCUP policies and with the HCUP DUA. Fees are set for databases released through the HCUP Central Distributor depending on the type of database. The fee for sale of State-level data is determined by each participating Statewide Data Organization and reimbursed to those organizations. Information collected in the HCUP Application process will be used for two purposes only:

1. Business Transaction: In order to deliver the HCUP databases and software contact information is necessary for shipping the data on disk (or any other media used in the future).

2. Enforcement of the HCUP DUA: The HCUP DUA contains several restrictions on use of the data. Most of these restrictions have been put in place to safeguard the privacy of individuals and establishments represented in the data. For example, data users can only use the data for research, analysis, and aggregate statistical reporting and are prohibited from attempting to identify any persons in the data. Contact information on HCUP DUA is retained in the event that a violation of the DUA takes place requiring legal remedy.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the applicants' time to order any of the HCUP databases. An estimated 1,300 persons will order HCUP data annually. Each of these persons will complete an application (10 minutes), the DUA training (15 minutes) and a DUA (5 minutes). The total burden is estimated to be 650 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the applicants' time to order HCUP data.

The total cost burden is estimated to be $24,772 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
HCUP Application Form	1,300	1	10/60	217
HCUP DUA Training	1,300	1	15/60	325
HCUP DUA	1,300	1	5/60	108
Total	3,900	na	na	650

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
HCUP Application Form	1,300	217	$38.11	$8,270
HCUP DUA Training	1,300	325	38.11	12,386
HCUP DUA	1,300	108	38.11	4,116
Total	3,900	650	na	24,772

* Based upon the mean of the average wages for Life Scientists, All Other (19–1099), National Compensation Survey: 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. 2015–27499 Filed 10–28–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 10:30 a.m.–5:00 p.m., EDT, December 1, 2015.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537 and the pass code is 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2017.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: Current findings from NIOSH dose reconstruction blind reviews; dose reconstruction cases under review from Sets 14–18, including the Oak Ridge sites (Y–12, K–25, Oak Ridge National Laboratory, and Savannah River Site; preparation of the Advisory Board's next report to the Secretary, HHS, summarizing the results of completed dose reconstruction reviews.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–27561 Filed 10–28–15; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates:

8:30 a.m.–4:30 p.m., EST, December 1, 2015.

8:30 a.m.–11:30 a.m., EST, December 2, 2015.

Place: CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters for Discussion: The agenda items for the BSC Meeting will include NCEH/ATSDR Office of the Director Updates; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; Update on the NCEH/ATSDR Strategic Plan; Approach to Addressing Perfluorinated Chemicals (PFCs) at Hazardous Waste Sites; The Role of Environmental Health Services in Legionnaires Disease; Parking Prices and Active Commuting: an Ecological Analysis of U.S. Cities and updates from the National Institute for Environmental Health Services, National Institute for Occupational Safety and Health, U.S. Department of Energy and the U.S. Environmental Protection Agency.

Agenda items are subject to change as priorities dictate.

Supplemental Information: The public comment period is scheduled Tuesday, December 1, 2015 from 4:15 p.m. until 4:30 p.m., and Wednesday, December 2, 2015 from 10:30 a.m. until 10:45 a.m.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Chamblee, Georgia 30345; Telephone 770/488–0575 or 770/488–0577, Fax: 770/488–3377; Email: *smalcom@cdc.gov.* The deadline for notification of attendance is November 24, 2015. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–27562 Filed 10–28–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA) PAR14–275, State Occupational Health and Safety Surveillance Program (U60).

Times and Dates:

5:00 p.m.–10:00 p.m., EST, December 8, 2015 (Closed)

7:00 a.m.–10:00 p.m., EST, December 9, 2015 (Closed)

7:00 a.m.–6:00 p.m., EST, December 10, 2015 (Closed)

Place: Embassy Suites Alexandria-Old Town, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: 703–684–5900.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to FOA ''State Occupational Health and Safety Surveillance Program (U60), PAR14–275, initial review.''

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, National Institute for Occupational Safety and Health, CDC, 2400 Century Center Parkway NE., 4th Floor, Mailstop E–74, Atlanta, Georgia 30345, Telephone: 404–498–6185, *DYB7@CDC.GOV.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and

Prevention and the Agency for Toxic Substances and Disease Registry.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–27563 Filed 10–28–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Community Living

Proposed Information Collection Activity; Comment Request; State Developmental Disabilities Council—Annual Program Performance Report (PPR)

AGENCY: Administration on Intellectual and Developmental Disabilities, Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: A Plan developed by the State Council on Developmental Disabilities is required by federal statute. Each State Council on Developmental Disabilities must develop the plan, provide for public comments in the State, provide for approval by the State's Governor, and finally submit the plan on a five-year basis. On an annual basis, the Council must submit a Program Performance Report (PPR) to described the extent to which annual progress is being achieved on the 5 year state plan goals. The PPR will be used by (1) the Council as a planning document to track progress made in meeting state plan goals; (2) the citizenry of the State as a mechanism for monitoring progress and activities on the plans of the Council; (4) the Department as a stewardship tool, for ensuring compliance with the Developmental Disabilities Assistance and Bill of Rights Act, as one basis for monitoring and providing technical assistance (*e.g.,* during site visits), and as a support for management decision making.

DATES: Submit written comments on the collection of information by November 30, 2015.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Allison Cruz, Administration on Community Living, Administration on Intellectual and Developmental Disabilities, Office of Program Support, One Massachusetts Avenue NW., Room 4306, Washington, DC 20201, 202–357–3439.

SUPPLEMENTARY INFORMATION: In compliance with the requirements of Section 506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration on Community Living is soliciting public comment on the specific aspects of the information collection described above. The Department specifically requests comments on: (a) Whether the proposed Collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden information to be collected; and (e) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection technique comments and or other forms of information technology. Consideration will be given to comments and suggestions submitted within 30 days of this publication.

Respondents: 56 State Developmental Disabilities Councils.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Developmental Disabilities Program Performance Report (PPR)	56	1	138	7728

Estimated Total Annual Burden Hours: 7728.

Dated: October 23, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–27511 Filed 10–28–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Small Business Innovation Research Program—Phase II

AGENCY: National Institute on Disability, Independent Living and Rehabilitation, Administration for Community Living (ACL), HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL), National Institute on Disability, Independent Living, and Rehabilitation Research (NIDLRR) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. This notice solicits comments on the information collection requirements relating to the Small Business Innovation Research Program (SBIR)—Phase II. Specifically, the information collection is the SBIR Application package, which provides information on requirements for the application including mandatory information provided via government- approved forms.

DATES: Submit comments on the collection of information by November 30, 2015.

ADDRESSES: Submit comments on the collection of information by fax 202.395.5806 or by email to *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Brian Bard 202–254–7345 or *Brian.Bard@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44

U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. This information collection is the SBIR Application Package. To comply with this requirement, ACL/NIDILRR published a notice of the proposed collection of information set forth in this document, inviting comment on: (1) Whether the proposed collection of information is necessary for the proper performance of ACL/NIDILRR's functions, including whether the information will have practical utility; (2) the accuracy of ACL/NIDILRR's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. NIDILRR received one comment asking for more information on the method by which it calculated burden. The Application Package, including instructions and forms, has been in continuous use with minor modifications since it was first approved by OMB in FY2012. This request is for approval to extent the current form and instructions, with minor modifications to change the sponsoring agency from Department of Education to Department of Health and Human Services (per requirement of the Workforce Innovation Opportunity Act) for three years, covering the FY 2015–2017 reporting periods.

Dated: October 23, 2015.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2015–27512 Filed 10–28–15; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0268]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 30, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–D–0268. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues to the Office of Management and Budget in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or email to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0728. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration—OMB Control Number 0910–0728—Extension

The definition of ''food'' under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), includes ''articles used for food or drink'' and thus includes alcoholic beverages. See 21 U.S.C. 321(f). As such, alcoholic beverages are subject to the FD&C Act's adulteration and misbranding provisions, and implementing regulations, related to food. For example, manufacturers of alcoholic beverages are responsible for adhering to the registration of food facilities requirements in 21 CFR part 1 and to the good manufacturing practice regulations in 21 CFR part 110. There are also certain requirements for nutrition labeling on menus, menu boards, and other written materials for alcohol beverages served in restaurants or similar retail food establishments in 21 CFR part 101 (79 FR 71156 (December 1, 2014)). However, as reflected in a 1987 Memorandum of Understanding (MOU) between FDA and the Alcohol and Tobacco Tax and Trade Bureau (TTB), TTB is responsible for the dissemination and enforcement of regulations with respect to the labeling of distilled spirits, certain wines, and malt beverages issued in the Federal Alcohol Administration Act (the FAA Act). In TTB Ruling 2008–3, dated July 7, 2008, TTB clarified that certain beers, which are not made from both malted barley and hops but are instead made from substitutes for malted barley (such as sorghum, rice, or wheat) or are made without hops, do not meet the definition of a ''malt beverage'' under the FAA Act. Accordingly, TTB stated in its Ruling that such products (other than sake, which is classified as a wine under the FAA Act), are not subject to the labeling, advertising, or other provisions of the TTB regulations issued under the FAA Act.

In cases where an alcoholic beverage is not covered by the labeling provisions of the FAA Act, the product is subject to ingredient and other labeling requirements under the FD&C Act and the implementing regulations that we administer. In addition, as provided for under the Fair Packaging and Labeling Act (FPLA), alcoholic beverages that are not covered by the labeling provisions of the FAA Act are subject to the provisions of the FPLA, which we administer.

Therefore, the beers described in the TTB's Ruling as not being a ''malt beverage'' are subject to the labeling requirements under the FD&C Act and FPLA, and our implementing regulations. In general, we require that food products under our jurisdiction be truthfully and informatively labeled in accordance with the FD&C Act, the FPLA, and FDA's regulations. Furthermore, some TTB labeling requirements, such as the Government Health Warning Statement under the Alcoholic Beverage Labeling Act and certain marking requirements under the Internal Revenue Code, continue to apply to these products.

In the **Federal Register** of December 23, 2014 (79 FR 77013), we announced the availability of a guidance entitled, ''Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration.'' Persons with access to the Internet may obtain the guidance at *http://www.fda.gov/FoodGuidances*. This guidance is intended to assist manufacturers on how to label bottled or otherwise packaged beers that are subject to our labeling laws and regulations.

Our food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the FPLA (15 U.S.C. 1453, 1454, and 1455) and under sections 201, 301, 402, 403, 409, 411, 701, and 721 of the FD&C Act (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the FD&C Act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the FD&C Act and the FPLA.

The primary user of the information to be disclosed on the label or labeling of food products is the consumer that purchases the food product. Consumers will use the information to assist them in making choices concerning their purchase of a food product, including choices related to substances that the consumer must avoid to prevent adverse reactions. This information also enables the consumer to determine the role of the food product in a healthful diet. Additionally, FDA intends to use the information to determine whether a manufacturer or other supplier of food products is meeting its statutory and regulatory obligations. Failure of a manufacturer or other supplier of food products to label its products in compliance with section 403 of the FD&C Act and parts 101, 102, 104, and 105 of FDA's food labeling regulations may result in a product being misbranded under the FD&C Act, subjecting the firm and product to regulatory action.

In the **Federal Register** of August 12, 2015 (80 FR 48322), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Description of Respondents: The respondents to this collection of information are manufacturers of beers that are subject to our labeling laws and regulations.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN [1]

Reference	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Avg. burden per disclosure	Total hours
21 CFR 101.3 and 101.22	12	2	24	0.5	12
21 CFR 101.4	12	2	24	1	24
21 CFR 101.5	12	2	24	0.25	6
21 CFR 101.9	12	2	24	4	96
21 CFR 101.105	12	2	24	0.5	12
Section 403(w)(1) of the FD&C Act	12	2	24	1	24
Guidance document entitled ''Labeling of Certain Beers Subject to the Labeling Jurisdiction of the Food and Drug Administration''	12	1	12	1	12
Total					186

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate of the number of respondents is based on the number of regulatory submissions to TTB for beers that do not meet the definition of a ''malt beverage'' under the FAA Act. Based on its records of submissions received from manufacturers of such products, TTB estimates the annual number of respondents to be 12 and the annual number of disclosures to be 24. We adopt TTB's estimate of 12 annual respondents, and estimate an annual number of 2 disclosures per respondent, as reflected in table 1 above.

Our estimate of the average burden per disclosure for each collection provision is based on our experience with food labeling under our jurisdiction. The estimated average burden per disclosure for §§ 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105 in table 1 are equal to, and based upon, the estimated average burden per disclosure approved by OMB in OMB control number 0910–0381. We further estimate that the labeling burden of section 403(w)(1) of the FD&C Act, which specifies requirements for the declaration of food allergens, will be 1 hour based upon the similarity of the requirements to that of § 101.4. Finally, FDA estimates that a respondent will spend 1 hour reading the guidance document.

Thus, we estimate that 12 respondents will each label 2 products annually, for a total of 24 labels. We estimate that the manufacturers will spend 7.25 hours (0.5 hours + 1 hour + 0.25 hour + 4 hours + 0.5 hour + 1 hour = 7.25 hours) on each label to comply with our labeling regulations and the requirements of section 403(w)(1) of the FD&C Act, for a total of 174 hours (24 labels × 7.25 hours = 174 hours). In addition, 12 respondents will each spend 1 hour reading the guidance document, for a total of 12 hours. Thus, we estimate the total hour burden of the proposed collection of information to be 186 hours (174 hours + 12 hours = 186 hours). The guidance also refers to previously approved collections of information found in our regulations. The collections of information in §§ 101.3, 101.4, 101.5, 101.9, 101.22, and 101.105 have been approved under OMB control number 0910–0381. Allergen labeling of these beers under section 403(w)(1) of the FD&C Act (21 U.S.C. 343(w)(1)), which was added by the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA), has been approved under OMB control number 0910–0792.

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27588 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2033]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Survey on Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Survey on Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 25, 2015, the Agency submitted a proposed collection of information entitled ''Survey on Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice and Retail Food Stores Facility Types'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0799. The approval expires on December 31, 2016. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27556 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0280]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 30, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0396. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Financial Disclosure by Clinical Investigators OMB Control Number 0910–0396—Extension

Respondents to this collection are sponsors of marketing applications that contain clinical data from studies covered by the regulations. These sponsors represent pharmaceutical, biologic, and medical device firms. Respondents are also clinical investigators who provide financial information to the sponsors of marketing applications.

Under § 54.4(a) (21 CFR 54.4(a)), applicants submitting an application that relies on clinical studies must submit a complete list of clinical investigators who participated in a covered clinical study, and must either certify to the absence of certain financial arrangements with clinical investigators (Form FDA 3454) or, under § 54.4(a)(3), disclose to FDA the nature of those arrangements and the steps taken by the applicant or sponsor to minimize the potential for bias (Form FDA 3455).

Under § 54.6, the sponsors of covered studies must maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the applications. Sponsors of covered studies maintain many records with regard to clinical investigators, including protocol agreements and investigator résumés or curriculum vitae. FDA estimates than an average of 15 minutes will be required for each recordkeeper to add this record to the clinical investigators' file.

Under § 54.4(b), clinical investigators supply to the sponsor of a covered study financial information sufficient to allow the sponsor to submit complete and accurate certification or disclosure statements. Clinical investigators are accustomed to supplying such information when applying for research grants. Also, most people know the financial holdings of their immediate family and records of such interests are generally accessible because they are needed for preparing tax records. For these reasons, FDA estimates that it will take clinical investigators 15 minutes to submit such records to the sponsor.

In the **Federal Register** of April 29, 2015 (80 FR 23803), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although two comments were received, none were responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Certification—54.4(a)(1) and (a)(2)—Form FDA 3454	1,000	1	1,000	1	1,000
Disclosure—54.4(a)(3)—Form FDA 3455	100	1	100	5	500
Total					1,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping—54.6	1,000	1	1,000	0.25 (15 minutes)	250

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
54.4(b)—Clinical Investigators	7,106	1	7,106	0.17 (10 minutes)	1,208

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: *October 23, 2015.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27559 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0286]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Formal Meetings Between the Food and Drug Administration and Biosimilar Biological Product Sponsors or Applicants

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Formal Meetings Between the Food and Drug Administration and Biosimilar Biological Product Sponsors or Applicant'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 25, 2015, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Formal Meetings Between the Food and Drug Administration and Biosimilar Biological Product Sponsors or Applicant'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0802. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: October 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27558 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3579]

Using Technologies and Innovative Methods To Conduct Food and Drug Administration-Regulated Clinical Investigations of Investigational Drugs; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a public docket to solicit input from a broad group of stakeholders on the scope and direction of the use of technologies and innovative methods in the conduct of clinical investigations. Specifically, FDA seeks information to understand individual and industry experiences with the use of such technologies to more efficiently conduct clinical research. FDA also seeks stakeholder perspectives on possible barriers to implementing these technologies and methods to conduct clinical investigations.

DATES: Submit electronic or written comments by December 28, 2015.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–3579 for ''Using Technologies and Innovative Methods to Conduct FDA-Regulated Clinical Investigations of Investigational Drugs.'' Please identify the specific question or issue that the comment addresses. Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
Nicole Silva, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3341, Silver Spring, MD 20993–0002, 301–796–3419; Aaliyah K. Eaves, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002, 301–796–2948; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

Clinical investigations that ensure the protection of the rights, safety, and welfare of trial participants and that yield reliable data are critical to FDA's mission to ensure that medical products are safe and effective. The clinical trial enterprise continues to evolve and become more complex, and the scientific and infrastructure challenges of conducting clinical investigations affect the cost and timeliness of medical product development. Challenges in recruiting and retaining sufficient numbers of trial participants to conduct an adequately powered investigation in a reasonable amount of time may contribute to the cost and complexity. Creative uses of technology in conducting clinical investigations have emerged over the previous decade and include advances that have the potential to improve recruitment, participation, and retention of trial participants. New technology and communication infrastructure allow for collection of data and communication wherever the trial participant is located, including at his or her health care provider's location, creating opportunities to overcome geographical and logistical barriers that otherwise might prevent a potential trial participant from participating in a clinical investigation, as well as facilitating the integration of research with clinical care. In addition to potential convenience for the trial participant, these tools and technologies may present sponsors with the opportunity to capture data more frequently and efficiently than would be feasible if data collection were only conducted when the trial participant visited the study site. This may enhance the sponsor's ability to understand the safety and effectiveness of drugs, biologics, and medical devices; increase additional meaningful data gathering; minimize missing data; and maximize trial participation and retention.

Some of these technologies and methods may be used regardless of the trial participant's location and may include, for example, mobile health technology, telemedicine, and remote sensors. Use of these technologies and methods allows for more flexibility for the sponsor and clinical investigator in the oversight of clinical investigation conduct, data collection, and monitoring of trial participants and clinical sites. Other elements that may be incorporated into clinical investigations to improve trial participant recruitment include online/Web-based eligibility screening, informed consent, and communication between investigators and participants.

II. Purpose of the Docket

FDA is soliciting public input from a broad group of stakeholders regarding technologies and innovative methods for using technology to more efficiently conduct clinical research. FDA is interested in identifying new opportunities to study medical products, as well as receiving comments on barriers, challenges, and relevant considerations that may affect a medical product clinical investigation that uses these technologies and methods.

III. Issues for Comment

In addition to the general information requests in section II of this document, FDA is interested in obtaining information and public comment on the following specific issues:

1. What technologies, communication infrastructure, or innovative methods are being used to conduct clinical investigations? FDA is aware of several groups conducting and interested in conducting clinical investigations using mobile technology and remote methods for data collection. FDA requests feedback on experiences with implementing such methods or models (for example, lessons learned), as well as information supporting the use of any suggested technologies, methods, or models, including any characteristics that would make the technology more or less desirable for use in clinical trials.

2. What are ways FDA could encourage adoption of these technologies and innovative methods in the conduct of clinical investigations?

3. Identify any clinical, cultural, business, regulatory, or other barriers perceived by stakeholders that serve as a disincentive to the use of technology to facilitate the conduct of clinical investigations.

a. What challenges do stakeholders anticipate in adoption of these technologies or methods? Are there challenges in complying with regulatory requirements surrounding the conduct of clinical investigations that use such technologies or methods?

b. What are the perceived barriers or challenges to obtaining and documenting informed consent or obtaining institutional review board review, approval, and oversight for clinical investigations utilizing these technologies or methods?

4. FDA is interested in obtaining information on potential trial participant acceptance, privacy, and human subject protection issues that may occur as a result of the use of technologies and innovative methods for the conduct of clinical investigations. In particular, FDA is

interested in assessing potential trial participants' interest, tolerance, concerns, and willingness to participate in clinical investigations that involve nontraditional settings or utilize new technologies. FDA is also interested in identifying the factors that affect trial participant awareness, acceptance, enrollment, and retention for these investigations.

a. Are there specific patient groups or therapeutic areas that could particularly benefit from these types of technologies or methods?

b. What new opportunities for the conduct of clinical investigations are created through the use of continuous or intermittent remote monitoring and data collection?

c. What are some of the anticipated risks to trial participants that may occur as a result of the use of these technologies or off-site methods in clinical investigations?

d. What are some of the anticipated benefits to trial participants that may occur as a result of the use of these technologies or off-site methods in clinical investigations?

e. Are there perceived challenges to participation in clinical investigations utilizing these types of technologies or methods because of concerns regarding inadvertent disclosure of trial participants' information or breach of privacy? Are there concerns relating to the integrity of data collection or encryption or the secure transmission of information?

f. Are there unique considerations for ensuring integrity of the source data, for example, authenticity and reliability?

g. How should validation of participant-operated mobile devices be addressed?

h. What are the challenges presented when data are collected using the Bring Your Own Device (BYOD) model? BYOD in clinical investigations refers to the practice of trial participants using their own devices, such as smartphones or tablets, for data collection. For example, participants in a clinical investigation may use their own computer devices to access and respond to study-related questionnaires. What are the perceived barriers to pooling data collected from different devices provided by individual trial participants, as well as pooling data from the BYOD model with data collected at the investigational site or on paper forms? How should situations such as mid-study user device switches be handled?

i. What are the challenges or special considerations with recruiting and/or retaining potential trial participants with low levels of computer literacy or individuals who may have limited or no access to mobile technologies, computer devices, or the Internet? How can these challenges or special considerations best be addressed?

Dated: October 26, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27581 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–2138]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug and Cosmetic Act'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On August 4, 2015, the Agency submitted a proposed collection of information entitled ''Guidance for Industry on Adverse Event Reporting for Outsourcing Facilities Under Section 503B of the Federal Food, Drug, and Cosmetic Act'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0800. The approval expires on September 30, 2018. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: *October 23, 2015.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–27557 Filed 10–28–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 80 FR 44358 dated July 27, 2015).

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA), Office of Planning, Analysis, and Evaluation (RA5). Specifically, this notice: (1) Establishes the Office of Strategic Initiatives (RA59) within the Office of Planning, Analysis, and Evaluation.

Chapter RA5—Office of Planning, Analysis, and Evaluation

Section RA5—00, Mission

The Office of Planning, Analysis, and Evaluation (RA5) provide HRSA-wide leadership on cross-agency initiatives and Departmental priorities.

Section RA5–10, Organization

Delete the organization for the Office of Planning, Analysis, and Evaluation in its entirety and replace with the following:

The Office of Planning, Analysis, and Evaluation (RA5) is headed by the Director, who reports directly to the Administrator, Health Resources and Services Administration. The Office of Planning, Analysis, and Evaluation includes the following components:

(1) Office of the Director (RA5);

(2) Office of Policy Analysis (RA53);

(3) Office of Research and Evaluation (RA56);

(4) Office of External Engagement (RA57);

(5) Office of Performance and Quality Measurement (RA58); and

(6) Office of Strategic Initiatives (RA59).

Section RA5–20, Functions

This notice reflects organizational changes in the Health Resources and Services Administration (HRSA), Office of Planning, Analysis, and Evaluation (RA5). Specifically, this notice: (1) Establishes the Office of Strategic Initiatives (RA59).

Establish the functional statement for the Office of Strategic Initiatives (RA59) within the Office of Planning, Analysis, and Evaluation (RA5).

Office of Strategic Initiatives (RA59)

(1) Provides HRSA-wide leadership on cross-agency initiatives and departmental priorities; (2) maintains liaison between the Administrator, other OPDIVs, Office of the Secretary staff components, and other Departments on priority initiatives; (3) provides technical assistance to Agency programs in order to help them respond to emerging issues affecting the health care safety net; (4) coordinates outreach to grantees and stakeholders on high profile public health initiatives; (5) establishes an infrastructure and strategic direction of priority initiatives and institutionalizes these efforts into HRSA programs; and (6) coordinates the Agency's long-term strategic planning process.

Delegations of Authority

All delegations of authority and re-delegations of authority made to HRSA officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

This reorganization is effective upon date of signature.

Dated: October 18, 2015.

James Macrae,

Acting Administrator.

[FR Doc. 2015–27592 Filed 10–28–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Dr. Maria C.P. Geraedts, University of Maryland, Baltimore: Based on the report of an investigation conducted by the University of Maryland, Baltimore (UMB) and analysis conducted by ORI in its oversight review, ORI and UMB found that Dr. Maria C.P. Geraedts, former postdoctoral fellow, Department of Anatomy and Neurobiology, UMB, engaged in research misconduct in research supported by National Institute on Deafness and Other Communication Disorders (NIDCD), National Institutes of Health (NIH), grant R01 DC010110.

ORI found falsified and/or fabricated data included in the following two (2) publications:

- *Am J Physiol Endocrinol Metab* 303:E464–E474, 2012 (hereafter referred to as ''*AJP* 2012'')
- *Journal of Neuroscience* 33(17):7559–7564, 2013 (hereafter referred to as ''*JN* 2013'')

As a result of the UMB investigation, *JN* 2013 and *AJP* 2012 have been retracted.

ORI found that Respondent falsified and/or fabricated bar graphs in *AJP* 2012, by changing ELISA-based measurements to produce the desired result for secretion of glucagon-like peptide-1 (GLP–1) from intestinal explants from various mouse strains in:

- Figure 2 for GLP–1 release from duodenum (2A & D), jejunum (2B & E), and ileum (2C & F).
- Figure 3 for GLP–1 release from colon (3A & C) and rectum (3D).
- Figure 4 for GLP–1 release from ileum (4A) and colon (4C) in the presence or absence of an ATP-sensitive K+ channel inhibitor.

ORI found that Respondent falsified and/or fabricated bar graphs in Figure 1, *JN* 2013 by changing ELISA-based measurements to produce the desired result for the secretion of peptides found in taste buds (GLP–1, glucagon, or neuropeptide Y) from mouse lingual epithelium exposed to various concentrations of stimuli (glucose, sucralose, MSG, polycose). These bar graphs also were included as Figure 7 in grant application R01 DC010110–06.

Both the Respondent and the U.S. Department of Health and Human Services (HHS) want to conclude this matter without further expenditure of time or other resources and have entered into a Voluntary Settlement Agreement (Agreement) to resolve this matter. Respondent stated that she is not currently involved in U.S. Public Health Service (PHS)-supported research and has no intention of applying for or engaging in PHS-supported research or otherwise working with PHS. Dr. Geraedts has entered into a Voluntary Settlement Agreement with ORI and UMB, in which she voluntarily agreed to the administrative actions set forth below. The administrative actions are required for three (3) years beginning on the date of Dr. Geraedts employment in a position in which she receives or applies for PHS support on or after the effective date of the Agreement (September 22, 2015). If the Respondent has not obtained employment in a research position in which she receives or applies for PHS support within one (1) year of the effective date of the Agreement, the administrative actions set forth below will no longer apply. Dr. Geraedts has voluntarily agreed:

(1) To have her research supervised as described below and notify her employer(s)/institution(s) of the terms of this supervision; Respondent agreed that prior to the submission of an application for PHS support for a research project on which her participation is proposed and prior to her participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of her duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of her research contribution; Respondent agreed that she will not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing her shall submit in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude herself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for period of three (3) years beginning on September 22, 2015.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2015–27587 Filed 10–28–15; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 17, 2015, 11:00 a.m. to November 17, 2015, 5:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in theFederal Register on October 22, 2015, 80 FR 64007.

The meeting notice is amended to change the date of the meeting from November 17, 2015 to December 3, 2015. The meeting time and location remains the same. The meeting is closed to the public.

Dated: October 23, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27584 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NIH Pathways to Prevention Workshop: Total Worker Health®—What's Work Got To Do With It?

SUMMARY: The National Institutes of Health (NIH) will host a workshop about Total Worker Health® on December 9–10, 2015. The workshop is free and open to the public.

DATES: December 9, 2015, from 8:30 a.m.–1:30 p.m. and December 10, 2015, from 8:30 a.m.–3:30 p.m.

ADDRESSES: The workshop will be held at the NIH, Masur Auditorium, Building 10 (Clinical Center), 9000 Rockville Pike, Bethesda, Maryland 20892. Registration and workshop information are available on the NIH Office of Disease Prevention (ODP) Web site at *https://prevention.nih.gov/twh*.

FOR FURTHER INFORMATION CONTACT: For further information concerning this workshop, contact the ODP at *prevention@mail.nih.gov*, 6100 Executive Blvd., Room 2B03, MSC 7523, Bethesda, MD 20892–7523; Telephone: 301–496–1508; FAX: 301–480–7660.

SUPPLEMENTARY INFORMATION: A Total Worker Health (TWH) approach is defined as policies, programs, and practices that integrate protection from work-related safety and health hazards with promotion of injury and illness prevention efforts to advance worker well-being. National Institute for Occupational Safety and Health (NIOSH) launched the Total Worker Health program to improve worker health and workplace safety.

One hundred forty-five million Americans are workers, and most spend at least 50% of their active time at the workplace. Despite improvements in occupational safety and health over the last several decades, workers continue to suffer work-related illnesses, injuries, and deaths. In 2007, it is estimated that there were over 53,000 deaths caused by work-related illnesses, and the estimated total cost of occupational injuries, illnesses, and fatalities was $250 billion. Furthermore, according to the Bureau of Labor Statistics, in 2013, more than 4,500 U.S. workers died from work-related injuries, and more than 3 million workers had a nonfatal occupational injury or illness. Also in 2013, according to the NIOSH, 2.8 million workers were treated in emergency departments for occupational injuries and illnesses, and approximately 140,000 workers were hospitalized.

TWH builds upon a foundation of protecting workers from work-related exposures and hazards by championing a holistic understanding of the myriad of factors that influence safety, health, and well-being. An integrated approach recognizes that risk factors in the workplace can contribute to many health problems previously considered unrelated to work, including cardiovascular disease, obesity, depression, and sleep disorders. With wide variation in the landscape of the workplace (*e.g.,* workplace culture, organization of work, working conditions, size of the employer) and the workforce (*e.g.,* age, gender, access to preventive health care), this often translates to diversity in the safety and health risks for each industry sector and the need for tailored, comprehensive interventions.

Traditionally, workplace systems addressing worker safety, health, and well-being have operated separately. An integrated approach would address the overall influences that the nature and conditions of the work itself (*e.g.,* stress levels, work schedules, trip or fall hazards) have on worker health. TWH promotes the integration of diverse relevant programs, including occupational safety and health, worksite health, disability management, workers' compensation, and human resource benefits. There is evidence that combining efforts through integrated workplace interventions helps safeguard the well-being of workers.

Although the benefits and synergistic possibilities of an integrated approach may seem obvious, integrated programs have not been sufficiently validated by the current research. To better understand the benefits of an integrated approach, the NIH will engage in a rigorous assessment of the available scientific evidence. The NIOSH, the National Heart, Lung, and Blood Institute, and the NIH Office of Disease Prevention (ODP) are sponsoring the December 9–10, 2015, Pathways to Prevention Workshop: Total Worker Health®—What's Work Got to Do With It? The workshop will evaluate the current state of knowledge on integrated approaches to worker safety, health, and well-being and will plot the direction for future research. Specifically, the workshop will seek to clarify the following questions:

- What studies exist assessing integrated interventions?
- What are the known benefits and harms of integrated interventions?
- What are the characteristics of effective integrated/combined interventions and programs?
- What factors influence the effectiveness of integrated interventions?
- What are the key evidence gaps?

Initial planning for each Pathways to Prevention workshop, regardless of the topic, is coordinated by a Content-Area Expert Group that nominates panelists and speakers and develops and finalizes questions that frame the workshop. After the questions are finalized, an evidence report is prepared by an Evidence-based Practice Center, through a contract with the Agency for Healthcare Research and Quality. During the 1½-day workshop, invited experts discuss the body of evidence, and attendees provide comments during open discussion periods. After weighing evidence from the evidence report, expert presentations, and public comments, an unbiased, independent panel prepares a draft report that identifies research gaps and future research priorities. The draft report is posted on the ODP Web site for public comment. After reviewing the public comments, the panel prepares a final report, which is also posted on the ODP Web site. Approximately 6–8 months after the workshop, the ODP convenes a Federal Partners Meeting to review the panel report and identify possible opportunities for collaboration.

Please Note: As part of measures to ensure the safety of the NIH employees and property, all visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter the NIH campus. For more information about the security measures at NIH, please visit *http://www.nih.gov/about/visitorsecurity.htm.*

Dated: October 22, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–27627 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neural injury and Neurodegeneration.

Date: November 12, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Application Re-Review: Neurobiology of the Cochlear.

Date: November 18, 2015.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181 MSC 7846, Bethesda, MD 20892–7846, 301–435–1236, *zhaow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 23, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27583 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; A Multi-Center International Hospital-Based Case-Control Study of Lymphoma in Asia (AsiaLymph) (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 28, 2015, page number 52325 and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Nathaniel Rothman, Senior Investigator, Division of Cancer Epidemiology and Genetics, 9609 Medical Center Drive MSC 9776 Room 6E134, Rockville, MD 20850 or call non-toll-free number (240) 276–7169 or Email your request, including your address to: *rothmann@mail.nih.gov.*

Proposed Collection: A Multi-Center International Hospital-Based Case-Control Study of Lymphoma in Asia (AsiaLymph) (NCI), 0925–0654, Expiration Date 10/31/2015—REVISION, National Institutes of Health (NIH).

Need and Use of Information Collection: Incidence rates of certain lymphomas have increased in the United States and in many other parts of the world. The contribution of environmental, occupational, and genetic factors to the cause of lymphoma and leukemia has generated a series of novel findings from epidemiological studies conducted in the United States that have attempted to explain this increase. However, none of the chemical associations have been conclusively established and the identification of the key, functional alleles in gene regions associated with risk of lymphoma requires further elucidation. Further, the ability to follow-up, confirm, and extend these observations in the United States is limited by the low prevalence and limited range of several important chemical and viral exposures and the high to complete linkage disequilibrium among key candidate genetic loci in Western populations. To optimize the ability to build on and clarify these findings, it is necessary to investigate populations that differ from those in the West in both exposure patterns and underlying genetic structure. A multidisciplinary case-control study of lymphoma in Asia, where lymphoma rates have also risen, provides an opportunity to replicate and extend recent and novel observations made in studies in the West in a population that is distinctly different with regard to patterns of key risk factors, including range of exposures, prevalence of exposures, correlations between exposures, and variation in gene regions of particular interest. It will also improve the ability to understand the causes of certain types of rare lymphoma tumors in the United States that occur at much higher rates in Asia. As such, AsiaLymph will confirm and extend previous findings and yield novel insights into the causes of lymphoma and leukemia in both Asia and in the United States. The major postulated risk factors for evaluation in this study are chemical exposures (*i.e.,* organochlorines, trichloroethylene, and benzene) and genetic susceptibility. Other factors potentially related to lymphoma, such as viral infections, ultraviolet radiation exposure, medical conditions, and other lifestyle factors will also be studied. Patients from 11 participating hospitals will be screened and enrolled. There will be a one-time computer-administered interview, and patients will also be asked to provide a one-time blood and buccal cell mouth wash sample and cases with lymphoma or leukemia will be asked to make available a portion of their pathology sample.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,262.

Estimated Annualized Burden Hours

TABLE A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Types of respondents	Instrument	Number of respondents	Frequency of response	Time per response (hours)	Annual burden hours
Potential Study Subjects	Screening Questions	2,110	1	5/60	176
Eligible Potential Study Subjects	Consent Form	1,801	1	5/60	150
Consented Patient Cases	Core Questionnaire & Occupational Job Module.	967	1	105/60	1,692
Consented Patient Controls	Core Questionnaire & Occupational Job Module.	300	1	105/60	525
Study Pathologists	Pathology sample request and tracking form.	10	97	5/60	81
Interviewers	Tracking forms	15	85	30/60	638

Dated: October 16, 2015.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2015–27586 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Opportunity for Public Comment on the Dietary Supplement Label Database

SUMMARY: The Office of Dietary Supplements (ODS) at the National Institutes of Health, in partnership with the National Library of Medicine (NLM), has developed a Dietary Supplement Label Database (DSLD) that is compiling all information from the labels of dietary supplements marketed in the United States. ODS welcomes comments about features to add and functionality improvements to make so the DSLD may become a more useful tool to users.

A federal stakeholder panel for the DSLD will consider all comments received. The ODS requests input from academic researchers, government agencies, the dietary supplement industry, and other interested parties, including consumers. The DSLD can be accessed online at *http://dsld.nlm.nih.gov.*

DATES: To ensure full consideration, all comments must be received by 11:59 p.m. EST, November 27, 2015.

ADDRESSES: Interested individuals and organizations should submit their responses to *ODS@nih.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Bailen MBA, MHA., Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, Phone: 301–435–2920, Fax: 301–480–1845, Email: *ODS@nih.gov.*

SUPPLEMENTARY INFORMATION: The DSLD is a free resource that captures all information present on dietary supplement labels as provided by the seller, including contents, ingredient amounts, and any health-related product statements, claims, and cautions. It also provides a downloadable photo of each label. Users can search for and organize this information in various ways. Research scientists, for example, could use the DSLD to determine total nutrient intakes from food and supplements in populations they study. Health care providers can learn the content of products their patients are taking. Consumers might use the DSLD to search for and compare products of interest.

The DSLD currently contains 50,000 labels, and it is expected to grow rapidly over the next three years to include most of the estimated 75,000+ dietary supplement products sold to American consumers. The DSLD is updated regularly to include any formulation changes and label information in a product. It also includes the labels of products that have been discontinued and are no longer sold. More information about the DSLD and its current capabilities is available at *http://www.dsld.nlm.nih.gov* and at Dwyer *et al.*, 2014.[1]

ODS would like would like to receive ideas and suggestions for how the DSLD might evolve. What features might be added, improved, or enhanced—for example, in capabilities related to search, sorting, organization, and downloading of information—that would make it a more valuable tool for users?

Dated: October 23, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–27625 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

[1] Dwyer JT, Saldanha LG, Bailen RA, *et al.* A free new dietary supplement label database for registered dietitian nutritionists. J Acad Nutr Diet. 2014;114(10):1512–7.

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Mechanisms of Immune Protection from TB among HIV-Infected Individuals (R01).

Date: November 24, 2015.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 8H200 A/B, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D. Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3F40, MSC 9823, Rockville, MD 20892–9823, 240–669–5035, *unferrc@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: October 26, 2015.

Natasha Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–27582 Filed 10–28–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4241–DR; Docket ID FEMA–2015–0002]

South Carolina; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of South Carolina (FEMA–4241–DR), dated October 5, 2015, and related determinations.

DATES: *Effective Date:* October 20, 2015.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 5, 2015.

Fairfield and Marion Counties for Individual Assistance (already designated for Public Assistance).

Clarendon, Dorchester, Horry, Orangeburg, and Sumter Counties for Public Assistance (Categories C–G) (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Lee County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2015–27464 Filed 10–28–15; 8:45 am]

BILLING CODE 9111–23—P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Revision of Agency Information Collection for Loan Guarantee, Insurance and Interest Subsidy Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting to the Office of Management and Budget (OMB) a request for approval for the collection of information for the Loan Guarantee, Insurance, and Interest Subsidy Program. The information collection is currently authorized by OMB Control Number 1076–0020, which expires October 31, 2015.

DATES: Interested persons are invited to submit comments on or before November 30, 2015.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to: James R. West, Office of Indian Energy and Economic Development, 1849 C Street, NW., Washington, DC 20240; email: *JamesR.West@bia.gov.*

FOR FURTHER INFORMATION CONTACT: James R. West, phone: (202) 208–7253. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Indian Energy and Economic Development (IEED) is seeking renewal of the approval for the information collection conducted under 25 CFR part 103, implementing the Loan Guarantee, Insurance, and Interest Subsidy Program, established by 25 U.S.C. 1451 *et seq.* The information collection allows IEED to determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms. A response is required to obtain and/or retain a benefit.

II. Request for Comments

On July 14, 2015, IEED published a notice announcing the renewal of this information collection and provided a 60-day comment period in the **Federal Register** (80 FR 41054). There were no comments received in response to this notice.

The IEED requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0020.

Title: Loan Guarantee, Insurance, and Interest Subsidy, 25 CFR 103.

Brief Description of Collection: Submission of this information allows IEED to implement the Loan Guarantee, Insurance, and Interest Subsidy Program, 25 U.S.C. 1451 *et seq.,* the purpose of which is to encourage private lending to individual Indians and Indian organizations by providing lenders with loan guarantees or loan insurance to reduce their potential risk. The information collection allows IEED to determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms. A response is required to obtain and/or retain a benefit.

Type of Review: Revision of a previously approved collection.

Respondents: Lenders, including commercial banks, and borrowers, including individual Indians and Indian organizations.

Number of Respondents: 315.

Frequency of Response: On occasion, as needed.

Obligation to Respond: Response required to obtain a benefit.

Estimated Time per Response: Ranging from 0.5 to 2 hours.

Estimated Total Annual Hour Burden: 2,654 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.00

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–27534 Filed 10–28–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD4523WD DWDFSE000.RV0000 DS68664000]

Privacy Act of 1974, as Amended; Notice To Amend an Existing System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of an amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to amend the system of records titled ‘‘Oracle Federal Financials (OFF), DOI–91.’’ The system provides the Interior Business Center customer agencies with a web-based financial accounting application for financial management purposes such as for budgeting, purchasing, procurement, reimbursement, and reporting and collection functions. This amendment will update the system name, system location, categories of records, authority, routine uses, system manager and address, safeguards, retention and disposal, notification procedures, record access procedures, contesting record procedures, and provide additional information about the system.

DATES: Comments must be received by November 30, 2015. The amendments to the system will be effective November 30, 2015.

ADDRESSES: Any person interested in commenting on this amendment may do so by submitting written comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; hand-delivering comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW., Mail Stop 5547 MIB, Washington, DC 20240; or emailing comments to *Privacy@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Chief, Application Management Section, Finance and Procurement Systems Division, Interior Business Center, U.S. Department of the Interior, 7401 West Mansfield Avenue, Mail Stop D–2782, Denver, CO 80235–2230; or by telephone at (303) 969–5023.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) Interior Business Center (IBC) maintains the ‘‘Oracle Federal Financials (OFF), DOI–91’’ system of records. The IBC is a service provider that performs services for other Federal government agencies, both inside and outside the DOI. The IBC's service offerings include providing and maintaining various types of business management systems for its clients, including human resources and financial management applications. The Oracle Federal Financial (OFF) system includes the OFF and OFF–VE applications, which are components of the Oracle eBusiness Suite. The OFF system provides IBC clients with a web-based application that contains customizable financial management modules that combine to provide a comprehensive financial software package to support budgeting, purchasing, Federal procurement, accounts payable, fixed assets, general ledger, inventory, accounts receivable, reimbursement, reporting, and collection functions.

The IBC hosts the OFF system and is responsible for system administration functions. Each client agency retains control over its data in the system and has one or more designated managers who are responsible for maintaining client agency data in the OFF system. While DOI records generated and maintained in OFF are covered under this system of records notice, each client agency that maintains records within the system has published system notices that cover these financial management activities. Therefore, individuals seeking access to or amendment of their records under the control of a client agency should follow the access procedures outlined in the applicable client agency system of records notice or send a written inquiry to that agency Chief Privacy Officer.

Additionally, the records maintained within the OFF system may also be covered by existing government-wide system of records notices, including GSA/GOVT–3, Travel Charge Card Program; GSA/GOVT–4, Contracted Travel Services Program; and GSA/GOVT–6, GSA SmartPay Purchase Charge Card Program, and may be subject to handling and disclosure requirements under published routine uses pursuant to the government-wide notices as applicable. Client agencies are responsible for ensuring the handling, use, and sharing of their records in OFF is in compliance with the Privacy Act of 1974, including the provisions regarding notice, access, collection, use, retention, and disclosure of records from this system. The Oracle Federal Financials (OFF), DOI–91 system of records notice was last published in the **Federal Register** on September 10, 2013, 78 FR 55284.

The amendments to the system will be effective as proposed at the end of the comment period (the comment period will end 30 days after publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information about an individual is retrieved by the name or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations located at 43 CFR part 2, subpart K.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses of the information in each system in order to make agency record keeping practices transparent, notify individuals regarding the uses of their records, and assist individuals to more easily find these records within the agency. Below is the description of the ''Oracle Federal Financials (OFF), DOI–91'' system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report concerning this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

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: October 23, 2015.

Teri Barnett,

Departmental Privacy Officer.

SYSTEM NAME:

Oracle Federal Financials (OFF), DOI–91.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system is located and managed at (1) U.S. Department of the Interior, Interior Business Center, Finance and Procurement Systems Division, 12201 Sunrise Valley Drive, MS–206, Reston, VA 20192; and (2) U.S. Department of the Interior, Interior Business Center, Finance and Procurement Systems Division, 7401 West Mansfield Avenue, MS
D–2782, Denver, CO 80235–2230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include employees of various Federal agencies that are Interior Business Center (IBC) clients using OFF, as well as employees or agents for third party vendors, contractors and suppliers who provide OFF clients with related financial services. This system also contains information about individuals, either employees or non-employees, who owe debts to the Federal agencies that use the system. Records relating to corporations and other business entities contained in this system are not subject to the Privacy Act, only records relating to individuals containing personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Accounts receivable for OFF clients, including individuals who may be employees or non-employees and employees who owe money to OFF clients and are the subject of collections actions. Information in the system may include first and last names, home addresses, phone numbers, email addresses, employee identification numbers, and Social Security numbers.

(2) Accounts payable information about non-employee individuals and sole proprietors, including individuals who provide services to OFF clients. Information may include names, home or business addresses, phone or fax numbers, email addresses, Tax identification numbers, Social Security numbers, banking account numbers for electronic fund transfer payments, invoices and claims for reimbursement.

(3) Employees of OFF clients who submit claims for reimbursable expenses. Information may include names, employee identification numbers, Social Security numbers, work addresses, phone numbers, email addresses, receipts and claims for reimbursement.

(4) Employees of OFF clients who hold government bank or debit cards for purchases or travel. Information may include names, employee identification numbers, Social Security Numbers, home or work addresses, phone numbers, email addresses, card numbers and purchase histories.

The system contains additional business and financial records for OFF clients that do not include personal information. Records in this system are subject to the Privacy Act only if they are about an individual within the meaning of the Privacy Act, and not if they are about a business, organization, or other non-individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3512, Executive Agency Accounting and Other Financial Management Reports and Plans; 5 U.S.C. 4111, Acceptance of Contributions, Awards, and Other Payments; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 5 U.S.C. 5701, *et seq.* Travel and Subsistence Expenses, Mileage Allowances; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans; 31 U.S.C. 3711, Collection and Compromise; and the Office of Management and Budget Circular A–127, Policies and Standards for Financial Management Systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is to support financial management for Federal agencies by providing a standardized, automated capability for performing administrative control of funds, general accounting, billing and collecting, payments, management reporting, and regulatory reporting.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use under 5 U.S.C. 552a(b)(3) as follows:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of the individual if the covered individual is deceased, has made a written request to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant to hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a commercial credit card contractor(s) for the accounting and payment of employee obligation for travel, purchasing and fleet management credit card usage.

(14) To OFF clients, for the purpose of processing, using and maintaining their agency's data in the OFF system.

(15) To the Department of Justice or other federal agency for further collection action on any delinquent debt when circumstances warrant.

(16) To the General Accounting Office, Department of Justice, or a United States Attorney, for actions regarding debt and attempts to collect monies owed.

(17) To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained on servers located at IBC's data centers in Denver, CO and Reston, VA. Records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties. Paper records are contained in file folders stored in file cabinets in accordance with 383 Departmental Manual 8.

RETRIEVABILITY:

The personal identifiers that can be used to retrieve information on individuals are name, Social Security number, employee identification numbers, bank account number, government travel/small purchase bank card number, employee number and supplier number.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and all other applicable security rules and policies. Manual or paper records are maintained in locked file cabinets located in secure facilities under the control of authorized personnel. Security controls to prevent unauthorized access include network access security limits, physical and logical access controls for the data center hosting the system, operating system controls, application passwords, and application data group security levels. Access to servers containing system records is limited to authorized personnel with a need to know the information to perform their official duties and requires a valid username and password.

Unique user identification and authentication, such as passwords, least privileges and audit logs are utilized to ensure appropriate permissions and access levels. Access to the system is also limited by network access or security controls such as firewalls, and system data is encrypted. Facilities that host the system are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Server rooms are locked and accessible only by authorized personnel. DOI personnel authorized to access the system must complete mandatory Security, Privacy, and Records Management training and sign the DOI Rules of Behavior. A privacy impact assessment was conducted to ensure appropriate controls and safeguards are in place to protect the information within the system.

RETENTION AND DISPOSAL:

Each Federal agency client maintains records in the system in accordance with records retention schedules approved by the National Archives and Records Administration (NARA), and agency clients are responsible for the retention and disposal of their own records. Financial management records are retained in accordance with General Records Schedule (GRS) 1.1, and records are destroyed six years after final payment or cancellation. While the IBC provides system administration and management support to agency clients, any records disposal is in accordance with client agency approved data disposal procedures.

DOI records are maintained under Departmental Records Schedules and GRS that cover administrative and financial management records, and retention periods may vary according to the subject matter and needs of the agency. Approved disposition methods include shredding or pulping for paper records, and degaussing or erasing electronic records in accordance with NARA Guidelines and 384 Departmental Manual 1.

SYSTEM MANAGER AND ADDRESS:

Chief, Application Management Section, Finance & Procurement Systems Division, U.S. Department of the Interior, Interior Business Center, 7401 West Mansfield Avenue, MS D–2782, Denver, CO 80235–2230.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of DOI records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.235.

Individuals seeking notification of records under the control of a client agency serviced by IBC under a cross-servicing agreement for financial management services should follow the notification procedures outlined in the applicable client agency system of records notice or send a written inquiry to that agency Chief Privacy Officer.

RECORDS ACCESS PROCEDURES:

An individual requesting access to DOI records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS''. The request letter should describe the records sought as specifically as possible. A request for access must meet the requirements of 43 CFR 2.238.

Individuals seeking access to their records under the control of a client agency serviced by IBC under a cross-servicing agreement for financial management services should follow the access procedures outlined in the applicable client agency system of records notice or send a written inquiry to that agency Chief Privacy Officer.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or contesting information contained in DOI records must send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.246.

Individuals seeking to contest their records under the control of a client agency serviced by IBC under a cross-servicing agreement for financial management services should follow the procedures outlined in the applicable client agency system of records notice or send a written inquiry to that agency Chief Privacy Officer.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from IBC's Federal agency clients, as well as third party vendors, contractors and suppliers who provide related financial services to the clients using the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2015–27595 Filed 10–28–15; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. FWS–HQ–FAC–2013–0118; FXFR13360900000–156–FF09F14000]

National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for U.S. Fish and Wildlife Service (516 DM 8)

AGENCY: Department of the Interior.

ACTION: Notice of Final National Environmental Policy Act Implementing Procedures.

SUMMARY: This notice announces the addition of a new categorical exclusion under the National Environmental Policy Act to be included in the Department of the Interior's Departmental Manual for the U.S. Fish and Wildlife Service. The categorical exclusion pertains to adding species to the injurious wildlife list under the Lacey Act. This action will improve the process of listing species by regulation as injurious wildlife and thereby help to prevent their introduction into and spread within the United States.

DATES: The categorical exclusion is effective October 29, 2015.

ADDRESSES: To obtain a copy of the new categorical exclusion, contact Susan Jewell, U.S. Fish and Wildlife Service, MS FAC, 5275 Leesburg Pike, VA 22041; telephone 703–358–2416. You may review the comments received on the proposed categorical exclusion and other supporting materials online at *http://www.regulations.gov* in Docket No. FWS–HQ–FAC–2013–0118.

FOR FURTHER INFORMATION CONTACT: Susan Jewell, U.S. Fish and Wildlife Service, MS FAC, 5275 Leesburg Pike, VA 22041; telephone 703–358–2416. If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.,* NEPA), Federal agencies are required to consider the potential environmental impact of agency actions. Agencies are generally required to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) or both. However, when a Federal agency identifies categories of actions that under normal circumstances do not have a significant environmental impact, either individually or cumulatively, Council on Environmental Quality (CEQ) regulations allow the agency to establish a categorical exclusion and not complete an EA or an EIS when undertaking those actions (40 CFR 1507.3(b); 40 CFR 1508.4. See also Department of the Interior (Department) NEPA regulations at 43 CFR 46.205). When appropriately established and applied, categorical exclusions serve a beneficial purpose. They allow Federal agencies to expedite the environmental review process for proposals that typically do not require more resource-intensive EAs or EISs (CEQ 2010).

The U.S. Fish and Wildlife Service (Service or we) has determined that it is appropriate to provide for a categorical exclusion for the Federal action of adding species to the list of injurious wildlife under the Lacey Act (18 U.S.C. 42, as amended; the Act). The Act authorizes the Secretary of the Interior, as delegated to the Service, to prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, and reptiles, and the offspring or eggs of any of the aforementioned, that are injurious to human beings, or to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The provisions of the Act regarding injurious species protect human health and welfare and the human and natural environments of the United States by identifying and reducing the threat posed by certain wildlife species. Listing these species as injurious under the Act subsequently prohibits individuals of the species from being imported into the United States or transported across State (including U.S. territories) lines. The Act does not restrict export from the United States (provided transport across State lines is not involved), transport within a State or territory, or possession of an animal already imported.

The lists of injurious species are codified in title 50 of the Code of Federal Regulations (CFR) in part 16. The listing of species as injurious is, as an agency action, subject to environmental review under NEPA procedures. The Service has generally prepared EAs for rulemaking actions to add species to the injurious species lists at 50 CFR part 16. In each case, the agency has determined that adding a species to the list of injurious wildlife has no significant effect on the environment. A categorical exclusion would allow the Service to exercise its authority to protect human health and welfare, certain human and natural environments, and wildlife resources from harm caused by injurious species more effectively and efficiently by precluding the need to conduct unnecessary and redundant environmental analyses.

In 2002, in promulgating two listing rules, the Service used an existing departmental categorical exclusion for policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or that have environmental effects too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process (43 CFR 46.210(i)). Upon further review, the Service believes that this description is not the best representation of why injurious species listings do not have a significant effect on the human environment. Therefore, the Service is adding a new categorical exclusion for the listing of injurious species under the Act. The categorical exclusion will be included in the Departmental Manual in Part 516: National Environmental Policy Act of 1969 in Chapter 8: Managing the NEPA Process—U.S. Fish and Wildlife Service (516 DM 8).

Comments on the Proposal

The Service solicited comments from the public on the proposed new categorical exclusion through three comment periods totaling 120 days. The original notice was published in the **Federal Register** on July 1, 2013 (78 FR 39307) and provided for a 30-day public comment period. Following requests to extend the public comment period, the Department published a notice on August 16, 2013, reopening the public comment period for an additional 60 days (78 FR 50079). The Department published another notice on January 22, 2014 (79 FR 3612), reopening public comment for an additional 30-days. All comments sent to either *prevent_invasives@fws.gov* or to *http://www.regulations.gov* have been considered.

Congressional interest led to an oversight hearing on September 20, 2013, by the House Committee on Natural Resources, Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs. The Service's Assistant Director for Fish and Aquatic Conservation testified.

The Service received more than 5,000 public comments, including a citizen petition of approximately 600 duplicate comments but excluding comments that were inadvertently posted multiple times. The range of comments varied from those that provided general supporting or opposing statements with no additional explanatory information to those that provided extensive comments and information supporting or opposing the proposed designation. The majority of comments were related to the listing of specific species as injurious (whether the Service should list or not), but not about the subject of this notice, which is about the NEPA process relative to a listing as injurious. The Service received comments from three Federal entities, five State governments, commercial and trade organizations, conservation organizations, other nongovernmental organizations, and private citizens. A summary of the comments follows.

Federal Agency Comments

Comment 1: The U.S. Department of Agriculture (USDA) believes that the proposed categorical exclusion will result in better prevention by the Service of entry of more invasive species into the United States by precluding the need to conduct redundant and costly environmental analyses and that it serves a beneficial purpose. USDA is particularly concerned about injurious species that can negatively affect human beings, agriculture, horticulture, and forestry. USDA agrees with the three justifications for the categorical exclusion submitted by the Department of the Interior and the Service in the July 1, 2013, notice (78 FR 39307).

Response: The Service agrees that the categorical exclusion will make adding species under the Lacey Act more efficient by eliminating the need to develop unnecessary and redundant EAs under NEPA. A more efficient listing process should allow the Service to better prevent the introduction of species that are injurious to the interests listed in the Act.

Comment 2: The Small Business Administration expressed concern that the categorical exclusion would remove transparency to the public. Furthermore, it was unclear why the Department of the Interior would propose a categorical exclusion for the Service's listings under the Lacey Act based upon the premise that those listings will have no environmental impact when, by statute, all wildlife that is proposed to be listed under the Lacey Act must be shown to have an injurious environmental impact.

Response: The Service spoke with the commenter after this comment was submitted and explained that all other aspects of the listing process under the Lacey Act, including the injurious species analysis, economic analysis, and Regulatory Flexibility Act analysis (for small businesses), would still be prepared, and the public would have an opportunity to comment under these various laws and Executive Orders. The Service also explained that species that are injurious would have a negative environmental impact if they were *not* listed, not if they *were* listed. The commenter requested that the Service post that information so that the commenter could refer future questioners to that clarifying information. The Service subsequently posted clarifying information on its Web site.

Comment 3: The National Park Service supports a new categorical exclusion for the listing of species as injurious in the interest of expediting the listing process and addressing nonnative species threats as early as possible to minimize the scale and scope of adverse impacts. Nonnative species represent one of the greatest emerging threats to the integrity of National Park Service ecosystems. Listing under the Lacey Act provides Federal and State agencies with legal and regulatory tools to prevent the import, spread, and introduction of some of the most harmful species.

Response: The Service agrees that conducting NEPA review through the categorical exclusion process should make listing species under the Lacey Act more efficient by eliminating the need to produce unnecessary EAs. This in turn should help protect wildlife and wildlife resources, such as those in the National Park system.

Comments From States

Comment 4: The Association of Fish and Wildlife Agencies (AFWA), which represents North American fish and wildlife agencies, received comments from their Invasive Species Committee and other members of AFWA. All comments from the Committee indicated some level of support for measures to make the listing process more efficient. However, AFWA members were also concerned about the unintended consequences of the categorical exclusion on economic impacts to States, industries, and others. AFWA did not take a formal stance on the categorical exclusion. Instead, they stated their concerns related to the Federal listing of species as injurious, which they believe erodes the States' authorities to manage fish and wildlife. Their recommendations for the Service include: Working with the State fish and wildlife agencies to identify the States' priorities for injurious wildlife concerns; implementing methods outside of NEPA to reduce the time required to complete listings; and ensuring that NEPA analyses include the human environment, specifically the economic impact that the States would incur with respect to eradications and restoration following introductions of injurious wildlife, including impacts due to unintended consequences as a result of listing.

Response: The Service signed a memorandum of understanding in June 2013 with AFWA and the Pet Industry Joint Advisory Council to help identify high-risk species more rapidly and to provide the States and pet industry with scientific information needed for them to help prevent importations of high-risk species under their own regulations and voluntary measures. The Service has already made summaries of this scientific information for some high-risk species available to the public on its Web site and is working on hundreds of more summaries, which the Service will also post publicly when completed. Therefore, the Service is working with AFWA to address priority species by providing States with the information they can use for their own injurious prevention methods and to streamline the listing process by using new methods to rapidly screen and prioritize species for listing or other risk management actions, either by the Service or any State.

The Service interprets AFWA's concern about ensuring through NEPA that the economic impact of not listing (thus incurring need by the States to expend funds for eradication and restoration) or of listing (with unintended consequences) to mean that economic effects of injurious species listings should be clear. Under other laws and Executive Orders not related to NEPA, the Service will continue to provide required analysis on the economic effects of listing a species under the Lacey Act, including effects on small businesses and governments if appropriate, and any other required determinations. To the extent AFWA is concerned about losing NEPA analysis on economic impacts to States, industries, and others, the purpose of an EA is to determine whether to prepare a finding of no significant impact or an EIS (see 43 CFR 46.300). The Service has always found and foresees that it would generally find that listing a species as injurious would have no significant impact on the environment and therefore no EIS is required. CEQ regulations clarify that economic and social effects of an agency action by themselves cannot require preparation of an EIS (see 40 CFR 1508.14), and therefore NEPA is not the appropriate means of considering purely economic impacts of an agency's proposed action. Finally, the comment regarding whether Federal listing of injurious species erodes States' authority to manage resident fish and wildlife is beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA.

Comment 5: Florida Department of Agriculture and Consumer Services (FDACS) opposes the categorical exclusion because of unintended consequences of not considering alternatives. FDACS gives, as an example, its potential interest in undertaking research on control of schistosomiasis, a devastating disease of tropical countries, using triploid sterile black carp. FDACS states that the current process listing ''injurious species'' precludes the development and use of these black carp as a tool to improve human health. FDACS recommends that the Service reassess the application of NEPA relative to listing injurious species from the perspective that certain nonnative species are utilized or can be utilized to the benefit of humans and human and natural environments.

Response: The Service recognizes that even some injurious species may provide benefits to humans and human environments. The Lacey Act provides that species listed as injurious wildlife may be imported and transported by permit for scientific, medical, educational, or zoological purposes. Research such as the commenter describes may be eligible for such a permit. The addition of the categorical exclusion will not affect the permitting process. In addition, the existence of a categorical exclusion is not the end of NEPA review. The Service will still have to determine, on a case-by-case basis, whether the listing of any species as injurious would trigger one of the ''extraordinary circumstances'' found at 43 CFR 46.215, in which case a normally excluded action would require additional analysis through an EA or EIS. One of the extraordinary circumstances is when an action may have significant impacts on public health or safety.

Comment 6: FDACS recommends that the ''agency implement Environmental Assessments or Environmental Impact Analysis processes to determine alternative courses of action and not for the sole purpose of supporting a species listing decision.''

Response: As explained above, even with the categorical exclusion in place, the Service will consider each potential listing on a case-by-case basis to determine whether the listing of that particular species would trigger one of the extraordinary circumstances found at 43 CFR 46.215, in which case a normally excluded action would require additional NEPA analysis through an EA or EIS, which would include reasonable alternatives. In other cases, a categorical exclusion is appropriate and necessary to reduce delays in the Lacey Act listing process for listings that do not have significant individual or cumulative effects on the environment.

Comment 7: FDACS provides citations for guidance on risk assessments for listings.

Response: The Service appreciates FDACS's contributions.

Comment 8: The Indiana Department of Natural Resources supports the categorical exclusion. The agency states that the proposed categorical exclusion serves to make the listing process under the Act more efficient and will limit undesirable environmental and economic effects associated with the injurious species.

Response: We appreciate the Indiana Department of Natural Resources' support.

Comment 9: The Kentucky Department of Fish and Wildlife Resources supports the categorical exclusion. The agency gave an example of a species it wishes to have federally listed as injurious.

Response: We appreciate the Kentucky Department of Fish and Wildlife Resources' support.

Comment 10: Arizona Game and Fish Commission supports this categorical exclusion and the effect it will have on protecting native wildlife from the harmful impacts of invasive exotic species. Their only concern is that, in rare and currently unknown circumstances, this action (obtaining a categorical exclusion) may inhibit their ability to manage fish and wildlife resources.

Response: We appreciate the Arizona Game and Fish Commission's support. The Service hopes to work with States on priorities for listing, especially those species' listings that would assist with the protection of a State's resources. Although the comment did not give an example of a case where using the categorical exclusion may inhibit their ability to manage fish and wildlife resources, we will review each proposed listing on a case-by-case basis when deciding whether the categorical exclusion is applicable.

Comment 11: Mississippi Department of Agriculture and Commerce expressed concern that listing species as injurious has the unintended consequence of eliminating jobs and of economic loss. The commenter provided an example of the black carp, which caused a loss of jobs in the State when the species was listed.

Response: Comments regarding the economic effects of listing species as injurious under the Lacey Act are beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA. Nonetheless, as it did with the black carp listing, the Service will continue to provide analysis on the economic effects of listing a species, including effects on small businesses and governments if appropriate and any other required determinations, as required under other laws and Executive Orders not related to NEPA.

Public Comments

Comment 12: Several commenters asserted that without completion of an EA or EIS, there will be less public participation in the listing process, and parties that may be affected by a listing will be left without a chance for significant input. One commenter stated that these same persons would be without legal recourse and that the categorical exclusion bypasses due process of law. Another commenter stated that public comment opportunities would be diminished without NEPA analysis.

Response: The Service disagrees. Development and application of a categorical exclusion is one type of NEPA review and does not bypass due process. Along with the opportunity to comment on the proposed categorical exclusion, the public will be able to comment on the appropriateness of applying the categorical exclusion whenever a proposed rule to list a new species is published. The Service will also continue to consider each potential listing on a case-by-case basis to determine whether the listing of that particular species would trigger one of the extraordinary circumstances found at 43 CFR 46.215, in which case a normally excluded action would require additional NEPA analysis through an EA or EIS, which would include public involvement. The Service will also continue to follow all applicable statutes, Executive Orders, and regulations, including the Administrative Procedure Act (APA) and Regulatory Flexibility Act of 1980 (Public Law 96–354), when making listing decisions. Under the APA and other law (separate from NEPA), the public will still be provided with the opportunity to review and comment on proposed rules and accompanying documents. The categorical exclusion will not eliminate the opportunity for legal recourse. Please also see the responses to Comments 15 and 23.

Comment 13: A commenter supports the control of invasive species. The commenter believes that full analysis of all environmental, scientific, and economic impacts (including cost–benefit determinations) associated with any injurious wildlife listing is essential.

Response: The Service appreciates the commenter's support of invasive species control. However, the Service is striving to be one step ahead and preclude the need to control invasive species by preventing their introduction to new areas, an approach that is significantly more effective and less obtrusive to the public. By conducting NEPA review through application of the categorical exclusion process, the Service can reduce delays in the Lacey Act listing process while continuing to consider situations where analysis of environmental effects through development of an EA or EIS may be appropriate. In addition, the Service will still complete all required determinations that involve analysis of other environmental and economic impacts.

Comment 14: A commenter referred to their comments submitted for the Service's proposed rule to list nine species of large constrictor snakes as injurious (75 FR 11808; March 12, 2010).

Response: The Service addressed these comments related to the large constrictor snake proposed rule in the final rule to list the Burmese python and three other species (75 FR 3330; January 23, 2012). They involved the Risk Assessment (Reed and Rodda 2009), cold tolerance of the species, use of boas and pythons by zoological institutions, informal education using reptiles, and coordination for management of invasive species. In addition, these comments relate to the Service's process for listing species under the Lacey Act and its consideration of the constrictor snakes in particular, which is outside the scope of this action that addresses the appropriateness of a categorical exclusion under NEPA.

Comment 15: The proposal gives the Service too much authority to list species that may not warrant listing. The careful consideration of economic impacts is especially important in Lacey Act decisions because the Act, on its own, does not explicitly require the Service to consider economic impacts in listing or permitting decisions. Under the Endangered Species Act, the Service must consider the economic impacts of designating critical habitat. The Lacey Act is different and does not specifically require this action. Granting an exclusion would allow the Service to bypass economic considerations when listing species. The only meaningful opportunity to consider economic and social impacts is through NEPA analysis because NEPA requires agencies to weigh competing factors and explain the decision to select their preferred alternative.

Response: The listing process remains the same under the Lacey Act, and the Service must still prepare a thorough evaluation consistent with standards under the APA and all other applicable laws and Executive Orders. The commenter is incorrect that conducting NEPA review through the categorical exclusion process would allow the Service to bypass economic considerations. The Service must still comply with all determinations required by the statutes and Executive orders that govern the Federal rulemaking process, which includes a separate economic analysis prepared under the Office of Management and Budget's guidelines.

Comment 16: An environmental coalition favors the proposed categorical exclusion. Generally, their component groups disfavor NEPA categorical exclusions, but in this case, it makes sense. The United States has one of the developed world's slowest and costliest known systems for regulating imports of nonnative injurious animals. The organization also points out that, contrary to the opposing position that the categorical exclusion might weaken the economic analyses that the Service conducts for listings, the environmental assessments under NEPA analyze only the effects that flow from environmental impacts.

Response: The Service agrees with the commenter's appraisal of the United States' inefficient system for protecting the country against invasion and disease risks. The Service also agrees with the assessment that the economic analysis it prepares under Executive Order (E.O.) 12866, separately from NEPA analysis, is the more informative analysis of the effects of listing. The Service will continue to prepare this analysis when appropriate.

Comment 17: In rare circumstances, such as this Service proposal, review under NEPA may be redundant. The commenter supports the Service's categorical exclusion. The commenter also notes that recent debates surrounding listings have focused on the effects of such listings on small businesses that buy and sell wildlife. However, the commenter notes that a categorical exclusion would not negate the Service's requirement to consider the economic impact to small businesses.

Response: The Service agrees with the commenter's appraisal of the situation regarding economic analyses for small businesses. Those impacts are addressed under separate economic analysis required by E.O. 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act.

Comment 18: The Service has not published its listing criteria, other than in recent listing rules. The commenter believes that the Service should have published its listing criteria before seeking the categorical exclusion.

Response: How the Service determines whether a species qualifies as injurious under the Lacey Act is not related to the environmental effects analysis under NEPA and therefore is beyond the scope of this notice. Nonetheless, the Service notes that while it has not published the factors it considers to determine injuriousness in a stand-alone document, the agency has published them with its proposed and final rules for many years. In addition, the Service has posted the process for preparing proposed and final rules (''Injurious Wildlife Evaluation Process Flow Chart'') on its publicly accessible Web site for more than 5 years (*http://www.fws.gov/injuriouswildlife/pdf_files/InjuriousWildlifeEvaluationProcessFlowChart.pdf*).

Comment 19: An EA is a critical and essential component of any evaluation of a nonnative species as a potential injurious species, and the Service is sidestepping this process. The Service cannot evaluate a species for injuriousness without an EA.

Response: The commenter is confusing two actions involved with listing a species as injurious. The first action is that the Service must determine if the species is injurious under the Lacey Act. This evaluation is presented in the preamble of each proposed and final listing rule. Nothing about this evaluation is changing. Separate from the evaluation of injuriousness, the Service conducts its NEPA review, which in the past had been through development of an EA that evaluated environmental effects of a listing along with alternatives to listing—not whether the species is injurious. This fundamental difference has confused many commenters.

Since the enactment of NEPA, the Service has conducted formal NEPA analyses for injurious species listings spanning 33 years for the following taxa: Raccoon dog (1982), three species of Chinese mitten crabs (1989), brown tree snake (1990), three species of Asian carps (2007), and eight species of large constrictor snakes (2012, 2015). These assessments all resulted in findings of no significant impact (FONSIs) without requiring mitigation measures, and, therefore, did not require further analysis and preparation of an EIS.

Comment 20: A commenter disagrees with the Service's justification that keeping species out of the country and preventing their spread across State lines justifies what they characterize as noncompliance with NEPA and disagrees that listing species under the Lacey Act has no significant effect on the human and natural environment.

Response: Application of a categorical exclusion is one type of NEPA review and not an attempt to sidestep it. The Service will still evaluate, on a case-by-case basis, whether any of the extraordinary circumstances under 43 CFR 46.215 apply before utilizing the categorical exclusion as its means of complying with NEPA. In addition, the purpose of listing a species as injurious is to maintain the baseline condition of that species' presence in a State or U.S. territory or in the United States. This means that no new individuals of a listed species would be imported into the United States or transported across State lines unless authorized under a permit, which sets strict conditions to control and prevent release or escape of the animal. The Lacey Act prohibits import and interstate transport, but does not prohibit possession or intrastate transport. Therefore, if a species has not yet been imported into the United States, it will continue not to be introduced into the United States and continue to have no effect on the U.S. environment. If a species has been imported into the United States, it may remain in the States and U.S. territories where it already occurs at the time of listing (as allowed by State or territorial law), but will not be transported to other States and territories where it does not yet occur. Thus, the environmental effects likewise remain the same upon listing, both for those States and territories where the species already occurs, and for those States and territories where it does not and will not occur. Furthermore, the standard for a categorical exclusion is that there is no ''significant'' effect, not that there is no effect. The Service believes it has made its case that, because adding a species as injurious merely maintains the environmental status quo, these listings qualify for a categorical exclusion as actions that do not have a potentially significant environmental impact, either individually or cumulatively. We have expanded and clarified the discussion for why adding species to the list of injurious species qualifies for a categorical exclusion in this final notice.

Comment 21: An EIS is an essential tool for decisionmaking in evaluating the positive and negative effects of a proposed action.

Response: An EIS is not required if the action agency finds there will be no significant effect on the environment from the action. In evaluating whether adding species as injurious under the Lacey Act is appropriate for a categorical exclusion, the Service has found that such listings qualify as a category of actions that has no significant individual or cumulative effect on the quality of the human environment.

Comment 22: The Service relies on different criteria for listing an unintentionally introduced species versus intentionally imported species and also different criteria for species not yet in the United States versus those already here.

Response: The Service does not use different criteria to evaluate intentionally versus unintentionally introduced species or for those species already imported into the United States versus those not yet imported into the United States. Each species is evaluated on a case-by-case basis using factors that are explained in each proposed and final rule. The results of considering these factors will vary, however, depending on the species' situation. For example, for species that have already been introduced into the United States and are invasive, the Service has more supporting evidence that additional animals of the same species can escape or be released into the wild. This type of information is not available for species that have never been imported into the United States. The Service has listed one unintentionally introduced species, the brown tree snake (55 FR 174390; April 25, 1990). That rule used an earlier, simplified version of criteria to determine injuriousness.

Comment 23: Without an EA, all nonnative species would be ''guilty until proven innocent,'' an apparent reference to the Service's initiative in 1973 to create a list of species that are approved for import, with any other species of Service-listable wildlife prohibited from import. The commenter further states that, if an EA or EIS is no longer required, the Service will categorically indulge in listing species ''with great abandon.'' Another commenter noted that if the Service is planning to substitute some process in lieu of an EA or EIS to add injurious species, no such mechanism is provided in the notice.

Response: These comments reflect an incorrect understanding of the role of the EA or EIS in the listing process. An EA or EIS does not determine a species' injuriousness (see response to Comment 19 for the discussion on the role of the listing analysis under the Lacey Act as compared to environmental review under NEPA). For its evaluations for injuriousness, the Service uses risk assessments, evaluation criteria, and peer review. The Service makes the scientific sources it uses available to the public. The Service prepares separate economic analyses to explain what the economic effect of such a listing could have on the U.S. economy (including small businesses). In addition, as explained above (see response to Comment 12), application of the categorical exclusion process will still involve consideration of any applicable extraordinary circumstances under NEPA. Even with a categorical exclusion, the listing process will still be intensive and time-consuming.

Comment 24: The Service should differentiate between first-time introductions and species already in international trade or present in the United States. For species in trade or already in the United States, the Service should automatically conduct a NEPA-styled EA as well as an EIS as a matter of course.

Response: The commenter does not express disapproval of the Service using a categorical exclusion for first-time introductions (species not yet present in the United States). Rather, the commenter states that a categorical exclusion would be inappropriate for species that are already present in the United States. As explained earlier, the Service stands by its reasoning for why adding species as injurious qualifies for a categorical exclusion under NEPA, regardless of whether the species has already been imported into the United States or not (see response to Comment 20). Nonetheless, the Service will determine on a case-by-case basis whether extraordinary circumstances apply before utilizing the categorical exclusion to comply with NEPA.

Comment 25: A commenter describes their issues with the Service's final environmental assessment for four species of large constrictors snakes (January 2012). For example, the Service failed to acknowledge any adverse environmental impacts in the EA.

Response: The Service's analysis contained in any particular previous EA is beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA for adding species under the Lacey Act. Nonetheless, the Service notes that, in the final environmental assessment for the four species referenced by the commenter (January 2012), the Service stated this potential adverse environmental impact: ''It is plausible that owners of large constrictor snakes may intentionally release their snakes in reaction to Federal regulation. This outcome would be contrary to the agency's intent of stopping spread through interstate movement and importation for approved purposes. * * * Alternative 1, the no action alternative, would minimize the unintended consequence of pet owners unlawfully releasing snakes in reaction to Federal regulation.''

Comment 26: The commenter doubts that a Federal action under a law that is explicitly intended to protect the environment can ever qualify for a categorical exclusion. This is especially so given that the Lacey Act is both an environmental and criminal statute.

Response: CEQ regulations (see 40 CFR 1508.4) and CEQ guidance (CEQ 2010) specifically allow for development and use of categorical exclusions for Federal agencies as one type of NEPA review, with no qualification that actions under certain types of laws, whether environmental or criminal, are not appropriate for categorical exclusions. The Service has explained why adding species as injurious species under the Lacey Act meets the standards for a categorical exclusion (see response to Comment 20). The extraordinary circumstances were developed to accommodate situations that are not appropriate for a particular categorical exclusion when a typically excluded action may have a significant environmental effect and therefore require additional analysis and action. In addition, the needs raised by the commenter for ''careful scientific scrutiny'' and rigorous justification of findings will continue to be provided through the Service's Lacey Act analysis. Regarding the issue of the Lacey Act being a criminal statute, see the response to Comment 28.

Comment 27: It is inappropriate and unlawful to apply a categorical exclusion to listings like those for the constrictor snakes (referring to 75 FR 11808; March 12, 2010), if they are controversial, based on uncertain science, entail potential adverse environmental effects, and impact large numbers of individuals and businesses.

Response: The Department's NEPA procedures at 43 CFR 46.215 identify extraordinary circumstances under which applying a categorical exclusion would be inappropriate and further NEPA review is needed. These circumstances include where there is a high level of controversy over the environmental effects of a proposal and where effects on the environment are highly uncertain and potentially significant or involve unique or unknown environmental risks. In these situations, an EA or EIS would be prepared. Regardless of the level of NEPA review, the Service will prepare an impact analysis on potential impacts to small business under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; Public Law 104–121) and comply with the Regulatory Flexibility Act. In addition, the Lacey Act listings referenced by the commenter were finalized before finalization of this categorical exclusion, so no determination was made whether the categorical exclusion would have been appropriate in that situation. Furthermore, EAs were prepared for both constrictor snake injurious listing rules (75 FR 11808, March 12, 2010; 80 FR 12702, March 10, 2015), both of which resulted in FONSIs.

Comment 28: Several commenters who oppose the categorical exclusion focused on the Service's comparison between the proposed categorical exclusion and the existing categorical exclusion for certain research, inventory, and information collection activities. They noted that injurious wildlife listings are significantly different in their effect from research, inventory, and information collection activities. A few commenters used this as a basis to argue that the justifications presented with the proposed categorical exclusion did not adequately support the exclusion. Some commenters raising this concern noted that injurious species listings involve the threat of criminal sanctions and environmental and economic effects.

Response: The Service agrees that research, inventory, and information collection activities are substantively different from listing species as injurious under the Lacey Act and used the categorical exclusion referred to by the commenters only as an example of consistency with existing approved categorical exclusions because it is directly related to the conservation of fish and wildlife resources ''as long as they do not involve, among other things 'introduction of organisms not indigenous to the affected ecosystem' ''. Under that categorical exclusion, activities that may result in the introduction of a nonindigenous species prevents application of the categorical exclusion, thereby recognizing the environmental impact that such introductions may have. Here, adding a species as injurious under the Lacey Act prevents the introduction of nonindigenous species not already present (either in particular States and territories or, for species not yet imported, in the United States overall), thereby avoiding the environmental effects that would be caused by the species. In addition, other categorical exclusions have been approved that may involve the potential for criminal penalties or economic effects because they involve public use (see 516 DM 8.5 C)

- ''(1) The issuance * * * of permits for activities involving fish, wildlife, or plants regulated under [Service regulations] when such permits cause no or negligible environmental disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.''
- ''(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects.''
- ''(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible environmental effects.''

Comment 29: The Service justifies the categorical exclusion because the listing action is taken under an environmental law. The commenter states that a categorical exclusion is even less justified under the Lacey Act than it is for actions under other conservation laws, such as the Endangered Species Act (ESA), which the commenter states provides for detailed NEPA-like analysis.

Response: The Service does not justify the categorical exclusion simply on the basis that it is an action taken under an environmental law. Rather, the notice (78 FR 39307; July 1, 2013) explained that adding species to the list of injurious wildlife preserves the environmental status quo as one of the justifications for qualifying for the categorical exclusion. See the response to Comment 20 for more details. In addition, the cases cited by the commenter are not applicable. Those cases involved designation of critical habitat under the ESA where the Service argued that NEPA did not apply. Here the Service does not argue that NEPA does not apply to the listing of species under the Lacey Act. Rather the Service has shown how adding species under the Lacey Act meets the NEPA standard for having no significant individual or cumulative effect on the quality of the human environment. As such, the Service will be conducting NEPA review when it lists injurious species in the future, using the process of applying the categorical exclusion and considering potentially applicable extraordinary circumstances.

Comment 30: A commenter states that the public raised comments on the proposed constrictor snake rule and draft EA about the listing's adverse impact on captive-breeding programs and associated research for threatened and endangered species. Other comments included that listing the constrictor snakes could delay necessary interstate and international animal transfers necessary for rare species survival programs and that the Service gave inadequate attention to the concern that listing the snakes would provide owners with an incentive to release their animals to the wild. The commenter uses these as examples to argue that NEPA is the only applicable law in the injurious-species listing process that provides for evaluation of environmental benefits and adverse impacts.

Response: Comments received on any particular past EA and the Service's response to those comments is beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA for adding species under the Lacey Act. Nonetheless, the Service notes that it responded to those comments in its final rule for the large constrictor snakes (75 FR 3350; January 23, 2012;). To the extent the commenter relies on these as examples of alleged impacts that would receive no analysis under the categorical exclusion process, as noted earlier, application of a categorical exclusion also includes consideration of the extraordinary circumstances listed at 43 CFR 46.215. These include when the action may ''have significant impacts on public health or safety,'' ''have significant impacts on species listed, or proposed to be listed, [under the ESA] or have significant impacts on designated critical habitat for these species,'' ''have significant impacts on such natural resources and unique geographic characteristics as [park lands, refuges, wilderness areas, prime farmlands, wetlands] and other ecologically significant or critical areas,'' and ''have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.'' The commenter and others will have the opportunity to raise these or similar alleged effects to assert why the Service should not rely on the categorical exclusion in future listing decisions and should instead conduct additional NEPA review through preparation of an EA or EIS.

Comment 31: The existence of an exclusion to add injurious species under the Lacey Act will lead the Service to default to a no-analysis mode, even in circumstances that do not justify its use.

Response: As noted previously, the existence of a categorical exclusion is not the end of an agency's NEPA review. CEQ and Department regulations are clear that an agency must also consider whether any extraordinary circumstances apply, in which case further NEPA analysis and documents must be prepared for the action. The Service will consider each future listing decision on a case-by-case basis to assess whether any of the extraordinary circumstances apply to the listing of that particular species. In addition, final NEPA decisions, including invocation of a categorical exclusion, is legally reviewable, so persons who believe that the Service has defaulted to a ''no-analysis mode'' have legal recourse.

Comment 32: The [constrictor snake] listing has economic impacts that are orders of magnitude greater than any previous listing. The commenter notes that while such impacts are not environmental, they are relevant to the ''human environment.''

Response: A category of actions is appropriate for a categorical exclusion if they ''do not individually or cumulatively have a significant effect on the human environment'' See 40 CFR 1508.4. The ''human environment'' includes ''the natural and physical environment and the relationship of people with that environment.'' 40 CFR 1508.14. But CEQ NEPA regulations further indicate in this same section that purely ''economic or social effects are not intended by themselves to require preparation of an [EIS].'' Therefore, while it is possible that adding certain species to the list of injurious species under the Lacey Act could have significant economic effects, an EA or EIS is not necessarily the appropriate means to evaluate such effects. In this case, the economic impacts that the commenter refers to are on the reptile industry. The Service's economic analysis for the constrictor snakes, conducted under E.O. 12866, was separate from NEPA analysis and fully analyzed the effects that the commenter raised.

Comment 33: Two species of fish important to U.S. aquaculture have been listed as injurious, and, if environmental assessments were completed, no alternatives were offered for public comment.

Response: The Service's analysis contained in any particular past EA is beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA for adding species under the Lacey Act. Nonetheless, the Service cannot clarify information for the commenter because the comment does not specify which two species of fish are being referred to. Of the species listed as injurious, the only fish for which the Service did not prepare an environmental assessment and instead relied upon a categorical exclusion are in the snakehead (Channidae) family, which is generally not considered important to U.S. aquaculture.

Comment 34: Multiple commenters request that the Service advance its decision making by adopting a risk analysis process that embraces the concepts and approaches described in the National Research Council report *Science and Decisions: Advancing Risk Assessment* (National Research Council 2009) to utilize in the decision making process for nonindigenous species valuable to the public as game, food, bait, or ornamental fish, which would be expected to be commercially valuable to U.S. farmers.

Response: The cited report was commissioned by the Environmental Protection Agency (EPA), which was struggling to keep up with the demands for hazard and dose-response information with limited resources. The report states that the regulatory risk assessment process is bogged down. Many of their risk assessments took decades and led to uncertainty in risk assessments and the need for unevaluated chemicals in the marketplace. The goal was to identify practical improvements that EPA could make. Thus, most of the report's conclusions and recommendations were geared toward EPA and their mission.

The Service uses risk assessments in its evaluation of species as injurious as part of the information used for preparing listing rules (for example, the risk assessments for the black carp (Nico *et al.* 2005) and the large constrictor snakes (Reed and Rodda 2009)), and we will continue to do so. The Service is working on ways to improve its risk assessments and is adapting current modeling techniques specifically for use under the Service's mission. In addition, the Service uses expert opinions (peer review) and stakeholder involvement (through notice and comment) as recommended in the report. Therefore, the Service's process for assessing risk should be in line with the report's goals of reducing the length of time it takes to prepare risk assessments, while also improving them.

Comment 35: Several commenters state their view that the categorical exclusion would diminish industry and public input and would rely only on internal staff or contractors. Similarly, several commenters state their view that consultation with scientists in the academic community, the private sector, and the public sector would provide a more comprehensive perspective than relying only on internal staff or a select group of individuals with a more narrow focus.

Response: The categorical exclusion would not replace the rulemaking process. If a rule is appropriate for a categorical exclusion, the difference in the rulemaking process is that a proposed or final rule would not have an EA or EIS as one of the supplemental documents, nor would it have a finding that corresponds to the EA (either a Finding of No Significant Impact (''FONSI'') or the need for an EIS). Instead, the proposed and final rules would include a brief discussion on why the particular listing is appropriate for the categorical exclusion and that none of the extraordinary circumstances applies. All other aspects of the rulemaking process under the Lacey Act and APA would still be required. The rules would still document the Service's injurious evaluation, the Service would continue to complete all of the required determinations (including under E.O. 12866), and proposed rules would still provide for scientific peer review and a public comment period. The Service would still address environmental and economic aspects in its rules. Proposed and final rules will be published in the **Federal Register**, and supplemental documents, such as those under the Regulatory Flexibility Act, will be made available to the public.

Comment 36: The Service should seek authorization for efficiency improvements for listing species as injurious through Congressional authorization rather than pursuing the categorical exclusion.

Response: As explained in CEQ and Department regulations, complying with environmental review requirements through the categorical exclusion process is a valid form of NEPA review. The Service believes that it has justified why adding species to the list of injurious species under the Lacey Act qualifies for a categorical exclusion.

Comment 37: An organization that advocates on behalf of captive wildlife and works at the state and local level to restrict and ban the private possession of dangerous exotic animals (those that pose significant risk to human health and safety and the environment) strongly supports the allowance of a categorical exclusion in reference to listing injurious species and prohibiting certain species from being imported into the United States and from interstate travel.

Response: The Service appreciates support for its development of the categorical exclusion.

Comment 38: An organization dedicated to amphibian conservation fully supports the Service's efforts to reduce the number of invasive species entering the United States and being transported across State lines. The organization supports placing all amphibians under the Lacey Act so that the Service can prevent amphibian diseases and predatory nonnative species from entering the United States.

Response: The organization is referring to a petition that the Service received regarding amphibians carrying a harmful pathogen. What action, if any, the Service will take in response to this petition is beyond the scope of this action.

Comment 39: Several commenters opposed the categorical exclusion and stated that any use of it should be accompanied by the Service's recognition of the extraordinary circumstances associated with existing and future managed water supply transfers across State lines and hydroelectric operations in the Western United States. Several commenters focused on the essential function of water transfers to a sustainable water supply, how such water supplies are essential to large regions of the United States, and the large number of people served by such projects. Therefore, these commenters asserted that the Service should apply an extraordinary circumstance to aquatic species listings that may affect existing and future interstate managed water supply transfers, especially for species that already exist in the United States.

Response: As discussed earlier, the Service will consider the applicability of all of the extraordinary circumstances found at 43 CFR 46.215 on a case-by-case basis whenever it is considering listing a species as injurious under the Lacey Act. This would include, but not be limited to, if listing the species may ''have significant impacts on public health or safety,'' ''have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks,'' or ''have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources.'' Whether potential effects on existing or future managed water supply transfers or hydroelectric operations would trigger these or any of the other extraordinary circumstances will need to be assessed at the time of the listing.

Comment 40: If a water supply project involves transporting water over a State line, and if a listed invasive species is already well established on both sides of the State line, then the Service should issue an ''extraordinary circumstances'' designation that allows the cross-border water transfer to proceed unimpeded.

Response: A new extraordinary circumstance would not allow an interstate water transfer to proceed, contrary to the commenter's interpretation. An extraordinary circumstance would trigger further analysis in an EA or EIS for an otherwise categorically excludable action. Thus, if an extraordinary circumstance were applicable, the result is that the Service would complete an EA or EIS as part of the species' listing process under the Lacey Act. The results of the EA or EIS might or might not affect the Service's decision whether to list the species.

Comment 41: A commenter does not believe that the Lacey Act applies to the water management activities of its members, such as the flow of water during interstate water supply operations and water transfers through conduits, and encourages the Service to include an exemption of these activities in its Departmental Manual from regulation under the Lacey Act.

Response: The scope of the prohibitions under the Lacey Act and specifically whether the transport prohibition applies to injurious species transported in the course of water management activities is beyond the scope of this action, which addresses the appropriateness of a categorical exclusion under NEPA for adding species to the injurious species list. Nonetheless, the Service notes that it cannot simply exempt these or other types of activities from regulation through the Departmental Manual or otherwise.

Comment 42: Some commenters opposed the categorical exclusion and stated that the Department of the Interior manual should recognize interstate water transfers with a new extraordinary circumstance that would trigger further NEPA review through an EA or EIS. Other commenters requested that the extraordinary circumstances under 43 CFR 46.215 be clarified and expanded to specifically address and include water transport. Some commenters noted that the extraordinary circumstance could be restricted to apply only to adding species that already exist in U.S. waters.

Response: The Service believes the existing extraordinary circumstances are sufficient, and we will still have to determine, on a case-by-case basis, whether the listing of any species as injurious would trigger one of the extraordinary circumstances found at 43 CFR 46.215, in which case a normally excluded action would require additional analysis through an EA or EIS.

Comment 43: Unless an extraordinary circumstance is applied to cross-border water supply transfers, the categorical exclusion may be inconsistent with the Bureau of Reclamation (BOR) operations or policies.

Response: A new extraordinary circumstance would not allow an interstate water transfer to proceed, contrary to the commenter's interpretation. An extraordinary circumstance would trigger further analysis in an EA or EIS for an otherwise categorically excludable action. Thus, if an extraordinary circumstance were applicable, the result is that the Service would complete an EA or EIS as part of the species' listing process under the Lacey Act. The results of the EA or EIS might or might not affect the Service's decision whether to list the species.

Comment 44: Western water agencies are working actively to control the spread of invasive species. One agency employs scuba divers 24 hours a day, 7 days a week to scrape quagga mussels from its intake and pumping structures. Other expensive control measures are mentioned. However, the commenter opposed the categorical exclusion and requests that the Service complete an EA and an EIS during the listing process that recognize the social and economic associated with cross-border water transfers.

Response: The Service has explained why adding a species to the list of injurious species under the Lacey Act qualifies for a categorical exclusion (see response to Comment 20). Provided none of the extraordinary circumstances applies, no EA or EIS is therefore required under NEPA. The Service will consider each listing situation on a case-by-case basis (see response to Comment 12). If an extraordinary circumstance is applicable, the Service will prepare, as appropriate, an EA or EIS that will contain all appropriate NEPA analysis for such documents. The Service evaluates certain effects of Lacey Act listings, including economic effects, under other laws and Executive Orders independent of the NEPA process. These include E.O. 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act. None of these is affected by this categorical exclusion.

Comment 45: A number of commenters opposed the categorical exclusion and expressed concern that the Lacey Act prohibits transport of injurious species across State lines during the course of water management activities. In this regard, they discussed their views of the consequences on water management projects. These commenters talked about what they see as possible effects, including prohibiting all water transfers across State lines, future Lacey Act listings making water transfers ''all but impossible,'' and interrupting or suspending water transfers.

Response: The scope of the prohibitions under the Lacey Act, including whether the transport prohibition applies to injurious species transported in the course of water management activities, is beyond the scope of this action, which addresses only the appropriateness of a categorical exclusion under NEPA. Thus, this action addresses what level of NEPA review should be applied when the agency is considering listing a species as injurious. If the listing of a particular species were to trigger one of the extraordinary circumstances under 43 CFR 46.215, the Service would conduct further analysis and prepare the appropriate documents under NEPA. An EA would discuss the need for the proposal, alternatives to the proposal, and the environmental impacts of the proposed action and alternatives. But it would neither require nor preclude listing the species as injurious or have any effect on what activities are prohibited under the Act. It is also not reasonably foreseeable what actions any particular entity may take in response to a listing under the Lacey Act.

Comment 46: A water agency supports the Service's proposal to create a categorical exclusion for listing species under the Lacey Act, because such an action will promote the Service's goal of protecting the environment from injurious wildlife while ensuring compliance with NEPA. As part of its mission, the water agency monitors and protects reservoirs and streams under its management from invasive species. The Lacey Act is an important element of protection against invasive species. For example, the water agency is acutely aware of the threat quagga mussels and other injurious, invasive *Dreissena* mussel species pose to the waterways under its care. Because of this continuing threat, the water agency continues to work toward the designation of the quagga mussel as an injurious species under the Lacey Act.

Response: The Service agrees that certain aquatic invasive species pose a serious threat to U.S. waterways and water deliveries and strives when appropriate, through listing species as injurious, to prevent that threat, including to water management agencies, throughout the country.

Comment 47: One commenter opposed the categorical exclusion, noting its concern that strict prohibitions on interstate transport of injurious species have been applied to the diversion of water for public supply purposes.

Response: The Lacey Act prohibits the transport of injurious species between States and territories of the United States. The Service has never brought a law enforcement action against a water supply and management entity on a charge that it caused the interstate transport of injurious species as a result of its water management activities.

Comment 48: One commenter asserted that water supply operations and water transfers across State lines do not constitute actions that are prohibited by the Lacey Act. In support of their position, they argue that it is not within the purpose of the Lacey Act when the species is transported due to movement of the medium in which the animals exist, that water management does not constitute transport of a species under 16 U.S.C. 3372, and that water management does not constitute shipment of a species under the Lacey Act (they reference the Nonindigenous Aquatic Nuisance Prevention and Control Act or NANPCA as an example of how Congress does intend to regulate injurious species that are moved in water).

Response: The scope of the prohibitions under the Lacey Act, including whether the transport prohibition applies to injurious species transported in the course of water management activities, is beyond the scope of this action, which addresses only the appropriateness of a categorical exclusion under NEPA (see response to Comment 45). Nonetheless, as explained earlier, the Lacey Act prohibits the transport of injurious species between States and territories of the United States. There is nothing on the face of the statute to indicate that transport of injurious species is exempt when that transport occurs as part of interstate water management operations. The statute does not include limits on the means by which such species could be transported in violation of the law. The commenter is correct that Congress enacted NANPCA to address the unintentional introduction of aquatic species through ballast water. However, there is nothing to suggest that Congress intended NANPCA to be the sole means of restricting the unintentional transport of aquatic injurious species. The commenter indicates that a contrary conclusion would lead to absurd results and disrupt commerce, but does not indicate what would be absurd about a commercial entity exercising due care to ensure that its operations do not result in the transport of injurious species. The commenter's references to the prohibitions under 16 U.S.C. 3372 and the case *Michigan* v. *U.S. Army Corps of Engineers,* 911 F. Supp. 2d 739 (N.D. Ill. 2012) are beside the point. That law and the court's holding regarding the movement of Asian carp do not address the scope of the Lacey Act's transport prohibition. The commenter's argument about interpretation of the statutory term ''shipment'' also relies, in part, on the holding in the *Michigan* case. But just because that court held that activities affecting the dispersal of Asian carp in the Chicago Area Waterway System was not an unlawful transport under 16 U.S.C. 3372 in that case does not mean that a court would find that interstate movement of injurious aquatic species by water management entities is not a violation of the Lacey Act. How the rule of lenity would influence a court's reasoning in a Lacey Act case involving transport of injurious species by a water management entity is also unknown. Finally, the commenter is incorrect that there is no indication whatsoever that Congress intended the Lacey Act to address the interstate transport of aquatic injurious species related to water management activities. In 2010, when Congress amended the Lacey Act to add the bighead carp, one of the bill's sponsors noted that addition of the species would ''help deter further intentional or accidental introduction of the species into our waterways'' (see 156 Cong. Record 7821).

Comment 49: A few commenters oppose the categorical exclusion on the argument that the justifications in the proposed categorical exclusion did not adequately support the exclusion. They first point to the Service's statement that listings ''ensure that certain potential effects associated with introduction of species that have been found to be injurious do not occur'' and note that the zebra mussel has continued to spread despite being listed as injurious by Congress in 1990. They also argue that indirect and incidental environmental effects of listing decisions, such as construction required to avoid a violation of the law, need to be considered in an EA or EIS. This is especially true where the species has no commercial value but may be transferred inadvertently through movement of other goods or resources or the shipping of other things. It may have unintended consequences of causing construction of entirely new infrastructure projects that has its own set of environmental issues. One commenter noted that the Lacey Act does not require a showing that the transport presents a risk of harm before the prohibition applies.

Response: It is true that certain injurious species have spread to additional States following their listing under the Lacey Act. That does not mean, however, that subsequent movement across State lines was consistent with the statute. Regarding consideration of indirect and incidental environmental effects of actions taken by entities to avoid a potential violation of law, the Service cannot reasonably foresee what actions, if any, an entity might take to avoid potentially transporting an injurious species in the course of its water management or similar activities, let alone what environmental effect would occur from these possible actions. There are an almost infinite number of possible responses that various entities might take to avoid transporting a particular injurious species. Several commenters noted the efforts undertaken by the North Texas Municipal Water District to avoid transporting zebra mussels between Texas and Oklahoma, but also noted that similar efforts by other water managers would not be feasible. Another commenter stated only that some listings might require the construction of ''new infrastructure.'' Thus, the commenters themselves demonstrate that, while the North Texas Municipal Water District undertook one type of actions, other water managers are likely to take other (unidentified) actions–or none at all. The Service cannot analyze under NEPA indirect effects that are not reasonably foreseeable.

Comment 50: Some commenters who oppose the categorical exclusion and argue that the justifications did not adequately support the exclusion also stated that previous listings that resulted in a FONSI did not involve the legal and practical complexities presented by an aquatic species impacting interstate water supply operations and water transfers. Another commenter asserted that listings of future injurious aquatic species that move through multiple pathways and affect multiple aspects of the environment, such as water supply and quality, along with having economic impacts on industry and recreation, should include consideration of all these effects under NEPA.

Response: The Service disagrees. The agency listed the silver, black, and largescale silver carps (collectively called Asian carps) as injurious in 2007. These aquatic species have the potential to be transported across State lines through water management activities. The EAs for these three species analyzed all reasonably foreseeable direct, indirect, and cumulative effects of the listings and found that adding the species to the list of injurious species would have no significant environmental impact. In addition, as noted earlier (see response to Comment 12), the Service will consider each potential listing on a case-by-case basis to determine whether the listing of that particular species would trigger one of the ''extraordinary circumstances'' found at 43 CFR 46.215, in which case a normally excluded action would require additional NEPA analysis through an EA or EIS.

Comment 51: The categorical exclusion will not make the injurious species listing process more effective and efficient. On the contrary, environmental review of listing effects on otherwise lawful activities will actually be postponed and become more complicated.

Response: We disagree. The Service will evaluate early in the listing process whether any of the extraordinary circumstances at 43 CFR 46.215 apply and thereby determine early in the rulemaking process whether an EA or EIS should be completed. This step is not expected to slow down the listing process, even if the Service determines that an EA or EIS is needed.

Comment 52: Enforcement under the Lacey Act could conflict with interstate agreements and undermine authorized purposes of the Federal Government's water storage and distribution facilities throughout the West.

Response: Possible enforcement actions under the Lacey Act are beyond the scope of this action, which addresses only the appropriateness of a categorical exclusion under NEPA for adding species to the list of injurious species.

Comment 53: The Service says it would use a separate NEPA review for any control measures needed to deal with an injurious species, yet the Service does not have regulatory authority over such control measures.

Response: Control measures can be conducted under the Service's or another Federal, State, tribal, or territorial agency's legal authority. For example, any injurious species control measures on national wildlife refuges would be conducted under the Service's refuge management authorities.

Comment 54: Some commenters expressed concern that the zebra mussel listing incurred tremendous costs in the North Texas Municipal Water District. One commenter argued that this serves as an example of how Lacey Act listings can disrupt water supply operations. Other commenters noted that for water management agencies to similarly prevent the occurrence of zebra mussels, quagga mussels, or other aquatic invasive species in public water systems would be impracticable, and listing the species would make it impossible to operate public water supplies without untenable exposure to criminal liability, threatening their viability and cost-effective operations.

Response: The Service recognizes the extent to which the North Texas Municipal Water District has gone to prevent the interstate transport of zebra mussels. This extensive cost is what the Service hopes to preclude by listing species before they become introduced or established. Please also see our response to Comment 45.

Comment 55: A city mayor was concerned that the ''fast-track'' of listing where water supplies are concerned would incur significant costs for them in fines.

Response: As noted earlier, the prohibitions under the Lacey Act and possible enforcement actions are beyond the scope of this action, which addresses only the appropriateness of a categorical exclusion under NEPA for adding species to the list of injurious species.

Comment 56: If the Service is concerned about efficiency in the injurious listing process, the Service should more thoroughly examine the other elements required for the listing process. One commenter noted that an EA or EIS could be developed concurrently with other analyses required to list a species.

Response: The Service is reviewing all elements of the listing process to make it more efficient within its authorities. But the Service has made its case that adding species as injurious meets the standards for a categorical exclusion (see response to Comment 20). Conducting NEPA review through the categorical exclusion process is expected to result in a more efficient listing process.

Comment 57: The categorical exclusion might restrict the ability of circuses, zoos, and other licensed exhibitors to transport animals across State lines.

Response: It is unclear how the categorical exclusion might restrict certain entities from transporting animals across State lines when the categorical exclusion is related only to the type of NEPA review conducted when the Service is considering a species for listing. In addition, the Lacey Act allows for the issuance of permits authorizing interstate transport or import for, among other things, zoological purposes. Licensed exhibitors and zoos may apply for a permit.

Categorical Exclusion

The Department and the Service find that the category of actions described in the categorical exclusion at the end of this notice does not individually or cumulatively have a significant effect on the human environment. This finding is based on the analysis that the listing action preserves the environmental status quo: It maintains the baseline population of the species and any environmental effects related to the presence or absence of the species. All previous NEPA reviews of species listings have consistently resulted in Findings of No Significant Impact. Finally, the categorical exclusion is consistent with existing approved Service categorical exclusions involving introduction of nonindigenous species.

Adding species to the list of injurious wildlife meets the standard for a category of actions that does not individually or cumulatively have a significant effect on the human environment because it merely preserves the environmental status quo within the United States. The Lacey Act prohibits importation into the United States and interstate transport of any animals already located within the United States. Therefore, the Lacey Act has two regulatory and environmental effects. For species not yet imported into the United States, it prevents them from entering the country and thereby avoids any environmental impact—positive or negative—that otherwise would be caused by the species. For injurious animals that were imported into the United States prior to the species' listing, it prevents the species spread to additional States and U.S. territories where it does not yet occur and thereby avoids any environmental impact—positive or negative—from the species in these other areas. But the Lacey Act does not prohibit possession or transport within a State or U.S. territory where the species already occurs. Therefore, a Lacey Act listing may do little to prevent environmental effects in States and territories where injurious animals already occur. Federal, State, territorial, and tribal agencies; environmental groups and associations; and individuals may undertake control measures to reduce or eliminate the species already in their State or territory, but these actions are not taken under the authority of the Lacey Act. Likewise, State, territorial, or tribal governments may enact laws that prohibit possession or other activities with the species within their State or territory, but these also are not under the authority of the Lacey Act. In the absence of such additional actions, people can continue to own, breed, and sell injurious animals already located within their State or territory, as allowed under State, territorial, or tribal law.

Therefore, listing species under the Lacey Act ensures that certain adverse effects associated with the introduction of injurious species will not occur. The injurious species listings maintain the state of the affected environment into the future—the state of the environment prior to listing and prior to potential introduction in the absence of a listing. Thus, preventing a nonindigenous injurious species from being introduced into an area in which it does not naturally occur cannot have a significant effect on the human environment.

Because the categorical exclusion also serves to make the listing process under the Act more efficient and adding species to the injurious species list has the sole purpose of limiting undesirable environmental effects in the future, the categorical exclusion itself supports maintenance of the environmental status quo.

This categorical exclusion also is consistent with the conclusions of every NEPA review conducted in conjunction with adding a species as injurious under the Lacey Act. Every EA prepared as part of an injurious species listing since 1982 (the first rule promulgated after environmental-assessment guidance was established under NEPA) has resulted in a finding that adding the species as injurious would have no significant environmental impact (a FONSI) without requiring mitigation measures and, therefore, did not require preparation of an EIS. See our July 1, 2013, notice proposing the categorical exclusion (78 FR 39307) for a list of past EAs and the environmental effects analyzed in those EAs. While these species, when present in an U.S. ecosystem, may have a significant effect on the environment, the regulatory action of adding them to the list of injurious species has no significant effect for the reasons explained above. That each EA has resulted in a FONSI strongly suggests that subsequent listings will also have no significant environmental impacts.

Finally, this categorical exclusion is consistent with existing Service categorical exclusions. For example, the Departmental Manual already includes a categorical exclusion for research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources as long as they do not involve, among other things, ''introduction of organisms not indigenous to the affected ecosystem'' (see 516 DM 8.5 B (1)). Thus, research, inventory, and information collection activities related to conservation of fish and wildlife resources that would involve the introduction of nonindigenous species would require additional NEPA review, while the absence of that effect, among other things, does not. This categorical exclusion therefore recognizes the potential environmental impact from nonindigenous species introductions that should be analyzed through an EA or EIS. Here, adding a species as injurious under the Lacey Act prevents the introduction of a nonindigenous species not already present (either in particular States and territories or, for species not yet imported, in the United States overall), thereby avoiding any environmental effect that would be caused by the species.

CEQ has reviewed the Service's summary of the substantive comments it received and its responses to those comments. CEQ approved the Department of the Interior's categorical exclusion in a letter dated September 25, 2015. Therefore, the Department is adding a categorical exclusion to the Department Manual at 516 DM 8.5 C, which covers ''Permit and Regulatory Functions.'' This section includes approved categorical exclusions that address, among other things, the issuance of regulations pertaining to wildlife. This addition would provide for a categorical exclusion for only the regulatory action of listing species as injurious (that is, adding a species to one of the lists in 50 CFR part 16). The regulatory listing action places the species on a list that prohibits their importation into the United States and interstate transportation.

The Service recognizes that certain potential species listings, when reviewed on a case-by-case basis, could trigger one of the extraordinary circumstances for which it is not appropriate to utilize the categorical exclusion. In such cases, the potential listing could have a significant environmental effect and would require additional NEPA analysis. These extraordinary circumstances include, but are not be limited to, listings that may have highly controversial environmental effects, involve unresolved conflicts concerning alternative uses of available resources, have highly uncertain and potentially significant environmental effects, or involve unique or unknown environmental risks (43 CFR 46.215). Thus, prior to applying the categorical exclusion when considering adding a species as injurious under the Act, the Service will review all of the extraordinary circumstances in the Department's NEPA regulations. If any extraordinary circumstance does apply, the Service will conduct additional NEPA analysis and prepare an EA or EIS.

The categorical exclusion does not cover all Service activities related to injurious species. For example, the categorical exclusion does not cover control actions (such as constructing barriers) or eradication actions (such as applying pesticides). Any such injurious species management measures conducted by the Service will undergo appropriate NEPA analysis and documentation prior to implementation of the action. The categorical exclusion also does not cover the issuance of permits (available for individual specimens imported or transported for zoological, educational, medical, or scientific use), which is already covered under an existing categorical exclusion (516 DM 8.5 C(1)). The categorical exclusion also does not cover the removal of species from the injurious wildlife lists under the Act.

Amended Text for the Departmental Manual

The text that will be added to 516 DM (see **ADDRESSES**) is set forth below:

Part 516: National Environmental Policy Act of 1969

Chapter 8: Managing the NEPA Process—U.S. Fish and Wildlife Service

* * * * *

8.5 Categorical Exclusions.

* * * * *

C. *Permit and Regulatory Functions.*

* * * * *

(9) The adding of species to the list of injurious wildlife regulated under the Lacey Act (18 U.S.C. 42, as amended) as implemented under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transportation of wildlife found to be injurious.

Dated: September 30, 2015.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2015–27360 Filed 10–28–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on November 30, 2015.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat and field notes of the corrective dependent resurvey in Township 34 North, Range 11 West, South of the Ute Line, New Mexico Principal Meridian, Colorado, were accepted on August 31, 2015.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in Township 48 North, Range 3 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in Township 47 North, Range 4 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and survey in Township 47 North, Range 3 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and survey in Townships 47 North, Ranges 3 and 4 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in Township 48 North, Range 1 East, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and survey in Township 47 North, Range 2 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and metes-and-bounds survey in Township 49 North, Range 1 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 3 sheets, incorporating the field notes of the dependent resurvey and survey in Townships 50 and 51 North, Range 1 East, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 5 sheets, incorporating the field notes of the dependent resurvey and survey in Township 51 North, Range 1 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

The plat, in 6 sheets, incorporating the field notes of the dependent resurvey and survey in Township 48 North, Range 3 West, New Mexico Principal Meridian, Colorado, was accepted on September 30, 2015.

Dale E. Vinton,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 2015–27565 Filed 10–28–15; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting for the Coastal Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Coastal Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Coastal Oregon RAC will hold a public meeting Thursday, November 12, 2015, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The Coastal Oregon RAC will meet at the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.

FOR FURTHER INFORMATION CONTACT: Megan Harper, Public Affairs Specialist, BLM Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459, (541) 751–4353, or email *m1harper@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Coastal Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM resource managers regarding management plans and proposed resource actions on public land in coastal Oregon. Tentative agenda items for the November 12, 2015, meeting include: Orientation to the Coos Bay District programs and introduction of new RAC members; developing meeting protocols and planning future meeting agendas, dates, and locations. Any other matters that may reasonably come before the Coastal Oregon RAC may also be addressed. This meeting is open to the public in its entirety.

A public comment period will be available on the day of the session. Unless otherwise approved by the Coastal Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the Coastal Oregon RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Coastal Oregon RAC.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

Patricia Burke,

Coos Bay District Manager.

[FR Doc. 2015–27560 Filed 10–28–15; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Vehicular Smartwatch Systems, Related Software, Components Thereof, and Products Containing the Same, DN 3093;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Intellectual Capital Consulting, Ltd. on October 26, 2015. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain vehicular smart watch systems, related software, components thereof, and products containing the same. The complaint names as respondents Hyundai Motor Company of South Korea; Hyundai Motor America of Fountain View, CA; Hyundai Motor Manufacturing Alabama of Montgomery, AL; General Motors Company of Detroit, MI; General Motors, LLC of Detroit, MI; Onstar, LLC of Detroit, MI; Bayerische Motoren Werke AG of Germany; BMW of North America, LLC of Woodcliff Lake, NJ; Volkswagen AG of Germany; Volkswagen Group of America, Inc. of Herndon, VA; Audi AG of Germany; Audi of America, Inc. of Herndon, VA; Audi of America, LLC of Auburn Hills, MI; Volvo Car Corporation of Sweden; Volvo Cars of North America, LLC of Rockleigh, NJ; Dr. Ing. h.c. F. Porsche AG of Germany; Porsche Cars North America, Inc. of Atlanta, GA; DEI Holdings, Inc. of Vista, CA; Directed Electronics, Inc. of Vista, CA; Samsung Electronics Co., Ltd. of Korea; Samsung Electronics America, Inc. of Ridgefield Park, NJ; LG Corporation of South Korea; LG Electronics USA, Inc. of Englewood Cliffs, NJ; LG Electronics Mobile Research. U.S.A., L.L.C. of San Diego, CA; Sony Corporation of Japan; Sony Corporation of America of Ney York, NY; Sony Electronics, Inc. of San Diego, CA; Lenovo Group Limited of China; Lenovo Holding Company, Inc. of Morrisville, NC; Lenovo (United States), Inc. of Purchase, NY; Motorola Mobility, Inc. of Chicago, IL; Apple, Inc. of Cupertino, CA; Station Digital Media, Inc. of Long Beach, CA; and Rego Apps, LLC of Celebration, FL. The complainant requests that the Commission issue general exclusion orders, a permanent cease and desist order, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3093'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures.[4]) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 26, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–27613 Filed 10–28–15; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF JUSTICE

[OMB Number 1121–0218]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection: Census of Juveniles in Residential Placement

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until December 28, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Brecht Donoghue, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *brecht.donoghue@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Census of Juveniles in Residential Placement.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state agencies, local governments, non-profit organizations, and for-profit organizations. This census will be sent to facilities that hold juvenile delinquent and/or juvenile status offenders. It requests information on juvenile offender characteristics (age, sex, race, ethnicity); state of origin; placing agencies for these youth; government level; and the legal status. The data collected is used to inform the Nation's understanding of youth placed out of the home due to some contact with the juvenile justice system.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,386 respondents will complete a 3.625-hour questionnaire.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 8,630.5 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: October 26, 2015.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2015–27552 Filed 10–28–15; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On October 26, 2015, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States* v. *The Municipality of San Juan, the Puerto Rico Department of Natural and Environmental Resources, the Puerto Rico Department of Transportation and Public Works, the Puerto Rico Highway and Transportation Authority, and the Commonwealth of Puerto Rico,* Civil Action No. 3:14-cv-1476–CCC.

The proposed consent decree resolves the United States' claims against the Municipality of San Juan (''San Juan'') under the Clean Water Act (CWA), 33 U.S.C. §§ 1251–1387, concerning CWA violations throughout San Juan's municipal separate storm sewer system (''MS4''). The proposed consent decree provides for injunctive relief to be implemented in a two-stage, multi-phased study and repair of San Juan's entire MS4. The proposed consent decree resolves only the violations alleged against San Juan in the Complaint through the date of lodging of the Consent Decree and does not resolve claims against the other Defendants.

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. *The Municipality of San Juan,* D.J. Ref. No. 90–5–1–1–09551. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the 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 $10.25 (25 cents per page reproduction cost) for a copy of the proposed consent decree (copies of the appendices attached to the consent decree are not included in this amount) payable to the United States Treasury.

Robert E. Maher Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

Appendix 1

BILLING CODE 4410–15–P

AVISO

DEPARTAMENTO DE JUSTICIA DE LOS ESTADOS UNIDOS

AVISO DE RADICACIÓN DE UN DECRETO POR CONSENTIMIENTO PROPUESTO A TRAVÉS DE LA LEY DE AGUA LIMPIA

El 26 de octubre de 2015, el Departamento de Justicia de los Estados Unidos radicó un decreto de consentimiento propuesto ante el Tribunal de Distrito de los Estados Unidos correspondiente al Distrito de Puerto Rico en una demanda judicial titulada *Los Estados Unidos contra* del Municipio de San Juan, *el Departamento del Transportacion y Obras Publicas y la Autoridad de Carreteras y Transportacion, y el Estado Libre Asociado de Puerto Rico*, Causa Civil Núm. 3:14-cv-1476-CCC.

El decreto por consentimiento propuesto resuelve las reclamaciones de los Estados Unidos en contra del Municipio de San Juan ("San Juan") a través de la Ley de Agua Limpia, Secciones 1251-1387 del Título 33 del Código de los Estados Unidos, relacionado con violaciones a la Ley de Agua Limpia a través del sistema de alcantarillado pluvial separado municipal ("MS4" por sus siglas en inglés). El decreto por consentimiento propuesto provee para la implementación de todas las medidas acordadas en varias fases para poder completar los estudios y las reparaciones necesarias en todo el MS4. El decreto por consentimiento propuesto solo resuelve las alegaciones en contra del Municipio de San Juan hasta la fecha de la radicación en el tribunal. Este acuerdo por consentimiento no resuelve las alegaciones en contra de los otros demandados nombrados en la demanda original.

La publicación de este aviso abre un período para recibir los comentarios del público sobre el decreto por consentimiento propuesto. Los comentarios deben dirigirse al Fiscal

Auxiliar General, División de Recursos Naturales y Medioambiente, y deben mencionar el caso titulado *Los Estados Unidos contra del Municipio de San Juan,* D. J. Ref. núm. 90-5-1-1-09551. Todos los comentarios deben enviarse antes de que transcurran treinta (30) días de la fecha de publicación de este aviso. Los comentarios pueden enviarse por correo electrónico o por correo regular:

Para enviar comentarios:	*Envíelos a:*
Por correo electrónico	Pubcomment-ees.enrd@usdoj.gov
Por correo regular	Assistant Attorney General U.S. DOJ – ENRD P.O. Box 7611 Washington, D.C. 20044-7611

Durante el período de comentarios públicos, el decreto por consentimiento propuesto puede examinarse y descargarse en este sitio web del Departamento de Justicia: http://www.justice.gov/enrd/consent-decrees. Proporcionaremos una copia impresa del decreto por consentimiento propuesto de recibir previa petición por escrito y pago de los costos de reproducción. Envíe su solicitud y pago a:

Consent Decree Library
U.S. DOJ – ENRD
P.O. Box 7611
Washington, D.C. 20044-7611

Adjunte un cheque o giro postal de $10.25 (25 centavos por el costo de reproducción por página) por una copia del decreto por consentimiento propuesto (las copias de los apéndices adjuntos al decreto por consentimiento no están incluidos en esta cantidad) pagadero al United States Treasury.

Robert E. Maher Jr.
Jefe Asistente de Sección,
Sección de Seguridad del Medioambiente,
División de Recursos Naturales y Medioambiente.

[FR Doc. 2015–27597 Filed 10–28–15; 8:45 am]
BILLING CODE 4410–15–C

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of Information Collection Requirements; Comment Request

AGENCY: Office of Federal Contract Compliance Programs, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). 44 U.S.C. 3506(c)(2)(A). The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the Non-construction Supply and Service Information Collection. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice or by accessing it at *http://www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 28, 2015.

ADDRESSES: You may submit comments, identified by Control Number 1250–0003, by any of the following methods:

Electronic comments: The Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the regulations.gov Web site or well in advance of the deadline if submitting by mail to account for potential delays. Comments, including personal information provided, become a matter of public record and will be posted to the regulations.gov Web site. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording), upon request, by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Federal Contractor Compliance Programs (OFCCP) administers and enforces the three nondiscrimination and equal employment opportunity laws listed below.

• Executive Order 11246, as amended (E.O. 11246).

• Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503).

• Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).

Generally, these authorities prohibit employment discrimination and require affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran by Federal contractors. Additionally, federal contractors and subcontractors are prohibited from, discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. This clearance request covers aspects of the EO 11246, Section 503, and VEVRAA non-construction supply and service program, particularly the Scheduling Letter and Itemized Listing. OFCCP is not proposing to collect new information with this renewal. Instead, OFCCP is seeking to clarify the information collection that is the subject of this renewal. To view this current supply and service information collection, go to *http://www.regulations.gov.*

E.O. 11246 applies to Federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract in excess of $10,000, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. EO 11246 also applies to government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to disability. Section 503 applies to Federal contractors and subcontractors with contracts in excess of $15,000. [1]

VEVRAA prohibits employment discrimination against protected veterans and requires affirmative action to ensure that persons are treated without regard to their status as a protected veteran. VEVRAA applies to Federal contractors and subcontractors with contracts of $150,000 or more. [2]

The ICR addresses EO 11246, Section 503 and VEVRAA supply and service program components subject to the Paperwork Reduction Act of 1995 (PRA).

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the compliance and enforcement 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

[1] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

[2] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: DOL seeks the approval of the revision of this information in order to carry out its responsibility to enforce the anti-discrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Revision of OMB 1250–0003.

Agency: Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements, Supply and Service.

OMB Number: 1250–0003.

Agency Number: None.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 104,545.

Total Annual responses: 104,545.

Average Time per Response (approximation due to rounding): 91 hours.

Estimated Total Burden Hours (approximation due to rounding): 9,559,739.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $140,263.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this ICR and become a matter of public record.

Dated: October 22, 2015.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2015–27580 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agricultural Recruitment System Forms Affecting Migratory Farm Workers

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Agricultural Recruitment System Forms Affecting Migratory Farm Workers,'' 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 November 30, 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=201509-1205-006* (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–ETA, 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: 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 Agricultural Recruitment System Forms Affecting Migratory Farm Workers information collection. Employers and farm labor contractors complete forms ETA–790 (the Agricultural and Food Processing Clearance Order) and ETA–795 (the Agricultural Food and Food Processing Clearance Memorandum) to recruit agricultural workers in compliance with the regulations at 20 CFR 653.500. These same forms are also used by State Workforce Agencies and American Job Centers to recruit workers from outside the local commuting area. Wagner-Peyser Act section 12 authorizes this information collection. *See* 29 U.S.C. 49k.

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 1205–0134.

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 October 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 26, 2015 (80 FR 36855).

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 1205–0134. 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–ETA.

Title of Collection: Agricultural Recruitment System Forms Affecting Migratory Farm Workers.

OMB Control Number: 1205–0134.

Affected Public: State, Local and Tribal Governments; Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 8,586.

Total Estimated Number of Responses: 9,356.

Total Estimated Annual Time Burden: 8,606 hours.

Total Estimated Annual Other Costs Burden: $29,471.

Dated: October 24, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27568 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Foreign Currency Transactions, Prohibited Transaction Class Exemption 1994–20

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Foreign Currency Transactions, Prohibited Transaction Class Exemption 1994–20,'' 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 November 30, 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=201510-1210-006* (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–EBSA, 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: 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 Foreign Currency Transactions information collection requirements in Prohibited Transaction Class Exemption (PTE) 1994–20, Foreign Exchange Transactions. The PTE permits, under circumstances the Employee Retirement Income Security Act of 1974 (ERISA) would otherwise preclude, the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker dealer or an affiliate thereof that is a party in interest with respect to such plan. The exemption imposes recordkeeping and disclosure requirements. Internal Revenue Code section 4975(c)(2) and ERISA section 408(a) authorize this information collection. *See* 26 U.S.C. 4975(c)(2); 29 U.S.C 1108(a).

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 1210–0085.

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 November 30, 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 17, 2015 (80 FR 34696).

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 1210–0085. 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–EBSA.

Title of Collection: Foreign Currency Transactions, Prohibited Transaction Class Exemption 1994–20.

OMB Control Number: 1210–0085.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 248.

Total Estimated Number of Responses: 1,240.

Total Estimated Annual Time Burden: 200 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: October 26, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27596 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; H–2B Foreign Labor Certification Program

ACTION: Notice.

SUMMARY: On October 30, 2015, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''H–2B Foreign Labor Certification Program,'' 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 November 30, 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*= 201510–1205–004 (this link will only become active on October 31, 2015) 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–ETA, 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: 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 H–2B Foreign Labor Certification Program information collection. Before an employer may petition the Department of Homeland Security for any temporary or permanent skilled or unskilled foreign workers, the employer must submit a request for certification to the Secretary of Labor containing elements prescribed by the Immigration and Nationality Act (INA) and its implementing regulations at 8 CFR 214.2(h)(6). The H–2B visa program enables an employer to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature.

Information collected through Form ETA–9142B, H–2B Application for Temporary Employment Certification, is the basis for the Secretary's determination of whether unemployed U.S. workers are not available to perform the services or labor and U.S. workers' wages and working conditions will not be adversely affected by H–2B workers' employment. The Secretary must issue an affirmative determination before the Department of Homeland Security may approve a petition for H–2B workers. Form ETA–9142B is used to collect information to permit the DOL to meet its statutory responsibilities for administering the H–2B temporary labor certification program.

This ICR also includes Forms ETA–9142B Appendix B and ETA–9155, H–2B Registration. Form ETA–9155 allows the DOL to make a preliminary determination with respect to an employer's temporary need and to issue an H–2B Registration for the employer to use for a period up to three years in connection with subsequent labor certification applications. An H–2B employer must register with the DOL prior to submitting a request for labor certification. Finally, employers in the seafood industry may file the Form ETA–9142B Seafood Attestation in order to avail themselves of the staggered entry provision for H–2B workers enacted by Consolidated and Further Continuing Appropriations Act, 2014 section 113. *See* Pub. Law 113–235 section 113.

This information collection has been classified as a revision, because of changes to Forms ETA–9142B, ETA–914B-Appendix B, and the Form ETA–9155 instructions made in response to public comments the ETA received in response to an earlier notice published in the**Federal Register** on July 10, 2015 (80 FR 39801). Immigration and Nationality Act sections 101(a)(15)(H)(ii)(b) and 214(c) and Consolidated Appropriations Act, 2014 section 113 authorize this information collection. *See* 8 U.S.C. 1011(a)(15)(H)(ii)(b), 1184(c); Public Law 113–76 section 113.

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 1205–0509. 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 July 10, 2015 (80 FR 39801).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by November 30, 2015. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0509. 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–ETA.

Title of Collection: H–2B Foreign Labor Certification Program.

OMB Control Number: 1205–0509.

Affected Public: State, Local, and Tribal Governments; Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 7,355.

Total Estimated Number of Responses: 180,185.

Total Estimated Annual Time Burden: 48,800 hours.

Total Estimated Annual Other Costs Burden: $351,800.

Dated: October 24, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27567 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Genetic Information Nondiscrimination Act of 2008 Research Exception Notice

ACTION: Notice.

SUMMARY: On October 30, 2015, the Department of Labor (DOL) will submit the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Genetic Information Nondiscrimination Act of 2008 Research Exception Notice,'' 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 November 30, 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=201509-1210-003* (this link will only become active on October 31, 2015) 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–EBSA 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 Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, Research Exception Notice information collection codified in regulations 29 CFR 2590.702A(c)(5)(iv). GINA sections 101 through 104 respectively amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act, the Internal Revenue Code of 1986, and the Social Security Act to prohibit discrimination in health coverage based on genetic information. GINA sections 101 through 103 generally prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information and from collecting such information. The GINA amended ERISA section 702 by adding paragraph (c) that limits a group health plan and an insurer offering such a plan from requesting or requiring genetic testing. *See* 29 U.S.C. 1182(c). Paragraph (c)(4) provides a research exception that allows a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if specified conditions are satisfied that include making certain disclosures to the participant or beneficiary. *See* 29 U.S.C. 1182(c)(4). The EBSA has developed a prototype notice that may be used. GINA section 101(f) authorizes this information collection. *See* 29 U.S.C. 1132 note.

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 1210–0136.

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 October 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 17, 2015 (80 FR 34696).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by November 30, 2015. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0136. 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–EBSA.

Title of Collection: Genetic Information Nondiscrimination Act of 2008 Research Exception Notice.

OMB Control Number: 1210–0136.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 3.

Total Estimated Number of Responses: 3.

Total Estimated Annual Time Burden: 1 hour.

Total Estimated Annual Other Costs Burden: $16.

Dated: October 23, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27530 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employer-Provided Survey Attestations To Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey

ACTION: Notice.

SUMMARY: On October 30, 2015, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey,'' to the Office of Management and Budget (OMB) for review and approval 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 November 30, 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=201510-1205-006* (this link will only become active on October 31, 2015) 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–ETA, 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: 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 Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey information collection. This ICR supports ETA regulations regarding the use of wage surveys in the H–2B labor certification program. The regulations at 20 CFR 655.10(b)(4) require an employer to submit Form ETA–9165 to answer questions about any private wage survey submitted to obtain a prevailing wage determination. Immigration and Nationality Act sections 101(a)(15)(H)(ii)(b) and 214(c) authorize this information collection. *See* 8 U.S.C. 1011(a)(15)(H)(ii)(b) and 1184(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 1205–0516.

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 October 31, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years. 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 July 16, 2015 (80 FR 42124).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by November 30, 2015. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0516. 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–ETA.

Title of Collection: Employer-Provided Survey Attestations to Accompany H–2B Prevailing Wage Determination Request Based on a Non-OES Survey.

OMB Control Number: 1205–0516.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 556.

Total Estimated Number of Responses: 556.

Total Estimated Annual Time Burden: 348 hours.

Total Estimated Annual Other Costs Burden: $211,884.

Dated: October 25, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–27566 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2015–0013]

National Advisory Committee on Occupational Safety and Health (NACOSH)

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

ACTION: Announcement of a NACOSH meeting.

SUMMARY: NACOSH will meet December 2, 2015, in Washington, DC. In conjunction with the committee meeting, the NACOSH Temporary Workers Work Group will meet December 1, 2015.

DATES: *NACOSH meeting:* NACOSH will meet from 9 a.m. to 5 p.m., Wednesday, December 2, 2015.

NACOSH Work Group meeting: The NACOSH Temporary Workers Work Group will meet from 9 a.m. to 5 p.m., Tuesday, December 1.

Comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address NACOSH, speaker presentations, and requests for special accommodations for the NACOSH and NACOSH Work Group meetings by November 20, 2015.

ADDRESSES: *NACOSH and NACOSH Work Group meetings:* NACOSH and the NACOSH Work Group will meet in Room C–5320, Conference Room 6, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and speaker presentations: You may submit comments and request to speak at the NACOSH meeting, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2015–0013), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger/courier service (hard copy): You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2015–0013, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (887) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) during normal business hours, 8:15 a.m. to 4:45 p.m. e.t., weekdays.

Requests for special accommodations: Please submit requests for special accommodations to attend the NACOSH and NACOSH Work Group meetings by email, telephone, or hard copy to Ms. Gretta Jameson, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (TTY (887) 889–5627); email *jameson.grettah@dol.gov.*

Instructions: Your submissions must include the Agency name and the docket number for this **Federal Register** notice (Docket No. OSHA–2015–0013). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, or messenger/courier service. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post in the NACOSH docket, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999 (TTY (877) 889–5627); email *meilinger.francis2@dol.gov.*

For general information: Ms. Michelle Walker, Director, OSHA Technical Data Center, Directorate of Technical Support and Emergency Management, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627); email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION:

NACOSH meeting: NACOSH will meet Wednesday, December 2, 2015, in Washington, DC. Some NACOSH members may attend the meeting by teleconference. NACOSH meetings are open to the public.

NACOSH was established by Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) to advise, consult with and make recommendations to the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory committee of indefinite duration.

NACOSH operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3), and OSHA's regulations on NACOSH (29 CFR part 1912a).

The tentative agenda for the NACOSH meeting includes:

- An update from the Assistant Secretary of Labor for Occupational Safety and Health on key OSHA initiatives;
- Remarks from the Director of the National Institute for Occupational Safety and Health;
- Report from NACOSH Emergency Response Subcommittee; and
- Report from and consideration of any recommendations presented by the NACOSH Temporary Workers Work Group on developing best practice language for protecting temporary workers as part of employers' injury and illness prevention programs.

OSHA transcribes and prepares detailed minutes of NACOSH meetings. OSHA posts the transcripts and minutes in the public docket along with written comments, speaker presentations, and other materials submitted to NACOSH or presented at NACOSH meetings.

NACOSH Work Group meeting: The NACOSH Temporary Workers Work Group will meet Tuesday, December 1, 2015. The meeting is open to the public. The purpose of the meeting is to discuss workplace safety and health issues regarding temporary workers and to develop recommendations for NACOSH's consideration. The issues include gaps in workplace protections for temporary workers, and joint responsibility of host employers and staffing agencies for temporary workers.

Public Participation, Submissions and Access to Public Record

NACOSH and NACOSH Work Group meetings: All NACOSH and NACOSH Work Group meetings are open to the public. Individuals attending NACOSH meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance at 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification (*e.g.,* driver's license) to enter the building. For additional information about building security measures for attending the NACOSH and NACOSH

Work Group meetings, please contact Ms. Jameson (see **ADDRESSES** section).

Individuals requesting special accommodations to attend the NACOSH and NACOSH Work Group meetings should contact Ms. Jameson.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2015–0013). OSHA will provide copies of any submissions to the NACOSH members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger/courier service, please contact the OSHA Docket Office.

Requests to speak and speaker presentations: If you want to address NACOSH at the meeting you must submit a request to speak, as well as any written or electronic presentation, by November 20, 2015, using one of the methods listed in the **ADDRESSES** section. Your request must state:

• The amount of time requested to speak;

• The interest you represent (*e.g.,* business, organization, affiliation), if any; and

• A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The NACOSH Chair may grant requests to address NACOSH as time and circumstances permit.

Public docket of NACOSH meetings: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the NACOSH docket, without change. Those documents also may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

OSHA also places in the NACOSH docket meeting transcripts, meeting minutes, documents presented at the NACOSH meeting, and other documents pertaining to the NACOSH and NACOSH Work Group meetings. These documents may be available online at *http://www.regulations.gov.*

Access to the public record of NACOSH meetings: To read or download documents in the NACOSH docket, go to Docket No. OSHA–2015–0013 at *http://www.regulations.gov.* The index for that Web page lists all of the documents in the docket; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the NACOSH docket, including materials not available through *http://www.regulations.gov,* are available in the OSHA Docket Office. Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the NACOSH docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 5 U.S.C. App. 2; 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on October 26, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–27605 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2015–0002]

Advisory Committee on Construction Safety and Health

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

ACTION: Announcement of Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Workgroup Meetings and Request for Nominations for Membership on ACCSH.

SUMMARY: ACCSH will meet December 2, 2015, in Washington, DC. In conjunction with the ACCSH meeting, ACCSH Workgroups will meet December 1, 2015. OSHA also announces the Assistant Secretary of Labor's request for nominations for membership on ACCSH.

DATES: *ACCSH meeting:* ACCSH will meet from 8:30 a.m. to 12 p.m., e.t., Wednesday, December 2, 2015.

ACCSH Workgroup meetings: ACCSH Workgroups will meet Tuesday, December 1, 2015. (For Workgroup meeting times, see the schedule under "Workgroup Meetings" in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH meeting and ACCSH Workgroup meetings, by November 13, 2015.

Nominations for ACCSH membership: Submit nominations for ACCSH membership by December 28, 2015.

ADDRESSES: *Submission of comments, requests to speak, and speaker presentations for the ACCSH meeting, and nominations for ACCSH membership:* Submit comments, requests to speak, and speaker presentations for the ACCSH meeting, and nominations and supporting material for ACCSH membership, using one of the following methods:

Electronically: Submit materials, including attachments, electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If the submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Regular mail, express mail, hand delivery, or messenger (courier) service: Submit materials to the OSHA Docket Office, Docket No. OSHA–2015–0002, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger service) during normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Instructions: Submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2015–0002). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change, at: *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

Location of the ACCSH meeting: ACCSH and ACCSH Workgroups will meet in Room N–4437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Requests for special accommodations: Please submit requests for special accommodations to attend the ACCSH meeting and ACCSH Workgroup meetings to Ms. Gretta Jameson, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *jameson.grettah@dol.gov*.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, Director, 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 information about ACCSH, the ACCSH meetings, and ACCSH membership: Mr. Damon Bonneau, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2020; email: *bonneau.damon@dol.gov*.

*Copies of this **Federal Register** notice:* Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov*. This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at: *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. ACCSH Meeting

Background: ACCSH will meet December 2, 2015, in Washington, DC. The meeting is open to the public. OSHA transcribes ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes speaker presentations, comments, and other materials submitted to ACCSH.

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the OSH Act and CSA require that the Assistant Secretary consult with ACCSH before the Agency proposes any occupational safety and health standard affecting construction activities (29 CFR 1911.10; 40 U.S.C. 3704).

Meeting agenda: The tentative agenda for this meeting includes:

- Assistant Secretary's Agency update and remarks;
- Directorate of Construction update;
- ACCSH's consideration of, and recommendation on, the following proposal:

—Eliminating Requirements for Employee Social Security Numbers from OSHA Standards;

- OSHA Data update;
- 2015 National Safety Stand-Down update; and,
- Public Comment Period.

II. Workgroup Meetings

The following ACCSH Workgroups will meet concurrently on December 1, 2015, from 1 to 5 p.m.:

- Health Hazards, Emerging Issues, and Prevention through Design.
- Temporary Workers.
- Training and Outreach.

ACCSH Workgroup meetings are open to the public. For additional information on ACCSH Workgroup meetings or participating in them, please contact Mr. Bonneau or look on the ACCSH page on OSHA's Web page at: *http://www.osha.gov.*

Attending the meeting: Individuals attending the meetings at the U.S. Department of Labor must enter the building at the visitors' entrance, 3rd and C Streets, NW., and pass through building security. Attendees must have valid government-issued photo identification (such as a driver's license) to enter the building. For additional information about building-security measures for attending ACCSH meetings, please contact Ms. Jameson (see ''*Requests for special accommodations''* in the **ADDRESSES** section of this notice).

Requests to speak and speaker presentations: Attendees who want to address ACCSH at the meeting must submit a request to speak, as well as any written or electronic presentation, by November 13, 2015, using one of the methods listed in the **ADDRESSES** section. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, at the ACCSH meeting, you may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) you will address. You also must provide 20 hard copies of any materials, written or electronic, you want to present to ACCSH.

The ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Public docket of the ACCSH meeting: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change, and those documents will be available online at: *http://www.regulations.gov*. OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, and other documents pertaining to the ACCSH and ACCSH Workgroup meetings. These documents are available online at: *http://www.regulations.gov*.

Access to the public record of ACCSH and ACCSH Workgroup meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2015–0002 at: *http://www.regulations.gov*. The *http://www.regulations.gov* index also lists all documents in the public record for these meetings; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection in the OSHA Docket Office (see **ADDRESSES** section). Contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

III. Request for Nominations for Membership on ACCSH

The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) invites interested persons to submit nominations for membership on ACCSH.

Background: ACCSH is a continuing advisory committee established under Section 107(e) of the CSA to advise the Secretary of Labor (Secretary) in the formulation of construction safety and health standards, as well as on policy matters arising under the CSA and the OSH Act. In particular, 29 CFR 1911.10(a) and 1912.3(a) provide that the Assistant Secretary shall consult with ACCSH whenever the Agency proposes any safety or health standard that affects the construction industry.

ACCSH operates in accordance with the CSA, the OSH Act, the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102–3). ACCSH generally meets two to four times a year.

ACCSH membership: ACCSH consists of 15 members whom the Secretary appoints. ACCSH members generally serve staggered two-year terms, unless they resign, cease to be qualified, or become unable to serve, or the Secretary removes them (29 CFR 1912.3(e)). The Secretary may appoint ACCSH members to successive terms. No member of ACCSH, other than members who represent employers or employees, shall have an economic interest in any proposed rule that affects the construction industry (29 CFR 1912.6).

The categories of ACCSH membership, and the number of new members to be appointed to replace members whose terms will expire, are:

- Five members who are qualified by experience and affiliation to present the viewpoint of employers in the construction industry—two employer representatives will be appointed;
- Five members who are similarly qualified to present the viewpoint of employees in the construction industry—two employee representatives will be appointed;
- Two representatives of State safety and health agencies—one representative from a State safety and health agency will be appointed;
- Two public members, qualified by knowledge and experience to make a useful contribution to the work of ACCSH, such as those who have professional or technical experience and competence with occupational safety and health in the construction industry—one public representative will be appointed; and
- One representative designated by the Secretary of the Department of Health and Human Services and appointed by the Secretary—no new appointment will be made.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse ACCSH membership. Any interested person or organization may nominate one or more individuals for membership on ACCSH. Interested persons also are invited and encouraged to submit statements in support of nominees.

Submission requirements: Nominations must include the following information:

- Nominee's contact information and current employment or position;
- Nominee's résumé or curriculum vitae, including prior membership on ACCSH and other relevant organizations and associations;
- Category of membership (employer, employee, public, State safety and health agency) that the nominee is qualified to represent;
- A summary of the background, experience, and qualifications that addresses the nominee's suitability for each of the nominated membership categories;
- Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the construction industry; and
- A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in ACCSH meetings, and has no conflicts of interest that would preclude membership on ACCSH.
- A letter signed by the nominee, stating: ''In agreeing to serve as a member of the Advisory Committee on Construction Safety and Health (ACCSH), I attest to the following: During the last 10 years, I have not been convicted of a felony, or been imprisoned, been on probation, or been on parole, for a felony; and I am not currently under charges for a felony. I certify that, to the best of my knowledge and belief, the above-information on this Self-Certification is true, correct, complete, and made in good faith.''

Member selection: The Secretary will select ACCSH members on the basis of their experience, knowledge, and competence in the field of occupational safety and health, particularly as it pertains to the construction industry. Information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary in appointing members to ACCSH. In selecting ACCSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Instructions for submitting nominations: All nominations, supporting documents, attachments, and other materials must identify the Agency name and the docket number for this **Federal Register** notice (Docket No. OSHA–2015–0002). Submit materials electronically, by FAX, or by hard copy. You may supplement electronic submissions by attaching electronic files. If you supplement electronic submissions with hard-copy documents, submit the hard copy documents to the OSHA Docket Office and clearly identify the electronic submission by Agency name and docket number (Docket No. OSHA–2015–0002) so the Docket Office can attach the hard-copy documents to the appropriate electronic submission.

The OSHA Docket Office will post all submissions, including personal information provided, in the docket without change. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. Guidance on submitting nominations and supporting materials is available on-line at: *http://www.regulations.gov* and from the OSHA Docket Office.

Access to docket: The *http://www.regulations.gov* index lists all submissions provided in response to this **Federal Register** notice; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from that Web page. All submissions, including materials not available on-line, are available for inspection at the OSHA Docket Office. For information about accessing materials in Docket No. OSHA–2015–0002, including materials not available on-line, contact the OSHA Docket Office.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656; 40 U.S.C. 3704; 5 U.S.C. App. 2; 29 CFR parts 1911 and 1912; 41 CFR 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on October 23, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–27525 Filed 10–28–15; 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 Comment Period: List of Candidates for the Advisory Board on Toxic Substances and Worker Health for Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Secretary of Labor (Secretary) previously invited interested parties to submit comments regarding

the qualifications of potential candidates for membership on the Advisory Board on Toxic Substances and Worker Health for Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). Notice of the comment period was posted in the **Federal Register** on October 15, 2015 and may be reviewed at 80 FR 62111. The Office of Workers' Compensation Programs is in receipt of requests from interested parties for an extension of time to provide comments on the candidates listed in the previous notice. In response to these requests, the Secretary now extends the deadline for submission of public comments by an additional 21 days, to November 19, 2015. Although this extension will delay the selection process, we think it is important for the commenters to have the time they requested to comment.

DATES: Public comments must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by November 19, 2015.

FOR FURTHER INFORMATION CONTACT: For questions, contact the Advisory Board's Designated Federal Official, 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. The purpose of the Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. Candidates who are ultimately appointed to the Advisory Board will serve as Special Government Employees (SGE). As defined in 19 U.S.C. Section 202, an SGE is an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days.

Dated: October 26, 2015.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2015–27641 Filed 10–28–15; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On August 18, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 8, 2015 to:

Permit No. 2016–005

Allyson Hindle, Massachusetts General Hospital, 55 Fruit Street, Thier 505, Boston, MA 02114.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–27532 Filed 10–28–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 23, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 23, 2015 to: Tehnuka Ilanko, Permit No. 2016–005, Department of Earth and Planetary Sciences, University of New Mexico, Albuquerque NM.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–27533 Filed 10–28–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: Dec. 2, 2015, 8:00 a.m.–5:00 p.m.; Dec. 3. 2015, 8:00 a.m.–1:00 p.m.

Place: National Science Foundation, 4121 Wilson Boulevard, Room 555, Arlington, VA 22230.

Operated assisted teleconference is available for this meeting. Call 888–658–9757 with password EHR and you will be connected to the audio portion of the meeting.

To attend the meeting in person, all visitors must contact the Directorate for Education and Human Resources (*ehr_ac@nsf.gov*) at least 24 hours prior to the teleconference to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance at 4201 Wilson Blvd. on the day of the teleconference to receive a visitor's badge.

Meeting materials and minutes will also be available on the EHR Advisory Committee Web site at *http://www.nsf.gov/ehr/advisory.jsp.*

Type of Meeting: Open, Teleconference.

Contact Person: Keaven M. Stevenson, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, (703) 292–8600; *kstevens@nsf.gov.*

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda:

Wednesday, Dec. 2, 2015, 8:00 a.m.–5:00 p.m.

- Remarks by the Committee Chair and NSF Assistant Director for Education and Human Resources (EHR)
- Revisiting the EHR Advisory Committee Re-envisioning Document and Recommendations
- Discussion of EHR AC Subcommittee Report on HBCUs
- Discussion: Research-to-Practice Interface—Open Education and I-Corps L
- Discussion with France Córdova, NSF Director
- Synthesis of the Day

Thursday, Dec. 3, 2015, 8:00 a.m.–1:00 p.m.

- Discussion; Research-to-Practice Interface—INCLUDES
- New Business
- Adjournment

Dated: October 26, 2015.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2015–27600 Filed 10–28–15; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov*

SUPPLEMENTARY INFORMATION: On September 23, 2015 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 23, 2015 to:

Permit No. 2016–008

David Rootes, Environmental Manager, Antarctic Logistics & Expeditions LLC, 3478 South Main Street, Salt Lake City UT 84115.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2015–27531 Filed 10–28–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003, 50–247, 50–286, and 72–5; NRC–2015–0246]

Entergy Nuclear Operations, Inc.; Indian Point Nuclear Generating Unit Nos. 1, 2, and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a draft environmental assessment (EA) and finding of no significant impact (FONSI) for public comment related to a request to amend Provisional Operating License No. DPR–5, and Facility Operating License Nos. DPR–26 and DPR–64 issued to Entergy Nuclear Operations, Inc. (''ENO,'' ''the licensee''), for operation of the Indian Point Nuclear Generating Unit Nos. 1, 2, and 3, (hereinafter ''Indian Point'' or ''the facility''), including the general-licensed Independent Spent Fuel Storage Installation, Docket No. 72–51, located in Westchester County, NY. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

DATES: Submit comments by November 30, 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 before this date. Any potential party, as defined in § 2.4, of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by November 9, 2015.

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–2015–0246. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information'' and ''Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1364 email: *Douglas.Pickett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0246 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–2015–0246.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The application for amendment for Indian Point dated August 20, 2013, was supplemented by letters dated November 21, 2013, May 13 and July 24, 2014, and January 16, 2015 (ADAMS Accession Nos. ML13239A447, ML13354B780, ML14149A247, ML14219A326, and ML15030A031, respectively), and citing letters dated April 27 and October 27, 2011, and January 4, 2012 (ADAMS Accession Nos. ML11124A075, ML11314A070, and ML12019A048, respectively). Those letters containing SUNSI are being withheld from public disclosure.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0246 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering a request to amend Provisional Operating License No. DPR–5, and Facility Operating License Nos. DPR–26 and DPR–64, issued to ENO for operation of Indian Point, including the general-licensed Independent Spent Fuel Storage Installation, Docket No. 72–51, located in Westchester County, NY, in accordance with 10 CFR 50.90. Therefore, as required by 10 CFR 51.21 and 10 CFR 51.33, the NRC has prepared a draft EA documenting its finding. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would permit security personnel at Indian Point, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that otherwise prohibit such actions.

The proposed action is in accordance with ENO's application dated August 20, 2013, as supplemented by letters dated November 21, 2013, May 13 and July 24, 2014, and January 16, 2015, and citing letters dated April 27 and October 27, 2011, and January 4, 2012.

The Need for the Proposed Action

The proposed action would allow the transfer, receipt, possession, transportation, importation and use of those firearms and devices needed in the performance of official duties required for the protection of Indian Point and associated special nuclear materials, consistent with the Indian Point NRC-approved security plan.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action would only allow the use of those firearms and devices necessary to protect Indian Point and associated special nuclear material, consistent with the Indian Point NRC-approved security plant. Therefore, the proposed action would not significantly increase the probability or consequences of accidents. In addition, the proposed action would not change the types and the amounts of any effluents that may be released offsite. There would also be no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

The proposed action would not impact land, air, or water resources, including biota. In addition, the proposed action would not result in any socioeconomic or environmental justice impacts or impacts to historic and cultural resources. Therefore, there would also be no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that issuance of the requested amendment would not result in significant environmental impacts.

The NRC will publish in the **Federal Register** a copy of the final environmental assessment as part of the final finding of no significant impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denying the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental conditions at Indian Point.

Alternative Use of Resources

The proposed action would not involve the use of any resources.

Agencies and Persons Consulted

The staff did not consult with any Federal Agency or New York state agencies regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested a license amendment to permit licensee security personnel, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that would otherwise prohibit such actions.

On the basis of the information presented in this environmental assessment, the NRC concludes that the proposed action would not cause any significant environmental impact and would not have a significant effect on the quality of the human environment. In addition, the NRC has determined that an environmental impact statement is not necessary for the evaluation of this proposed action.

Other than the licensee's letter dated August 20, 2013, there are no other environmental documents associated with this review. This document is available for public inspection as indicated above.

Dated at Rockville, Maryland, this 22nd day of October, 2015.

For the Nuclear Regulatory Commission.

Benjamin G. Beasley,

Chief, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27648 Filed 10–28–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–333 and 72–12; NRC–2015–0247]

Entergy Nuclear Operations, Inc.; James A. FitzPatrick Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a draft

environmental assessment (EA) and finding of no significant impact (FONSI) for public comment related to a request to amend Renewed Facility Operating License No. DPR–59, including the general licensed Independent Spent Fuel Storage Installation, issued to Entergy Nuclear Operations, Inc. (ENO, ''the licensee''), for operation of the James A. FitzPatrick Nuclear Power Plant, (hereinafter ''JAFNPP'' or ''the facility''), located in Oswego County, New York. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

DATES: Submit comments by November 30, 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 before this date. Any potential party, as defined in § 2.4, of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by November 9, 2015.

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–2015–0247. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information'' and ''Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1364 email: *Douglas.Pickett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0247 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–2015–0247.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it available in ADAMS) is provided the first time that a document is referenced. The application for amendment for JAFNPP dated August 30, 2013, was supplemented by letters dated November 12, 2013, May 14 and July 11, 2014, and January 15, 2015 (ADAMS Accession Nos. ML13248A517, ML13317A928, ML14135A327, ML14195A040, and ML15015A637, respectively). Those letters containing SUNSI are being withheld from public disclosure.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0247 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Introduction

The NRC is considering a request to amend Renewed Facility Operating License No. DPR–59, including the general licensed Independent Spent Fuel Storage Installation, issued to ENO for operation of the JAFNPP located in Oswego County, New York, in accordance with 10 CFR 50.90. Therefore, as required by 10 CFR 51.21 and 10 CFR 51.33, the NRC has prepared a draft EA and FONSI documenting its finding. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would permit security personnel at the JAFNPP, in the performance of official duties, to transfer, receive, possess, transport, import, and use certain firearms and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations, that otherwise prohibit such actions.

The proposed action is in accordance with ENO's application dated August 30, 2013, as supplemented by letters dated November 12, 2013, May 14 and July 11, 2014, and January 15, 2015.

The Need for the Proposed Action

The proposed action would allow the transfer, receipt, possession, transportation, importation and use of those firearms and devices needed in the performance of official duties required for the protection of the JAFNPP and associated special nuclear materials, consistent with the JAFNPP NRC approved security plan.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action would only allow the use of those firearms and devices necessary to protect JAFNPP and associated special nuclear material, consistent with the JAFNPP NRC-approved security plant. Therefore, the proposed action would not significantly increase the probability or consequences of accidents. In addition, the proposed action would not change the types and the amounts of any effluents that may be released offsite. There would also be no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

The proposed action would not impact land, air, or water resources, including biota. In addition, the proposed action would not result in any socioeconomic or environmental justice impacts or impacts to historic and cultural resources. Therefore, there would also be no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that the issuance of the requested amendment would not result in significant environmental impacts.

The NRC will publish in the **Federal Register** a copy of the final environmental assessment as part of the final finding of no significant impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denying the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental conditions at the JAFNPP.

Alternative Use of Resources

The proposed action would not involve the use of any resources.

Agencies and Persons Consulted

The staff did not consult with any Federal Agency or New York state agencies regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested a license amendment to permit licensee security personnel, in the performance of official duties, to transfer, receive, possess, transport, import, and use certain firearms and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that would otherwise prohibit such actions.

On the basis of the information presented in this environmental assessment, the NRC concludes that the proposed action would not cause any significant environmental impact and would not have a significant effect on the quality of the human environment. In addition, the NRC has determined that an environmental impact statement is not necessary for the evaluation of this proposed action.

Other than the licensee's letter dated August 30, 2013, there are no other environmental documents associated with this review. This document is available for public inspection as indicated above.

Dated at Rockville, Maryland, this 22nd day of October 2015.

For the Nuclear Regulatory Commission.

Benjamin G. Beasley,

Chief, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27647 Filed 10–28–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–244 and 72–67; NRC–2015–0249]

Exelon Generation Company, LLC; R.E. Ginna Nuclear Power Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S Nuclear Regulatory Commission (NRC) is issuing a draft environmental assessment (EA) and finding of no significant impact (FONSI) for public comment related to a request to amend Renewed Facility Operating License No. DPR–18, issued to Exelon Generation Company, LLC (Exelon, ''the licensee''), for operation of the R.E. Ginna Nuclear Power Plant (hereinafter ''Ginna,'' or ''the facility''), including the general-licensed Independent Spent Fuel Storage Installation, Docket No. 72–67, located in Wayne County, NY. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

DATES: Submit comments by November 30, 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 before this date. Any potential party, as defined in § 2.4, of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 9, 2015.

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–2015–0249. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information'' and ''Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Douglas V. Pickett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1364; email: *Douglas.Pickett@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0249 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–2015–0249.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the ADAMS Public Documents collection *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a

document is referenced. The application for amendment for Ginna dated August 14, 2013, was supplemented by letters dated November 4, 2013, May 14, 2014, and January 16, 2015 (ADAMS Accession Nos. ML13228A265, ML13312A921, ML14139A342, and ML15020A100, respectively). Those letters containing SUNSI are being withheld from public disclosure.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0249 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering a request to amend Renewed Facility Operating License No. DPR–18, issued to Exelon for operation of Ginna, including the general-licensed Independent Spent Fuel Storage Installation, Docket No. 72–67, located in Wayne County, NY, in accordance with 10 CFR 50.90. Therefore, as required by 10 CFR 51.21 and 10 CFR 51.33, the NRC has prepared a draft EA documenting its finding. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would permit security personnel at Ginna, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations, that otherwise prohibit such actions.

The proposed action is in accordance with Exelon's application August 14, 2013 as supplemented by letters dated November 4, 2013, May 14, 2014, and January 16, 2015.

The Need for the Proposed Action

The proposed action would allow the transfer, receipt, possession, transportation, importation and use of those firearms and devices needed in the performance of official duties required for the protection of Ginna and associated special nuclear materials, consistent with the Ginna NRC-approved security plan.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action would only allow the use of those firearms and devices necessary to protect Ginna and associated special nuclear material, consistent with the Ginna NRC-approved security plant. Therefore, the proposed action would not significantly increase the probability or consequences of accidents. In addition, the proposed action would not change the types and the amounts of any effluents that may be released offsite. There would also be no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

The proposed action would not impact land, air, or water resources, including biota. In addition, the proposed action would not result in any socioeconomic or environmental justice impacts or impacts to historic and cultural resources. Therefore, there would also be no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that issuance of the requested amendment would not result in significant environmental impacts.

The NRC will publish in the **Federal Register** a copy of the final environmental assessment as part of the final finding of no significant impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denying the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental conditions at Ginna.

Alternative Use of Resources

The proposed action would not involve the use of any resources.

Agencies and Persons Consulted

The staff did not consult with any Federal Agency or New York state agencies regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested a license amendment to permit licensee security personnel, in the performance of their official duties, to transfer, receive, possess, transport, import, and use certain firearms, and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that would otherwise prohibit such actions.

On the basis of the information presented in this environmental assessment, the NRC concludes that the proposed action would not cause any significant environmental impact and would not have a significant effect on the quality of the human environment. In addition, the NRC has determined that an environmental impact statement is not necessary for the evaluation of this proposed action.

Other than the licensee's letter dated August 14, 2013, there are no other environmental documents associated with this review. This document is available for public inspection as indicated above.

Dated at Rockville, Maryland, this 22nd day of October 2015.

For the Nuclear Regulatory Commission.

Benjamin G. Beasley,

Chief, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27646 Filed 10–28–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220, 50–410, and 72–1036; NRC–2015–0248]

Exelon Generation Company, LLC; Nine Mile Point Nuclear Station Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental assessment and finding of no significant impact; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a draft environmental assessment (EA) and finding of no significant impact (FONSI) for public comment related to a request to amend the Renewed Facility Operating License Nos. DPR–63, NPR–69, and Docket No. 72–1036, issued to Exelon Generation Company, LLC (Exelon, ''the licensee''), for operation of the Nine Mile Point Nuclear Station, Units 1 and 2, including the general-licensed Independent Spent Fuel Storage Installation (hereinafter ''NMP'' or ''the facility''), located in Oswego County, New York. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

DATES: Submit comments by November 30, 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 before this date. Any potential party, as defined in 2.4, of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by November 9, 2015.

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–2015–0248. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information'' and ''Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas V. Pickett, telephone: 301–415–1364, email: *douglas.pickett@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0248 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–2015–0248.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The application for amendment for NMP dated August 14, 2013, was supplemented by letters dated September 10, 2013, May 14, 2014, and January 16, 2015 (ADAMS Accession Nos. ML13228A265, ML13260A257, ML14139A342, and ML15020A100, respectively). Those letters containing SUNSI are being withheld from public disclosure.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2015–0248 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering a request to amend Renewed Facility Operating License Nos. DPR–63, NPR–69, and Docket No. 72–1036, issued to Exelon for operation of NMP located in Oswego County, New York, in accordance with 10 CFR 50.90. Therefore, as required by 10 CFR 51.21 and 10 CFR 51.33, the NRC has prepared a Draft Environmental Assessment and Finding of No Significant Impact documenting its finding. The requested amendment would permit licensee security personnel to use certain firearms and ammunition feeding devices not previously permitted, notwithstanding State, local, and certain Federal firearms laws or regulations that otherwise prohibit such actions.

III. Draft Environmental Assessment and Finding of No Significant Impact

Identification of the Proposed Action

The proposed action would permit security personnel at NMP, in the performance of official duties, to transfer, receive, possess, transport, import, and use certain firearms and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations, that otherwise prohibit such actions.

The proposed action is in accordance with Exelon's application dated August 14, 2013, as supplemented by letters dated September 10, 2013, May 14, 2014, and January 16, 2015.

The Need for the Proposed Action

The proposed action would allow the transfer, receipt, possession, transportation, importation and use of those firearms and devices needed in the performance of official duties required for the protection of NMP and associated special nuclear materials, consistent with the NMP NRC-approved security plan.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the proposed action only allow the use of those firearms and devices necessary to protect NMP and associated special nuclear material, consistent with the NMP NRC-approved security plant. Therefore, the proposed action would not significantly increase the probability or consequences of accidents. In addition, the proposed action would not change the types and the amounts of any effluents that may be released offsite. There would also be no significant increase in occupational or public radiation exposure. Therefore, there would be no significant radiological environmental impacts associated with the proposed action.

The proposed action would not impact land, air, or water resources, including biota. In addition, the proposed action would not result in any socioeconomic or environmental justice impacts or impacts to historic and cultural resources. Therefore, there would also be no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that the issuance of the requested amendment would not result in significant environmental impacts.

The NRC will publish in the **Federal Register** a copy of the final environmental assessment as part of the final finding of no significant impact.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denying the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the license amendment request would result in no change in current environmental conditions at NMP.

Alternative Use of Resources

The proposed action would not involve the use of any resources.

Agencies and Persons Consulted

The staff did not consult with any other Federal Agency or State of New York agencies regarding the environmental impact of the proposed action.

IV. Finding of No Significant Impact

The licensee has requested a license amendment to permit licensee security personnel, in the performance of official duties, to transfer, receive, possess, transport, import, and use certain firearms and large capacity ammunition feeding devices not previously permitted to be owned or possessed, notwithstanding State, local, and certain Federal firearms laws, or regulations that would otherwise prohibit such actions.

On the basis of the information presented in this environmental assessment, the NRC concludes that the proposed action would not cause any significant environmental impact and would not have a significant effect on the quality of the human environment. In addition, the NRC has determined that an environmental impact statement is not necessary for the evaluation of this proposed action.

Other than the licensee's letter dated August 14, 2013, there are no other environmental documents associated with this review. This document is available for public inspection as indicated above.

Dated at Rockville, Maryland, this 22nd day of October 2015.

For the Nuclear Regulatory Commission.

Benjamin G. Beasley,

Chief, Plant Licensing Branch 1–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2015–27644 Filed 10–28–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–8 and CP2016–10; Order No. 2780]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 149 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 30, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 149 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, 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 Nos. MC2016–8 and CP2016–10 to consider the Request pertaining to the proposed Priority Mail Contract 149 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than October 30, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–8 and CP2016–10 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent

[1] Request of the United States Postal Service to Add Priority Mail Contract 149 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 22, 2015 (Request).

the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than October 30, 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. 2015–27526 Filed 10–28–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2015–95; Order No. 2776]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 130 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 30, 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 October 22, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Contract 130 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment.

The Postal Service also filed the unredacted Amendment under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.*

The Amendment amends section I.G of the Existing Agreement, which concerns the minimum commitment required for eligibility for certain prices and adds section VIII, which concerns assignment. *Id.* Attachment A at 1–2.

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of this filing. Notice at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. *See id.*

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 30, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–95 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Cassie D'Souza to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than October 30, 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. 2015–27523 Filed 10–28–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 130, with Portions Filed Under Seal, October 22, 2015, at 1 (Notice).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–9 and CP2016–11; Order No. 2779]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 30, 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

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. Request, Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, 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 Nos. MC2016–9 and CP2016–11 to consider the Request pertaining to the proposed Priority Mail Express, Priority Mail & First-Class Package Service

[1] Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 5 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, Amendment, and Supporting Data, October 22, 2015 (Request).

Contract 5 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than October 30, 2015. The public portions of these filings 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 these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–9 and CP2016–11 to consider the matters raised in each docket.

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 these proceedings (Public Representative).

3. Comments are due no later than October 30, 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. 2015–27524 Filed 10–28–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 149 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–8, CP2016–10.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–27500 Filed 10–28–15; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* October 29, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 22, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 5 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–9, CP2016–11.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–27498 Filed 10–28–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Friday, October 30, 2015 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

- The Commission will consider whether to adopt rules and forms related to the offer and sale of securities through crowdfunding under Section 4(a)(6) of the Securities Act of 1933, as mandated by Title III of the Jumpstart Our Business Startups Act.
- The Commission will consider whether to propose amendments to Securities Act Rule 147 and Rule 504.

Commission Stein, as duty officer, voted to consider the items listed for the Open Meeting in open session, and determined that Commission business required consideration earlier than one week from today. No earlier notice of this Meeting was practicable.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: October 26, 2015.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2015–27695 Filed 10–27–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76248; File No. SR–NYSEMKT–2015–88]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 953.1NY(c), Which Addresses How the Exchange Treats Obvious and Catastrophic Errors During Periods of Extreme Market Volatility to Coincide with the Pilot Period for the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS

October 23, 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 October 22, 2015, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS. The pilot period is currently set to expire on October 23, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (''LULD Plan''), including any extensions to the pilot period for the LULD Plan. The pilot period is currently set to expire on October 23, 2015.

In April 2013, in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''Plan''),[3] the Exchange adopted Rule 953.1NY(c) to provide that options executions would not be adjusted or nullified if the execution occurs during periods of extreme market volatility.[4] Specifically, Rule 953.1NY(c) provides that, during the pilot period, electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State (as defined by the Plan) are not subject to review under Rule 975NY(c) for Obvious Errors or Rule 975NY(d) for Catastrophic Errors. Nothing in Rule 953.1NY(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 975NY(c)(3), or a bust or adjust pursuant to paragraphs (e) through (j) and (l) of Rule 975NY.[5]

The Plan has been amended several times since inception and was implemented on February 24, 2014. On May 28, 2015, the Participants submitted to the Commission a Supplemental Joint Assessment that recommended that the Plan be adopted as permanent with certain modifications.[6] The purpose of this proposed extension is to allow the Participants to conduct, and the Commission to consider, further analysis of data in support of the recommendations made in the Supplemental Joint Assessment, including around the attributes of limit states; the length of trading pauses; the use of an alternative reference price at the open of trading; and the alignment of the percentage parameters with the Clearly Erroneous Execution (CEE) thresholds (with the goal of largely eliminating the Participants' CEE authority).

In order to align the pilot period for Rule 953.1NY(c) with the proposed pilot period for the Plan, the Exchange similarly proposes to extend the pilot period. The Exchange has committed to provide the Commission with its data assessments five months prior to the expiration of the LULD Plan pilot period, including any extensions. If the Plan extension is approved, the Exchange will deliver its next data assessment to the Commission by December 18, 2015.

In connection with the proposed change, the Exchange proposes to modify the text of Rule 953.1NY to make clear that paragraph (c), like paragraphs (a) and (b), will be in effect for a pilot period to coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan. The Exchange believes the benefits afforded to market participants under Rule 953.1NY(c) should continue on a pilot basis during the same period as the Plan pilot. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States would encourage market participants to continue to provide liquidity to the Exchange, and thus, promote a fair and orderly market during those periods. Thus, the Exchange believes that the protections of current Rule 953.1NY(c) should continue while the industry gains further experience operating the Plan. In addition, the Exchange believes that extending the pilot period for Rule 953.1NY(c) would allow the Exchange to continue to collect and evaluate data, as well as to conduct further data analyses, related to this provision.

Specifically, in connection with the adoption of Rule 953.1NY(c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.[7] The Exchange agreed to and has been providing to the Commission and the public data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State.[8] For each of those option classes affected, each data record contains the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan). The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.

[4] *See* Securities and Exchange Act Release No. 69339 (April 8, 2013), 78 FR 22011 (April 12, 2013) (SR–NYSEMKT–2013–10) (''Approval Order'').

[5] *See* Rule 975NY, Commentary .03.

[6] *See* Letter from Christopher B. Stone, Vice President, FINRA, to Brent J. Fields, Secretary, SEC, dated May 28, 2015. In addition, the Participants to the Plan recently filed to extend the Plan's pilot period until April 22, 2016 (the ''Ninth Amendment''). *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (File No. 4–631) (notice of proposed Ninth Amendment to the Plan).

[7] Specifically, the Exchange committed to: ''(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States.'' *See* Approval Order, 78 FR at 22015.

[8] *See* Securities Exchange Act Release No. 71870 (April 4, 2014), 79 FR 19692 (April 9, 2014) (SR–NYSEMKT–2014–31).

• number of trades for which a request for review for error was received during Straddle and Limit States;

• an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange believes that the extension of the pilot period of Rule 953.1NY(c) would allow the Exchange to continue to observe the operation of the pilot and conduct its assessments relating to the impact of the operation of the Rule during Limit and Straddle States, which information will continue to be shared with the Commission and the public as set forth above.

Finally, the Exchange proposes to amend 953.1NY (c) to update cross-references to Rule 975NY that reflect the recent amendments of that rule, which add clarity and consistency to Exchange rules. The Exchange also proposes to similarly amend Commentary .03 to Rule 975NY regarding the Limit Up-Limit Down State to reflect the extension of the pilot to coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 953.1NY(c) and Commentary .03 to Rule 975NY to coincide with the pilot period for the LULD Plan, as it may be amended from time to time, including any extensions to the pilot period for the LULD Plan would align that pilot program with the Pilot Period for the Plan, as proposed in the Ninth Amendment to the Plan. The Exchange believes that aligning the pilot periods would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 953.1NY(c) and Commentary .03 to Rule 975NY would help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that extending the pilot period for Rule 953.1NY(c) and Commentary .03 to Rule 975NY would remove impediments to, and perfect the mechanisms of, a free and open market because it would enable the Exchange to continue to conduct its assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as set forth above, which, in turn, provides the Exchange with more information from which to assess the impact of Rule 953.1NY(c) and Commentary .03 to Rule 975NY.

Finally, the Exchange believes that amending Rule 953.1NY (c) to update cross-references to Rule 975NY to reflect the recent amendments of that rule would remove impediments to, and perfect the mechanisms of, a free and open market by adding clarity and consistency to Exchange rules to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). 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.

[13] 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).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–88, and should be submitted on or before November 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27518 Filed 10–28–15; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76245; File No. SR–NASDAQ–2015–124]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Active Alts Contrarian ETF of ETFis Series Trust I

October 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2015, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the Active Alts Contrarian ETF (the ''Fund'') of ETFis Series Trust I (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares'').[3] The shares of the Fund are referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Exchange believes the proposed rule change raises no significant issues not previously addressed in prior Commission orders.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares[4] on the Exchange. The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Delaware series trust on September 20, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund is a series of the Trust.

Description of the Shares and the Fund

Etfis Capital LLC is the investment adviser (''Adviser'') to the Fund. Active Alts Inc. is the investment sub-adviser to the Fund (the ''Sub-Adviser''). The Sub-Adviser is responsible for daily portfolio management and all investment decisions for the Fund. ETF Distributors LLC (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation (''BNY'') will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission has issued an order, upon which the Trust may rely (the ''Exemptive Order''), granting certain exemptive relief to the investment adviser to the Fund under the 1940 Act. *See* Investment Company Act Release No. 30607 (July 23, 2013) (File No. 812–14080).

[6] *See* Post-Effective Amendment No. 70 to Registration Statement on Form N–1A for the Trust, dated October 16, 2015 (File Nos. 333–187668 and 811–22819). The description of the Fund and the Shares contained herein is based, in part, on information in the Registration Statement.

information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, nonpublic information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with the Distributor, a broker-dealer. The Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is not a broker-dealer and is not affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer[8] or registers as a broker-dealer, or (b) any new adviser or new sub-adviser is a registered broker-dealer or is or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund portfolio and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio.

Investment Objective

The Fund's investment objective is to seek current income and capital appreciation. The Fund will seek to achieve its investment objective by primarily investing in U.S. exchange-traded equity securities (U.S. exchange-traded equity securities are referred to herein as ''Equities''[9]) that the Sub-Adviser believes may be subject to a ''short squeeze'' (as described below). The Fund may also lend portfolio securities that the Sub-Adviser believes may be subject to a short squeeze to short sellers and other market participants for a premium recognized as income. The Fund is an actively managed ETF and thus does not seek to replicate the performance of any index. Instead, the Fund uses an active investment strategy in an effort to meet its investment objective.[10]

Principal Investments

In selecting securities for the Fund's portfolio, the Sub-Adviser will seek to identify Equities that it believes have a higher potential for capital appreciation as a result of a short squeeze. A ''short squeeze'' occurs when investors who have sold short shares of an equity security seek to rapidly cover or buy back the short position due to actual or perceived appreciation in the security, which may occur because of positive news or events related to the company, its market sector or the market generally. Often, the additional buying momentum created by short sellers covering their short positions escalates the increase in the price of the shares. The Fund will not be limited with respect to its investments in any sector or industry, but the Fund will limit investments in a single issuer to no more than five percent (5%) of the total assets of the Fund and to no more than five percent (5%) of the security's public float. In addition, the Fund will limit its Equities investments to companies with a market capitalization of $250 million or more.

The Sub-Adviser's process for identifying short squeeze opportunities involves analysis of both fundamental factors (*e.g.,* quality of earnings, fundamental stability of business, etc.) and technical factors (*e.g.,* price and volume characteristics, relative strength, etc.). Using this analysis, the Sub-Adviser seeks to identify securities where, in the opinion of the Sub-Adviser, short interest is significant, is increasing or is expected to increase, but is unjustified based on the Sub-Adviser's analysis.

To the extent that the Sub-Adviser has not identified Equities suitable for investment, the Fund principally will be invested in cash or money market instruments,[11] and to the extent permitted by applicable law and the Fund's investment restrictions, the Fund may invest in shares of money-market mutual funds. At times the Fund's investment in such investments may be significant.

The Fund may also determine to lend out portfolio securities that the Sub-Adviser believes to be strong candidates for a short squeeze to short sellers and other market participants for a premium recognized as income.

As a result of its trading strategy, the Fund expects to engage in frequent portfolio transactions that will likely result in higher portfolio turnover than many investment companies. Portfolio turnover is a ratio that indicates how often the securities in an investment company's portfolio change during a year. A higher portfolio turnover rate indicates a greater number of changes, and a lower portfolio turnover rate indicates a smaller number of changes. Under normal circumstances, the anticipated annual portfolio turnover rate for the Fund is expected to be greater than 100%.

Other Investments

The Fund may invest in other types of investments, as set forth in this section. The Fund may invest in any type of ETF that is U.S. exchange-traded, including index based ETFs, sector based ETFs, and fixed-income ETFs—but will not invest in leveraged ETFs. Due to legal limitations, the Fund will be prevented from purchasing more than 3% of an ETF's outstanding shares unless: (i) The ETF or the Fund has received an order for exemptive relief from the 3% limitation from the Commission that is applicable to the Fund; and (ii) the ETF and the Fund take appropriate steps to comply with any conditions in such order. The Fund

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser, the Sub-Adviser and each such party's related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with applicable federal securities laws as defined in Rule 204A–1(e)(4). Accordingly, procedures designed to prevent the communication and misuse of nonpublic information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] In the case of the Adviser, which is already affiliated with a broker-dealer and has implemented a fire wall with respect to such affiliated broker-dealer, this refers to a new affiliation with an additional broker-dealer.

[9] As used herein, the term ''Equities'' includes American Depository Receipts, but does not include shares of ETFs or closed-end investment companies that are U.S. exchange-traded.

[10] All Equities traded by the Fund will be listed on a U.S. exchange that is a member of the Intermarket Surveillance Group (''ISG'') or a party to a comprehensive surveillance sharing agreement with the Exchange.

[11] The following is a list of the money market instruments in which the Fund may invest: Short-term (less than one-year) notes issued by (i) the U.S. government, (ii) an agency of the U.S. government, or (iii) a U.S. corporation.

also may invest in closed-end investment companies that are U.S. exchange-traded.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any particular industry.[12] The Fund's investments (including investments in ETFs) will not be utilized to seek to achieve a leveraged return on the Fund's net assets. The Fund will not invest in futures contracts, will not invest in options, will not invest in swaps, and will not invest in other derivative instruments.

The Shares

The Fund will issue and redeem Shares only in Creation Units, through the Distributor, without a sales load (but subject to transaction fees), at the net asset value (''NAV'') next determined after receipt of an order in proper form, on a continuous basis every day except weekends and specified holidays, pursuant to the terms of the agreement executed with each Authorized Participant (as defined below). The NAV of the Fund will be determined once each business day, normally as of the close of regular trading on the NYSE, generally, 4:00 p.m. Eastern time.[13] Creation Unit sizes will be 25,000 Shares per Creation Unit.

The consideration for purchase of a Creation Unit will consist of either (i) an in-kind deposit of a designated portfolio of securities (the ''Deposit Securities'') for each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash (the ''Cash Component'') computed as described below or (ii) cash totaling the NAV of the Creation Unit (''Deposit Cash''). The ''Cash Component'' will be an amount equal to the difference between the NAV of the shares (per Creation Unit) and the market value of the Deposit Securities. The Fund may also effect a portion of an otherwise in-kind creation or redemption for cash, in accordance with the Exemptive Order.

As applicable, (i) the Deposit Securities and the Cash Component, together, or (ii) the Deposit Cash, will constitute the ''Fund Deposit,'' which will represent the minimum initial and subsequent investment amount for a Creation Unit of the Fund. If the Cash Component is a positive number (*i.e.,* the NAV per Creation Unit exceeds the market value of the Deposit Securities), the Cash Component will be such positive amount. If the Cash Component is a negative number (*i.e.,* the NAV per Creation Unit is less than the market value of the Deposit Securities), the Cash Component will be such negative amount and the creator will be entitled to receive cash from the Fund in an amount equal to the Cash Component. The Cash Component will serve the function of compensating for any difference between the NAV per Creation Unit and the market value of the Deposit Securities.

To be eligible to place orders with respect to creations and redemptions of Creation Units, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'') or (ii) a Depository Trust Company (''DTC'') Participant (a ''DTC Participant''). In addition, each Participating Party or DTC Participant (each, an ''Authorized Participant'') must execute an agreement that has been agreed to by the Distributor and the Fund Administrator, BNY, with respect to purchases and redemptions of Creation Units.

BNY, through the NSCC, will make available on each business day, immediately prior to the opening of business on the Exchange's Regular Market Session (currently 9:30 a.m. Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit, subject to any relevant adjustments, will be applicable in order to effect purchases of Creation Units of the Fund until such time as the next announced composition of the Deposit Securities is made available.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through BNY and only on a business day. With respect to the Fund, BNY, through the NSCC, will make available immediately prior to the opening of business on the Exchange (9:30 a.m. Eastern time) on each business day, the list of the names and share quantities of the Fund's portfolio securities (''Fund Securities'') that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities.

Unless cash redemptions are available or specified for the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities as announced by BNY on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a fixed redemption transaction fee and any applicable additional variable charge as set forth in the Registration Statement. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential will be required to be made by or through an Authorized Participant by the redeeming shareholder. Notwithstanding the foregoing, at the Trust's discretion, an Authorized Participant may receive the corresponding cash value of the securities in lieu of one or more Fund Securities.

The creation order and redemption order cut off time for the Fund is expected to be one hour prior to the close of the regular trading session on the Exchange (*i.e.,* typically 3:00 p.m. Eastern time). In the case of custom orders, the Fund may require orders for Creation Units to be placed earlier in the day.

Net Asset Value

The NAV per Share for the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. Expenses and fees, including the management fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund will be calculated by BNY and determined at the close of regular trading on the NYSE (ordinarily 4:00 p.m. Eastern time) on each day that such exchange is open. In calculating the Fund's NAV per Share, investments will generally be valued by using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer) or (ii) based on a price quotation or other equivalent indication of value supplied by an

[12] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[13] NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, *see* ''Net Asset Value'' below.

exchange, a pricing service, or a major market maker (or dealer).[14]

Equities and any other exchange traded securities (such as shares of ETFs or closed-end investment companies) will be valued at the official closing price on their principal exchange, or lacking any current reported sale at the time of valuation, at the mean between the most recent bid and asked quotations on the principal exchange. Portfolio securities traded on more than one securities exchange will be valued at the last sale price or official closing price, as applicable, on the business day as of which such value is being determined at the close of the exchange representing the principal market for such securities. Shares of money market mutual funds will be valued at their NAV. Money market instruments will be valued at the mean between the most recent available bid and asked quotations provided by parties that make a market in the instrument. If recent bid and asked quotations are not available, these securities will be valued in accordance with the Fund's fair valuation procedures. Money market instruments with maturities of less than 60 days will be valued at amortized cost.

Notwithstanding the foregoing, in determining the value of any security or asset, the Fund may use a valuation provided by a pricing vendor employed by the Trust and approved by the Trust Board. The pricing vendor may base such valuations upon dealer quotes, by analyzing the listed market, by utilizing matrix pricing, by analyzing market correlations and pricing and/or employing sensitivity analysis.

The Adviser may use various pricing services, or discontinue the use of any pricing service, as approved by the Trust Board from time to time. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

In the event that current market valuations are not readily available or such valuations do not reflect current market value, the Trust's procedures require the Adviser's Pricing Committee to determine a security's fair value in accordance with the Fund's Fair Value Pricing Procedures, which are approved by the Trust Board and consistent with the 1940 Act.[15] In determining such value the Adviser's Pricing Committee may consider, among other things, (i) price comparisons among multiple sources, (ii) a review of corporate actions and news events, and (iii) a review of relevant financial indicators. In these cases, the Fund's NAV may reflect certain portfolio securities' fair values rather than their market prices. Fair value pricing involves subjective judgments and it is possible that the fair value determination for a security is materially different than the value that could be realized upon the sale of the security.

Availability of Information

The Fund's Web site, ActiveAlts.com, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[16] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters; and (3) daily trading volume. On each business day, before commencement of trading in Shares in the Regular Market Session[17] on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the ''Disclosed Portfolio'') held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[18]

On a daily basis, the Fund will disclose for each portfolio security and other asset of the Fund the following information on the Fund's Web site (if applicable): Name, ticker symbol, CUSIP number or other identifier, if any; type of holding (such as ''common stock'', ''note'', ''mutual fund''); quantity held (as measured by, for example, number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holdings in the Fund's portfolio. The Web site information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735 as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service,[19] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. In addition, during hours when the local markets for foreign securities in the Fund's portfolio are closed, the Intraday Indicative Value will be updated at least every 15 seconds during the Regular Market Session to reflect currency exchange fluctuations.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available from the Fund free upon request, and those documents and the Form N–CSR and Form N–SAR

[14] Under normal market conditions, the Fund will obtain pricing information on all of its assets from these sources.

[15] The Valuation Committee of the Trust Board will be responsible for the oversight of the pricing procedures of the Fund and the valuation of the Fund's portfolio. The Valuation Committee has delegated day-to-day pricing responsibilities to the Adviser's Pricing Committee, which will be composed of officers of the Adviser. The Pricing Committee will be responsible for the valuation and revaluation of any portfolio investments for which market quotations or prices are not readily available. The Trust and the Adviser have implemented procedures designed to prevent the use and dissemination of material, nonpublic information regarding valuation and revaluation of any portfolio investments.

[16] The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[17] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m. Eastern time; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m. Eastern time; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m. Eastern time).

[18] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[19] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*.

Intra-day, executable price quotations of the Equities, any other exchange-traded securities, and money market instruments and money-market mutual funds, held by the Fund are available from major broker-dealer firms or on the exchanges on which they are traded, if applicable. The foregoing intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. The previous day's closing price and trading volume information for the Equities and any other exchange-traded securities held by the Fund will be published daily in the financial section of newspapers. Quotation and last sale information for the Equities and any other exchange-traded securities held by the Fund will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 [20] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts and Trading Pauses

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 7:00 a.m. until 8:00 p.m. Eastern time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[21] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange may obtain information from the Trade Reporting and Compliance Engine (''TRACE''), which is the FINRA-developed vehicle that facilitates mandatory reporting of over-the-counter secondary market transactions in eligible fixed income securities.[22]

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Equities, or other exchange-traded securities with other markets and other entities that are Intermarket Surveillance Group (''ISG'') members, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, Equities, or other exchange-traded securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Equities, or other exchange-traded securities from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[23] FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain money market instruments held by the Fund reported to FINRA's TRACE.

All Equities, and any shares of ETFs or closed-end investment companies, held by the Fund will be listed on a U.S. exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Exchange also has a general policy prohibiting the distribution of material, nonpublic information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how and by whom information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a

[20] *See* 17 CFR 240.10A–3.

[21] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[22] All broker/dealers who are FINRA member firms have an obligation to report transactions in corporate bonds to TRACE.

[23] For a list of the current members of ISG, *see www.isgportal.org.*

prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act [24] in general and Section 6(b)(5) of the Act [25] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on Nasdaq during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Adviser is affiliated with a broker-dealer and has implemented a ''fire wall'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. All Equities, and any shares of ETFs or exchange-traded investment companies, traded by the Fund will be listed on a U.S. exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange. The Fund's portfolio holdings will be disclosed on its Web site daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service will be widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available via UTP Level 1, as well as Nasdaq proprietary quote and trade services. Intra-day, executable price quotations on the Equities, money market instruments, shares of ETFs, shares of exchange-traded investment companies, and other assets held by the Fund are available from major broker-dealer firms or on the exchanges on which they are traded, if applicable. The foregoing Intra-day price information is available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Web site for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted if the circuit breaker parameters in Nasdaq Rule 4120(a)(11) have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–124 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–124. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–124 and should be submitted on or before November 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27515 Filed 10–28–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76249; File No. SR–CHX–2015–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Adopt CHX SNAP Execution Fees

October 23, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 19, 2015, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule'') to adopt CHX SNAP execution fees. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt and amend fees for CHX SNAP (''SNAP''). On October 6, 2015, the SEC approved a proposed rule change to adopt SNAP, an intra-day, sub-second and on-demand auction service.[3] A SNAP Cycle[4] is comprised of the following five stages:

• Stage one—Initiating the SNAP Cycle;

• Stage two—SNAP Order Acceptance Period;

• Stage three—Pricing and Satisfaction Period;

• Stage four—Order Matching Period; and

• Stage five—Transition to the Open Trading State.[5]

In sum, SNAP Cycles will never be scheduled by the Exchange and will always be driven by market demand for bulk trading in a subject security. The key features of a SNAP Cycle are as follows:[6]

• The entire SNAP Cycle is designed to be completed in less than one second.

• SNAP Cycles could occur numerous times in a subject security during the regular trading session only.[7]

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[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76087 (October 6, 2015), 80 FR 61540 (October 13, 2015); *see also* Securities Exchange Act Release No. 75346 (July 1, 2015), 80 FR 39172 (July 8, 2015) (SR–CHX–2015–03). The approved rule change is not yet operative and will become operative with two weeks' notice by the Exchange to its Participants.

[4] *See supra* note 3; *see also* CHX Article 18, Rule 1(b).

[5] *See supra* note 3; *see also* CHX Article 1, Rule 1(qq).

[6] A complete description of SNAP may be found in the Approval Order and associated rule filing. *See supra* note 3.

[7] CHX Article 20, Rule 1(b) provides that the ''regular trading session—shall begin at 8:30 a.m.

- Order cancellations would be prohibited during a SNAP Cycle.
- Only limit orders marked Start SNAP [8] that meet minimum size, price and time of receipt requirements could initiate a SNAP Cycle.
  - During the stage one Initiating the SNAP Cycle, automated trading in the subject security on the Exchange would be suspended and remain suspended for the duration of the SNAP Cycle; provided, however, automated trading in the subject security may continue to occur simultaneously elsewhere in the national market system.
- During the stage two SNAP Order Acceptance Period, the Exchange will transition precedent SNAP Eligible Orders [9] to the SNAP CHX book and accept new SNAP Eligible Orders for a randomized time period for inclusion on the SNAP CHX book.[10] During the stage three Pricing and Satisfaction Period, the Exchange will attempt to ascertain a single auction price (*i.e.,* ''SNAP Price'') [11] from SNAP Eligible Orders resting on the SNAP CHX book.
  - If the SNAP Price is determined to be at a price that would require orders to be routed away, the Exchange would route away SNAP Eligible Orders resting on the SNAP CHX book.[12] Immediately after the necessary orders are routed away, the SNAP Cycle would enter the Satisfaction Period, during which time the Exchange would delay proceeding to the stage four Order Matching Period for a period of time not to exceed 200 milliseconds to allow for confirmations of routed orders to be received from away markets.
  - If the SNAP Price does not require orders to be routed away, the SNAP Cycle would immediately proceed to the stage four Order Matching Period.
- During the stage four Order Matching Period, SNAP Eligible Orders on the SNAP CHX book would execute at the SNAP Price within the Matching System.[13]
- During the stage five Transition to the Open Trading State,[14] unexecuted SNAP Eligible Orders, as well as other orders and cancel messages that have been queued during the SNAP Cycle, would be transitioned to the CHX book for automated trading.[15] During the transition, orders may, among other things, be executed within the Matching System or be routed away in a manner consistent with how orders are currently executed and routed during automated trading.[16]

As such, during a SNAP Cycle, orders may execute within the Matching System during either the stage four Order Matching Period (''stage four executions'') or the stage five Transition to the Open Trading State (''stage five executions''), whereas orders may be routed away during either the stage three Pricing and Satisfaction Period or the stage five Transition to the Open Trading State.[17]

The Exchange now proposes the following SNAP execution fees:

- *All away executions* resulting from orders routed away during a SNAP Cycle shall be assessed the current CHX Routing Services fee, pursuant to Section E.6 of the Fee Schedule, without amendment.
- *Stage four executions within the Matching System* shall be assessed new fees, pursuant to proposed Section E.9.[18]
- *Stage five executions within the Matching System* shall be assessed the current CHX fees and credits pursuant to Sections E.1–4, without amendment.[19]

Proposed Section E.9 outlines these proposed SNAP execution fees, as discussed below.

In order to incentivize Participants to initiate and participate in SNAP Cycles, the Exchange proposes to assess no fee for stage four executions.[20] However, the Exchange proposes to adopt a fee structure for stage four executions so that market participants would be notified as to how the Exchange would charge fees for stage four executions if it decides to assess such fees in the future.[21] To this end, proposed Section E.9(a) provides as follows:

Stage four executions. For all executions within the Matching System during a stage four Order Matching Period, as described under Article 18, Rule 1(b)(4), the Exchange shall charge a fee for each buy order per share executed and a fee for each sell order per share executed, regardless of the original size of the orders, depending on the single SNAP Price, as defined under Article 1, Rule 1(rr), at which the orders executed relative to the National Best Bid and Offer (''NBBO'') at the time the SNAP Price was calculated. Only one of the following rows shall apply per SNAP Cycle.[22]

SNAP Price	Buy order	Sell order
1. SNAP Price < NBB	No Fee	No Fee.
2. SNAP Price = NBB	No Fee	No Fee.
3. NBB < SNAP Price < NBO.	No Fee	No Fee.
4. SNAP Price = NBO ...	No Fee	No Fee.
5. SNAP Price > NBO ...	No Fee	No Fee.
6. SNAP Price = Locked NBBO.	No Fee	No Fee.

The following examples illustrate how the proposed Section E.9(a) fee would be applied:

- *Example 1.* Assume that stage four executions occurred at a SNAP Price of $50.00/share and the relevant NBBO was 50.01 x 50.03. Under this Example 1, since the SNAP Price is less than the NBB, the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(1).
- *Example 2.* Assume the same as Example 1, except that the SNAP Price was $50.01/share. Under this Example 2, since the SNAP Price is equal to the NBB, the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(2)
- *Example 3.* Assume the same as Example 1, except that the SNAP Price was $50.02. Under this Example 3, since the SNAP Price is in between the NBBO, the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(3).
- *Example 4.* Assume the same as Example 1, except that the SNAP Price was $50.03. Under this Example 4, since the SNAP Price is equal to the NBO, the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(4).
- *Example 5.* Assume the same as Example 1, except that the SNAP Price

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and shall end at 3:00 p.m. each day for all securities.'' All times are in central time, unless noted otherwise.

[8] *See supra* note 3; CHX Article 1, Rule 2(h)(1).

[9] *See supra* note 3; *see also* CHX Article 1, Rule 1(ss).

[10] *See supra* note 3; *see also* CHX Article 18, Rule 1(b)(2); *see also* CHX Article 20, Rule 8(b)(3).

[11] *See supra* note 3; *see also* CHX Article 1, Rule 1(rr).

[12] *See supra* note 3; *see also* CHX Article 19, Rule 3(a)(4) and (5).

[13] *See supra* note 3; *see also* CHX Article 18, Rule 1(b)(4).

[14] *See supra* note 3; *see also* CHX Article 1, Rule 1(qq).

[15] *See supra* note 3; *see also* CHX Article 18, Rule 1(b)(5).

[16] *See* CHX Article 19, Rule 3(a)(1)–(3); *see also* CHX Article 20, Rule 8(e)(1).

[17] *See* CHX Article 19, Rule 3(a)(1)–(3).

[18] The Exchange will continue to assess fees related to Section 31 of the Act for all Matching System executions, pursuant to Section E.5 of the Fee Schedule.

[19] *Id.*

[20] The Exchange would continue to assess the CHX Section 31 fees, pursuant to Section E.5 of the Fee Schedule.

[21] Any change to proposed Section E.9 of the Fee Schedule would be effected through a proposed rule filing, pursuant to Rule 19b–4 under the Act.

[22] Pursuant to CHX Article 18, Rule 1(b)(2)(E), a SNAP Cycle would only proceed to the stage three Pricing and Satisfaction Period if the market snapshot taken to establish the SNAP Price shows that a two-sided NBBO exists and the CHX Routing Services are available. In calculating the NBBO for this purpose, the Exchange would utilize its current CHX NBBO calculation protocol to ascertain the first uncrossed NBBO. *See supra* note 3; *see also* paragraph .01(d) of CHX Article 20, Rule 5. Thus, the NBBO utilized to establish the SNAP Price may be uncrossed or locked, but never crossed.

was $50.04. Under this Example 5, since the SNAP Price is greater than the NBO, the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(5).

- *Example 6.* Assume the same as Example 1, except that the relevant NBBO is locked at 50.00 x 50.00. Under this Example 5 [sic], since the SNAP Price is locked than the NBO [sic], the Exchange would charge fees to all buy and sell orders per share executed, pursuant to proposed Section E.9(a)(6).

Also, the Exchange proposes to amend current Sections E.1, E.3 and E.4 to provide that each of those sections are subject to proposed Section E.9.[23] The Exchange does not propose to substantively modify Sections E.1, E.3 or E.4 in any other way.

Proposed Section E.9(b) provides as follows:

> Stage five executions. For all executions within the Matching System during a stage five Transition to the Open Trading State, as described under Article 18, Rule 1(b)(5), the Exchange shall charge fees and attribute credits, pursuant to Sections E.1–4 above.

Since stage five executions within the Matching System will occur in a manner similar to the current automated execution of orders within the Matching System,[24] the Exchange proposes to apply the current Matching System execution fees and credits to such executions. The Exchange notes that current Sections E.1–4 apply to all Matching System executions and, thus, Sections E.1–4 do not need to be amended to contemplate stage five executions, in particular.

Proposed Section E.9(c) provides as follows:

> Away executions. For all away executions resulting from orders routed away during a SNAP Cycle, the Exchange shall charge the CHX Routing Services fee, pursuant to Section E.6 of the Fee Schedule.

The proposed language clarifies that all away executions resulting from orders routed away during a SNAP Cycle will be subject to the current CHX Routing Services fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[25] in general, and furthers the objectives of Section 6(b)(4) of the Act[26] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities.

Specifically, the Exchange believes that proposed Section E.9(a) equitably allocates fees among Participants in a non-discriminatory manner because no Participant will be charged an execution fee for stage four executions. Moreover, in the event that the Exchange decides to adopt stage four executions fees,[27] the Exchange believes that proposed Section E.9(a) will allocate fees among Participants in a non-discriminatory manner because the same fees would be assessed to all orders executed during the stage four Order Matching Period.

The Exchange also believes that applying the current Matching System execution fees and credits for stage five executions, pursuant to current Sections E.1–4 and the current CHX Routing Services fees for all away executions resulting from orders routed away during a SNAP Cycle, pursuant to current Section E.6, equitably allocates fees among Participants in a non-discriminatory manner, as such fees and credits will continue to apply equally to all Participants that submit orders to the Matching System pursuant to current fees and credits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels set by the Exchange to be excessive. The Exchange believes that the proposed SNAP execution fees will encourage Participants to utilize SNAP, which is an innovative trading functionality that addresses a market need.[28] Thus, the proposed rule change is a competitive proposal that is intended to add additional liquidity and order executions to the Exchange, which will, in turn, benefit the Exchange and all Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[29] and subparagraph(f)(2) of Rule 19b–4 thereunder[30] because it establishes or changes a due, fee or other charge imposed by the Exchange.

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–CHX–2015–06 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–CHX–2015–06. 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

[23] Section E.1 of the Fee Schedule provides fees and credits for Matching System executions resulting from single-sided orders submitted as at least a Round Lot. Section E.2 of the Fee Schedule provides fees and credits for Matching System executions from orders submitted by Institutional Brokers registered with the Exchange pursuant CHX Article 17, which includes fees for both single-sided and cross orders. *See* CHX Article 1, Rule 2(a)(2). Section E.4 of the Fee Schedule provides fees for Matching System executions resulting from single-sided orders submitted as Odd Lots.

The Exchange notes that it does not propose to amend Section E.2 of the Fee Schedule, which addresses cross orders executed within the Matching System, to contemplate proposed Section E.9 because cross orders cannot be executed within the Matching System during the stage four Order Matching Period. *See* CHX Article 1, Rule 2(a)(2); *see also supra* note 3; *see also* CHX Article 18, Rule 1(b)(2)(C)(iv).

[24] *See supra* note 3.

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(4).

[27] *See supra* note 21.

[28] *See supra* note 3; *see also* Mary Jo White, Chair, Securities and Exchange Commission, Speech at Sandler O'Neil & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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–CHX–2015–06 and should be submitted on or before November 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27519 Filed 10–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76246; File No. SR–NYSEArca–2015–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 6.65A(c), Which Addresses How the Exchange Treats Obvious and Catastrophic Errors During Periods of Extreme Market Volatility To Coincide With the Pilot Period for the Plan To Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS

October 23, 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 October 22, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS. The pilot period is currently set to expire on October 23, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time ("LULD Plan"), including any extensions to the pilot period for the LULD Plan. The pilot period is currently set to expire on October 23, 2015.

In April 2013, in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the "Plan"),[3] the Exchange adopted Rule 6.65A(c) to provide that options executions would not be adjusted or nullified if the execution occurs during periods of extreme market volatility.[4] Specifically, Rule 6.65A(c) provides that, during the pilot period, electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State (as defined by the Plan) are not subject to review under Rule 6.87(c) for Obvious Errors or Rule 6.87(d) for Catastrophic Errors. Nothing in Rule 6.65A(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to Rule 6.87(c)(3), or a bust or adjust pursuant to paragraphs (e) through (j) of Rule 6.87.[5]

The Plan has been amended several times since inception and was implemented on February 24, 2014. On May 28, 2015, the Participants submitted to the Commission a Supplemental Joint Assessment that recommended that the Plan be adopted as permanent with certain modifications.[6] The purpose of this proposed extension is to allow the Participants to conduct, and the Commission to consider, further analysis of data in support of the recommendations made in the Supplemental Joint Assessment, including around the attributes of limit states; the length of trading pauses; the use of an alternative reference price at the open of trading; and the alignment of the percentage parameters with the Clearly Erroneous Execution (CEE) thresholds (with the goal of largely eliminating the Participants' CEE authority).

In order to align the pilot period for Rule 6.65A(c) with the proposed pilot

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan). The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.

[4] *See* Securities and Exchange Act Release No. 69340 (April 8, 2013), 78 FR 22004 (April 12, 2013) (SR–NYSEArca–2013–10) ("Approval Order").

[5] *See* Rule 6.87, Commentary .03.

[6] *See* Letter from Christopher B. Stone, Vice President, FINRA, to Brent J. Fields, Secretary, SEC, dated May 28, 2015. In addition, the Participants to the Plan recently filed to extend the Plan's pilot period until April 22, 2016 (the "Ninth Amendment"). *See* Securities Exchange Act Release No. 75917 (September 14, 2015), 80 FR 56515 (September 18, 2015) (File No. 4–631) (notice of proposed Ninth Amendment to the Plan).

period for the Plan, the Exchange similarly proposes to extend the pilot period. The Exchange has committed to provide the Commission with its data assessments five months prior to the expiration of the LULD Plan pilot period, including any extensions. If the Plan extension is approved, the Exchange will deliver its next data assessment to the Commission by December 18, 2015.

In connection with the proposed change, the Exchange proposes to modify the text of Rule 6.65A to make clear that paragraph (c), like paragraphs (a) and (b), will be in effect for a pilot period to coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan. The Exchange believes the benefits afforded to market participants under Rule 6.65A(c) should continue on a pilot basis during the same period as the Plan pilot. The Exchange continues to believe that adding certainty to the execution of orders in Limit or Straddle States would encourage market participants to continue to provide liquidity to the Exchange, and thus, promote a fair and orderly market during those periods. Thus, the Exchange believes that the protections of current Rule 6.65A(c) should continue while the industry gains further experience operating the Plan. In addition, the Exchange believes that extending the pilot period for Rule 6.65A(c) would allow the Exchange to continue to collect and evaluate data, as well as to conduct further data analyses, related to this provision.

Specifically, in connection with the adoption of Rule 6.65A (c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.[7] The Exchange agreed to and has been providing to the Commission and the public data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State.[8] For each of those option classes affected, each data record contains the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange believes that the extension of the pilot period of Rule 6.65A(c) would allow the Exchange to continue to observe the operation of the pilot and conduct its assessments relating to the impact of the operation of the Rule during Limit and Straddle States, which information will continue to be shared with the Commission and the public as set forth above.

Finally, the Exchange proposes to amend 6.65A(c) to update cross-references to Rule 6.87 that reflect the recent amendments of that rule, which add clarity and consistency to Exchange rules. The Exchange also proposes to similarly amend Commentary .03 to Rule 6.87 regarding the Limit Up-Limit Down State to reflect the extension of the pilot to coincide with the pilot period for the LULD Plan, including any extensions to the pilot period for the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 6.65A(c) and Commentary .03 to Rule 6.87 to coincide with the pilot period for the LULD Plan, as it may be amended from time to time, including any extensions to the pilot period for the LULD Plan would align that pilot program with the Pilot Period for the Plan, as proposed in the Ninth Amendment to the Plan. The Exchange believes that aligning the pilot periods would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 6.65A(c) and Commentary .03 to Rule 6.87 would help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that extending the pilot period for Rule 6.65A(c) and Commentary .03 to Rule 6.87 would remove impediments to, and perfect the mechanisms of, a free and open market because it would enable the Exchange to continue to conduct its assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as set forth above, which, in turn, provides the Exchange with more information from which to assess the impact of Rule 6.65A(c) and Commentary .03 to Rule 6.87.

Finally, the Exchange believes that amending 6.65A(c) to update cross-references to Rule 6.87 to reflect the recent amendments of that rule would remove impediments to, and perfect the mechanisms of, a free and open market by adding clarity and consistency to Exchange rules to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will

[7] Specifically, the Exchange committed to: "(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States." *See* Approval Order, 78 FR at 22008.

[8] *See* Securities Exchange Act Release No. 71869 (April 4, 2014), 79 FR 19689 (April 9, 2014) (SR–NYSEArca–2014–36).

[9] 15 U.S.C. 78f (b).

[10] 15 U.S.C. 78f(b)(5).

facilitate appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the obvious error pilot program to continue uninterrupted while the industry gains further experience operating under the Plan, and avoid any investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). 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.

[13] 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–101 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–101, and should be submitted on or before November 19, 2015.

[14] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27516 Filed 10–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76247; File No. SR–CBOE–2015–094]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Qualification and Registration of Trading Permit Holders and Associated Persons

October 23, 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 October 9, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .08 to Rule 3.6A (Qualifications and Registration of Trading Permit Holders and Associated Persons) regarding the categories of registration and respective qualification examinations required for Trading Permit Holders (''TPHs'') and associated persons that engage in trading activities on the Exchange. Specifically, the Exchange proposes to replace the Proprietary Trader registration category and the Series 56 Proprietary Trader registration qualification examination for Proprietary Traders with the Securities Trader category of registration and the Series 57 Securities Trader

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

registration qualification examination for Securities Traders respectively. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .08 to Rule 3.6A (Qualification and Registration of Trading Permit Holders and Associated Persons) to replace the Proprietary Trader (PT) registration category and qualification examination (Series 56) with the Securities Trader (TD) registration category and qualification examination (Series 57). In addition, the Exchange proposes to replace the Proprietary Trader Principal (TP) registration category with a Securities Trader Principal (TP) registration category for individual TPHs or associated person [sic] who either: (i) Supervise or monitor proprietary trading, market-making and/or brokerage activities for broker-dealers; (ii) supervise or train those engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer, with respect to those activities; and/or (iii) are officers, partners or directors of a TPH or TPH organization, as described in paragraph (a)(2)(i) of current Interpretation and Policy .08 to Rule 3.6A. The Exchange also proposes to replace the Proprietary Trader Compliance Officer (CT) registration category with the Securities Trader Compliance Officer (CT) registration category for Chief Compliance Officers (or individuals performing similar functions) of a TPH or TPH organization. This filing is, in all material respects, based upon SR–FINRA–2015–017, which was recently approved by the Securities and Exchange Commission (''SEC'' or ''Commission'').[5]

Rule 3.6A sets forth various qualification and registration requirements that individual TPHs and associated persons must satisfy in order to transact business on the Exchange. Among the qualification and registration requirements set forth in Rule 3.6A, Interpretation and Policy .08 provides that individual TPHs and associated persons that engage in proprietary trading, market-making, or effect transactions on behalf of a broker-dealer must register and qualify as a Proprietary Trader in WebCRD.[6] To qualify as a Proprietary Trader, individual TPHs and associated persons must either pass the Series 56 Proprietary Trader qualification examination[7] or Series 7 General Securities Representative qualification examination.[8] Several exchanges, including CBOE currently use the Series 56 examination as a qualification standard.[9]

Interpretation and Policy .08 to Rule 3.6A further requires that individual TPHs and associated persons with supervisory responsibility over proprietary trading activities and officers, partners, and directors of a TPH or TPH organization qualify and register as a Proprietary Trader Principal. Specifically, under paragraph (a)(2) of Interpretation and Policy .08 to Rule 3.6A, an individual TPH or associated person who either: (i) Supervises or monitors proprietary trading, market-making and/or brokerage activities for broker-dealers; (ii) supervises or trains those engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer, with respect to those activities; and/or (iii) is an officer, partner or director of a TPH or TPH organization must register and qualify as a Proprietary Trader Principal in WebCRD and satisfy prerequisite [sic] registration and qualification requirements, including, but not limited to passing the Series 24 General Securities Principal Examination or an acceptable alternative qualification examination.[10] An individual TPH or associated person who is a Chief Compliance Officer (or performs similar functions) for a TPH or TPH organization that engages in proprietary trading, market-making, or effecting transactions on behalf of a broker-dealer is also required to register and qualify as a Proprietary Trader Compliance Officer in WebCRD and satisfy the prerequisite [sic] registration and qualification requirements, including, but not limited to passing the Series 14 Compliance Official Examination.[11]

The Exchange proposes to replace the Series 56 qualification examination with the Series 57 qualification examination for those registration categories where the Series 56 is currently an acceptable qualification standard.[12] Specifically, with respect to the Proprietary Trader registration categories identified in Interpretation and Policy .08 to Rule 3.6A, the Exchange proposes to replace

[5] *See* Securities Exchange Act Release No. 75783 (August 28, 2015) (Order Approving a Proposed Rule Change to Establish the Securities Trader and Securities Trader Principal Registration Categories) (SR–FINRA–2015–017).

[6] WebCRD is a secure registration and licensing system operated by FINRA and is the central licensing and registration system for the U.S. securities industry and its regulators. The system contains the registration records of more than 6,500 registered broker-dealers, and the qualification, employment and disclosure histories of more than 650,000 active registered individuals. In addition, Web CRD facilitates the processing and payment of FINRA registration-related fees such as form filings, fingerprint submissions, qualification exams and continuing education sessions.

[7] The Series 56 Proprietary Trader Examination is a two hour and thirty minute exam, consisting of 100 scored multiple-choice questions. The Series 56 examination is administered by FINRA, but is not recognized by FINRA as an acceptable qualification examination for associated persons engaged in securities trading. Under FINRA rules, associated persons of FINRA members that engage in over-the-counter securities trading are required to pass the Series 55 Equity Trader Exam. Nevertheless, as FINRA has recognized, because the Series 55 and Series 56 are intended to test the core knowledge required of individuals engaged in trading activities as well as self-regulatory organization (''SRO'') rules, including trading rules that are common across all SROs, there is significant overlap in the content of the Series 55 and Series 56 qualification examinations.

[8] *See* Interpretation and Policy .08 to Rule 3.6A.

[9] *See, e.g.,* BATS Exchange, Inc. (''BATS'') Interpretation and Policy .01 to Rule 2.5 (Proficiency Examinations); Miami International Securities Exchange, LLC (''MIAX'') Rule 1302 (Registration of Representatives). *See also* Interpretation and Policy .08 to Rule 3.6A.

[10] Under current Interpretation and Policy .08 to Rule 3.6A, the Series 9 and 10 General Securities Sales Supervisor Examination and Series 23 General Securities Principal Exam—Sales Supervisor Module are acceptable alternative qualification examinations to the Series 24 General Securities Principal Examination. Because the Series 23 is not available in WebCRD, however, each applicant that chooses to take the Series 23 module as an alternative to the Series 24 qualification examination must provide documentation of a valid Series 23 license to the Registration Services Department upon request for proof of licensure.

[11] Under current Interpretation and Policy .08 to Rule 3.6A, the Series 24 General Securities Principal Examination is considered an acceptable alternative qualification examination for the Series 14 Compliance Official Examination and registered General Securities Principals may register as Proprietary Trader Compliance Officers subject to applicable provisions under the Rules. *See* Interpretation and Policy .08(b) to Rule 3.6A.

[12] *See* Interpretation and Policy .08 to Rule 3.6A.

the Proprietary Trader (PT) registration category with the Securities Trader (TD) registration category as well as eliminate the current Series 56 Proprietary Trader Exam prerequisite [sic] and, instead, include a Series 57 Securities Trader qualification examination in its place.[13] The Proprietary Trader Principal and Proprietary Trader Compliance Officer registration categories would be replaced with the renamed registration categories of Securities Trader Principal and Securities Trader Compliance Officer respectively.[14]

The Exchange will announce the effective date of the proposed rule change in a Regulatory Circular. Currently, the Exchange intends for the effective date to be January 4, 2016. Under the proposed rule, individual TPHs and associated persons who have passed the Proprietary Trader (Series 56) qualification examination and who have registered as Proprietary Trader (PT) [sic] in WebCRD on or before the effective date of the proposed rule change and individual TPHs and associated persons who have passed the General Securities Representative (Series 7) qualification examination and who have registered as Proprietary Traders (PT) in WebCRD on or before the effective date of the proposed rule change would be grandfathered as Securities Traders (TDs) without having to take any additional examinations and without having to take any other action), provided that the individual TPH's or associated person's registration has not been revoked by the Exchange as a disciplinary sanction and no more than two years have passed between the date that the individual TPH or associated person last registered as a Proprietary Trader (PT) and the effective date. After the effective date, an individual TPH or associated person would need to pass the new Series 57 Securities Trader qualification examination and register as a Securities Trader in WebCRD.

In addition, individual TPHs and associated persons who have either passed the Proprietary Trader (PT) qualification examination or the General Securities Representative (Series 7) qualification examination and who have registered as Proprietary Traders (PT) in WebCRD on or before the effective date of the proposed rule change and who have also passed the General Securities Principal (Series 24) qualification examination (or have completed any of the alternative acceptable qualifications requirements as defined in current Interpretation and Policy .08(b) to Rule 3.6A) and who have also registered as Proprietary Trader Principals (TP) in WebCRD on or before the effective date of the proposed rule change would be eligible to register as Securities Trader Principals (TPs), provided that the individual TPH's or associated person's registration has not been revoked by the Exchange as a disciplinary sanction and no more than two years have passed between the date that the individual TPH or associated person last registered as a Proprietary Trader Principal (TP) and the date they register as a Securities Trader Principal (TP).[15] After the effective date, a Securities Trader Principal would need to pass the Securities Trader (Series 57) qualification examination and the General Securities Principal (Series 24) qualification examination (or have completed any of the alternative acceptable qualifications as defined in current Interpretation and Policy .08(b) to Rule 3.6A) and be registered as such in order to register as a Securities Trader Principal (TP).[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that adoption of the Securities Trader registration category and Series 57 Securities Trader qualification examination registration requirement is consistent with the Act. FINRA has indicated that the Series 57 qualification examination is being developed in an effort to adopt a more tailored examination. The Exchange believes that a more tailored qualification examination for individual TPHs and associated persons engaged in trading activities is a measure designed to help ensure professionalism among market participants, prevent fraudulent and manipulative practices, and promote just and equitable principles of trade. The Exchange also believes that it is in the interests of investors and the general public to develop a more tailored qualification examination for proprietary traders and that a more uniform qualification standard may help ensure fair and orderly markets. Furthermore, the Exchange believes that it is in the interests of all market participants to provide consistent qualification and registration requirements across markets. The Exchange believes that harmonizing the Exchange's qualification and registration requirements with those of FINRA and the other national securities exchanges would further such interests.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change relating to Securities Traders, which is, in all material respects, based upon and substantially similar to, recent rule changes adopted

[13] Neither the Exchange's current Rules nor the proposed rule would require that a Proprietary Trader or Securities Trader work at, or be associated with, a ''proprietary trading firm.'' Rather, both the current Rules and the proposed rule would require that individual TPHs and associated persons that engage in proprietary trading, market-making, or effect transactions on behalf of a broker-dealer register to qualify and register as a Proprietary Trader (or Securities Trader) in WebCRD. Whereas the current rule allows individual TPHs and associated persons to qualify as a Proprietary Trader by either passing the Series 56 Proprietary Trader qualification examination or Series 7 General Securities Representative qualification examination, the proposed rule would require individual TPHs and associated persons to pass the Series 57 Securities Trader qualification examination in order to qualify as a Securities Trader after the effective date of the proposed rule change.

[14] As is the case under the current Rules, under the proposed rule, only individuals qualified and registered as a Proprietary Trader Principal (Securities Trader Principal) would be permitted to supervise a Proprietary Trader (Securities Trader).

[15] *See* Rule 3.6A(e) (Requirement for Examination on Lapse of Registration).

[16] The Exchange also proposes to add text to Interpretation and Policy .08(b) to Rule 3.6A regarding the supervisory responsibilities of the Securities Trader Principals, which would limit Securities Trader Principals' supervisory responsibilities to supervision of the securities trading functions of TPHs as described in paragraph (a)(2)(i) of Interpretation and Policy .08 to Rule 3.6A, and the activities of officers, partners, and directors of TPHs or TPH organizations.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

by FINRA and which is being filed in conjunction with similar filings by the other national securities exchanges, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of these registration requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov Please include File Number SR–CBOE–2015–094 on the subject line..*

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE-2015–094. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–094 and should be submitted on or before November 19, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27517 Filed 10–28–15; 8:45 am]

BILLING CODE 8011–01–P

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76251; File No. SR–CBOE–2015–026]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of a Proposed Rule Change Relating to Rules 6.74A and 6.74B

October 23, 2015.

On March 6, 2015, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding the solicitation of Market-Makers as the contra party to an agency order entered into the Exchange's Automated Improvement Mechanism and Solicitation Auction Mechanism auctions. The proposed rule change was published for comment in the **Federal Register** on March 23, 2015.[3] On May 4, 2015, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to June 21, 2015.[4] On June 18, 2015, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] On July 21, 2015, the Commission received a letter from the Exchange responding to the Order Instituting Proceedings.[6] Subsequently, the Commission received two other comment letters on the proposed rule change.[7] On September 14, 2015, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74519 (March 17, 2015), 80 FR 15264.

[4] *See* Securities Exchange Act Release No. 74862 (May 4, 2015), 80 FR 26599 (May 8, 2015).

[5] *See* Securities Exchange Act Release No. 75245 (June 18, 2015), 80 FR 36386 (June 24, 2015) (''Order Instituting Proceedings'').

[6] *See* Letter to Brent J. Fields, Secretary, Commission, from Kyle Edwards, Attorney, CBOE, dated July 21, 2015.

[7] *See* Letter to Brent J. Fields, Secretary, Commission, from Gavin Rowe, Senior Director, Dash Financial LLC, dated August 11, 2015; Letter to Brent J. Fields, Secretary, Commission, from Benjamin Londergan, Executive Managing Director, Convergex Execution Solutions, dated September 15, 2015.

disapprove the proposed rule change.[8] On October 22, 2015, CBOE withdrew the proposed rule change (SR–CBOE–2015–026).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–27520 Filed 10–28–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76254; File No. SR–CBOE–2015–045]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Withdrawal of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Rule 6.53C and Complex Orders on the Hybrid System

October 23, 2015.

On May 12, 2015, the Chicago Board Options Exchange, Incorporated (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify CBOE Rule 6.53C, Complex Orders on the Hybrid System, regarding eligibility for participation in the Complex Order Book and the Complex Order Auction (''COA''). The proposed rule change was published for comment in the **Federal Register** on May 27, 2015.[3] On June 3, 2015, CBOE filed Amendment No.1 to the proposed rule change.[4] On July 6, 2015, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to August 25, 2015.[5] On August 19, 2015, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[6] The Commission received no comments on the proposed rule change, as modified by Amendment No. 1. On September 8, 2015, CBOE withdrew the proposed rule change (SR–CBOE–2015–045).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett

Deputy Secretary.

[FR Doc. 2015–27521 Filed 10–28–15; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Securities Exchange Act Release No. 75908 (September 14, 2015), 80 FR 56525 (September 18, 2015).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75003 (May 20, 2015), 80 FR 30306.

[4] Amendment No. 1 to the proposed rule change amended the statutory basis and burden on competition sections regarding distinguishing between Professional and non-Professional orders for purposes of determining eligibility for COA.

[5] *See* Securities Exchange Act Release No. 75359 (July 6, 2015), 80 FR 39821.

[6] *See* Securities Exchange Act Release No. 75736 (August 19, 2015), 80 FR 51642.

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9335]

U.S. National Commission for UNESCO; Notice of Meeting

The 2015 Annual Meeting of the U.S. National Commission for the United Nations Educational, Scientific, and Cultural Organization (UNESCO) will take place on Friday, December 11, 2015, at the U.S. Department of State in Washington, DC (2201 C Street NW.). The Commission will hold a series of informational plenary sessions, subject-specific committee and thematic breakout sessions and discuss final recommendations, which will be open to the public 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to approximately 4:30 p.m.

Members of the public who wish to attend any of these meetings or who need reasonable accommodation should contact the U.S. National Commission for UNESCO at the email address below no later than Monday, December 7, 2015 for further information about admission, as seating is limited. Those who wish to make oral comments during the public comment section held during the afternoon session should request to be scheduled by Friday, December 4, 2015. Each individual will be limited to five minutes, with the total oral comment period not exceeding thirty minutes.

Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend will need to provide full name, address, date of birth, citizenship, driver's license or passport number, and email address. This information will greatly facilitate entry into the building.

Written comments should be submitted by Friday, December 4, 2015 to allow time for distribution to the Commission members prior to the meeting. The National Commission may be contacted via email at *DCUNESCO@state.gov,* or via phone at (202) 663–0026. The Web site can be accessed at: *http://www.state.gov/p/io/unesco/.*

Personal information regarding attendees is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: October 22, 2015.

Allison Wright,

Executive Director, U.S. National Commission for UNESCO, Department of State.

[FR Doc. 2015–27614 Filed 10–28–15; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 9334]

30-Day Notice of Proposed Information Collection: Contact Information and Work History for Nonimmigrant Visa Applicant

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to November 30, 2015.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Taylor Mauck, who may be reached at 202–485–7635 or at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Contact Information and Work History for Nonimmigrant Visa Applicant.
• *OMB Control Number:* 1405–0144.
• *Type of Request:* Extension of a Currently Approved Collection.
• *Originating Office:* CA/VO/L/R.
• *Form Number:* DS–0158.
• *Respondents:* Nonimmigrant Visa Applicants.
• *Estimated Number of Respondents:* 2,000.
• *Estimated Number of Responses:* 2,000.
• *Average Time per Response:* 1 hour.
• *Total Estimated Burden Time:* 2,000.
• *Frequency:* One time per visa application.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This paper form collects contact information, current employment information, and previous work experience information from aliens applying for nonimmigrant visas to enter the United States. The information collected is necessary to determine eligibility for certain visa classifications.

Methodology: Applicants may fill out the DS–158 online or print the page and fill it out by hand and submit it in person at the time of interview.

Dated: October 16, 2015.

Ed Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2015–27616 Filed 10–28–15; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on November 19, 2015, from 12:00 Noon to 3:00 p.m., Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: October 21, 2015.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2015–27667 Filed 10–27–15; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0061]

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity

ACTION: Request for public comment on a proposed collection of information

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Written comments should be submitted by December 28, 2015.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2015–0061 through one of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
• *Mail or Hand Delivery:* Docket Management Facility, US Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 202–366–9826.
• *Fax:* 202–493–2251.

Instructions: All submission must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulation.gov*, including any personal information provided. Please see the Privacy heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html*.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov*, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For access to background documents, contact Ritchie Huang, Office of Crash Avoidance and Electronic Controls, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; email: *ritchie.huang@dot.gov*; telephone: 202–366–5586.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB:

OMB Control Number: Not assigned.

Title: Heavy Vehicle Collision Warning Interfaces

Form Numbers: None.

Type of Review: New Information Collection

Background: Crash warning systems (CWSs) for commercial motor vehicles have been available for more than 20 years. CWSs can include features such as forward collision and lane departure warnings and use a variety of sensor technologies (*e.g.*, radar) to determine the crash risk of a collision. CWSs are designed to warn the driver to take action to avoid or mitigate a potential crash.

CWSs are available as both options from OEMs and as aftermarket/retrofit devices. While there are certain similarities between offerings within a particular CWS product class (*e.g.*, forward collision warning (FCW)), there are also differences in how suppliers present collision warnings, including the design of visual displays and auditory alerts. Typically, suppliers will use a combination of visual and audio modalities to convey a potential crash situation to the driver. However, their implementations vary across factors such as the visual interface, auditory alert, and the salience of alerts. While CWS implementations change and evolve, it is likely that certain warning interfaces are more effective than others during crash-imminent situations. This research seeks to examine the impact of CWSs as they pertain to commercial motor vehicle safety. The primary goal of this effort is to evaluate CWSs and assess the effectiveness of these driver-vehicle interfaces for heavy trucks and motorcoaches.

Description of the Need for the Information and Proposed Use of the Information: The collection of information consists of: (1) An eligibility questionnaire, (2) a demographic questionnaire, (3) mid study questionnaires, and (4) post study questionnaire.

The information to be collected will be used to:

- *Eligibility questionnaire(s)* will be used to obtain self-reported eligibility information participants must meet to qualify for participation in this study (*e.g.*, must hold valid Class A driver's license to drive a tractor-trailer).
- *Demographic questionnaire* will be used to obtain demographic information to confirm that the study group includes participants from various groups (*e.g.*, age, gender). Other demographic information will be collected to describe the study sample (*e.g.*, heavy vehicle operation type and classification).
- *Mid-study questionnaires* will be used to get information about drivers' beliefs and attitude towards different driver distractions and their willingness to perform these types of distractions in their own vehicle. These questionnaires also serve the purpose of setting up the true surprise event which is targeted to elicit a natural response from the driver during a crash warning. Each driver will complete three mid study questionnaires, one after experiencing each task.
- *Post study questionnaire(s)* will be used to get information about drivers' beliefs and attitude towards the visual and auditory alerts used in the technology tested, and to identify potential problems associated with each system. These questionnaires will also be used to assess perceived distraction potential of the systems as well as its usefulness. Each driver will complete a post study questionnaire once, after experiencing the surprise event.

Respondents: Virginia, West Virginia, North Carolina, and Tennessee drivers with a valid Class A commercial driver license.

Estimated Number of Respondents: 50 to 60.

Estimated Number of Responses: Eligibility screening will consist of one response containing 26 questions per respondent. Full participation in the study will include a demographics questionnaire containing seven questions per participant, three mid-study questionnaires each containing three questions per participant, and the post questionnaire containing 12 questions per participant.

Estimated Total Annual Burden: 37 minutes per respondent (44 hours total).

Estimated Frequency: Onetime for the eligibility, post study, and demographic questionnaire; three times for the mid study questionnaire.

TABLE 1—ESTIMATED BURDEN HOURS

Instrument	Number of respondents [1]	Frequency of responses	Number of questions	Estimated individual burden (minutes)	Total estimated burden hours	Total annualize cost to respondents [2]
Eligibility questionnaire	100	1	26	10	17	$414.80
Demographic questionnaire	60	1	7	2	2	48.80
Mid-study questionnaires	60	3	9	10	10	244.00
Post study questionnaire	60	1	12	15	15	366.00
Total					44 hours	1,073.60

[1] The number of respondents in this table includes drop-out rates.

[2] Estimated based on the mean hourly rate for Virginia (all occupations) is $24.40 as reported in the May 2014 Occupational Employment and Wage Estimates, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_va.htm*.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995, 44. U.S.C. Chapter 35, as amended; 5 CFR part 1320; and 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2015–27480 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0052; Notice 2]

Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Goodyear Tire & Rubber Company (Goodyear), has determined that certain Goodyear G316 LHT commercial truck trailer tires do not fully comply with paragraph S6.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Radial Tires for motor vehicles with a GVWR of more than 4,536 Kilograms (10,000 pounds) and Motorcycles.* Goodyear has filed an appropriate report dated April 27, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Abraham Diaz, Office of Vehicles Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Goodyear 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.

Notice of receipt of the Goodyear's petition was published, with a 30-day public comment period, on June 11, 2015 in the **Federal Register** (80 FR 33336). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2015–0052.''

II. Tires Involved: Affected are approximately 79 Goodyear G316 LHT size 295/75R22.5 LRG commercial truck trailer tires manufactured between March 22, 2015 and April 9, 2015.

III. Noncompliance: Goodyear explains that because the sidewall markings on the reference side of the subject tires incorrectly identify the number of plies as ''4 Plies Steel Cord'' instead of the actual number ''5 Plies Steel Cord,'' the tires do not meet the requirements of paragraph S6.5(f) of FMVSS No. 119.

IV. Rule Text: Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

> S6.5 *Tire markings.* Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. . . .
>
> (f) The actual number of plies and the composition of the ply cord material in the sidewall and, if different, in the tread area; . . .

V. Summary of Goodyear's Arguments: Goodyear stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Goodyear stated that the subject tires were manufactured as designed and meet or exceed all applicable FMVSS performance standards.

(B) Goodyear also stated that all of the sidewall markings related to tire service (load capacity, corresponding inflation pressure, etc.) are correct.

(C) Goodyear believes that the mislabeling of the subject tires is not a safety concern and also has no impact on the retreading, repairing, and recycling industries.

(D) Goodyear also pointed out that NHTSA has previously granted petitions for non-compliances in sidewall marking that it believes are similar to the subject noncompliance.

Goodyear additionally informed NHTSA that the molds at the manufacturing plant have been corrected so that no additional tires will be manufactured or sold with the noncompliance.

In summation, Goodyear believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Goodyear 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's Decision

NHTSA's Analysis: Although tire construction affects a tire's strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Tire dealers and customers must therefore consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires.

Therefore, the agency agrees with Goodyear's statement that the incorrect markings in this case do not present a safety concern. There is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgement, the incorrect labeling of the tire construction information in this instance will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of tire plies. In addition, all of the sidewall markings related to tire service, such as load capacity and corresponding inflation pressure, are correct.

Goodyear has also indicated that it has corrected the stamping problem that caused the noncompliance. *NHTSA's Decision:* In consideration of the foregoing, NHTSA has decided that Goodyear has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is hereby granted and Goodyear is exempted from the obligation of providing notification of, and remedy for the subject noncompliance.

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, the decision only applies to the subject tires that Goodyear no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 tires under their control after Goodyear 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 M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–27611 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0098; Notice 1]

Continental Tire the Americas, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Continental Tire the Americas, LLC (CTA), has determined that certain Continental Tire T-type spare tires do not fully comply with paragraph S4.3(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic and Certain Specialty Tires.* CTA has filed an appropriate report dated August 25, 2015 and amended on October 1, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is November 30, 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 above 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. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), CTA 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.

This notice of receipt of CTA'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. Tires Involved: Affected are approximately 3,627 Continental Tire CST 17 size T125/70R17 98M temporary spare tires sold to General Motors and also in small quantities in the replacement market. These tires were manufactured between March 18, 2012 and April 11, 2015.

III. Noncompliance: CTA explains that the noncompliance is that the tire size designation markings on the sidewalls of the subject tires do not contain the tire type code designator symbol from The Tire and Rim Association yearbook as required by paragraph S4.3(a) of FMVSS No. 109. Specifically, the subject tire size reads ''125/70R17 98M'' but should read ''T125/70R17 98M'' indicating the tire is a spare tire and for temporary use.

IV. Rule Text: Paragraph S4.3(a) of FMVSS No. 109 requires in pertinent part:

> S4.3 *Labeling Requirements.* Except as provided in S4.3.1 and S4.3.2 of this standard, each tire, except for those certified to comply with S5.5 of § 571.139, shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3(a) through (g) of this standard. On at least one sidewall, the information shall be positioned in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire . . .
>
> (a) One size designation, except that equivalent inch and metric size designations may be used; . . .

V. Summary of CTA's Analyses: CTA stated that the only missing marking on the sidewalls of the affected tires is the letter ''T'' as part of the size designation.

CTA also stated its belief that the omission of the tire size designation markings has no impact on the operational performance or durability of these tires or on the safety of vehicles on which these tires may be mounted and that the affected tires cannot be confused with normal P-metric or metric passenger tires for the following reasons:

1. Both sidewalls of the affected tires have permanently molded letters that are ½ inch tall with the words ''TEMPORARY USE ONLY.''

2. Both sidewalls of the affected tires have permanently molded letters and numerals that are ½ inch tall with the words ''INFLATE TO 420KPA (60PSI),'' as required by section S4.3.5 of FMVSS No. 109.

3. The affected tires are intended as a spare tire for the Chevy Impala, which is equipped with four ground tires of size P235[/]55R17 98W. Thus, the ground tires are significantly different in

width (approximately four inches wider) and in diameter (approximately three inches larger).

The affected tires also have a starting tread depth of only 3⁄32 inch, whereas a typical P-metric or metric passenger tire has a much deeper tread depth of approximately 10⁄32 inch.

CTA notes that they are not aware of any crashes, injuries, customer complaints or field reports associated with this noncompliance.

CTA informed NHTSA that it has corrected the mold at the manufacturing plant so that no additional tires will be manufactured with the subject noncompliance and that all remaining CTA inventory of the subject tires in their possession have been scrapped.

CTA stated its belief that NHTSA has previously granted inconsequential noncompliance petitions regarding noncompliances that they believe are similar to the subject noncompliance.

In summation, CTA believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt CTA 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 tires that CTA 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 tires under their control after CTA 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 M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–27610 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0041; Notice 2]

Tireco, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Tireco, Inc., (Tireco) has determined that certain Tireco Traction tires do not fully comply with paragraph S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More than 4,536 Kilograms (10,000 pounds) and Motorcycles.* Tireco has filed an appropriate report dated March 30, 2015, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

ADDRESSES: For further information on this decision contact Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5310, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Tireco 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.

Notice of receipt of the petition was published with a 30-day public comment period, on June 11, 2015 in the **Federal Register** (80 FR 33333). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2015–0041.''

II. Tires Involved: Affected are approximately 1,600 Tireco Power King Traction size 8.25–20E/10, Power King Traction size 9.00–20 E/10, Milestar Traction size 8.25–20 E/10, and Milestar Traction size 9.00–20 E/10 tires. These tires were manufactured between March 1, 2014 and March 22, 2015.

III. Noncompliance: Tireco explains that the noncompliance is that the Tire Information Numbers (TINs) required to be marked on the tire sidewalls by paragraph S6.5(b) of FMVSS No. 119 are incomplete because they do not include the tire size codes required by 49 CFR part 574.5(b).

IV. Rule Text: Paragraph S6.5 of FMVSS No. 119 requires in pertinent part:

S6.5 *Tire Markings.* Except as specified in this paragraph, each tire shall be marked on each sidewall with the information in paragraph (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less than 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires . . .

(b) The tire identification number required by part 574 of this chapter. This number may be marked on only one sidewall. . . .

V. Summary of TIRECO's Arguments: Tireco state its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Tireco believes that the absence of the tire size code from the TIN has no impact on the operational performance of the subject tires or on the safety of vehicles on which the subject tires are mounted because the subject tires meet or exceed all of the applicable performance requirements specified by FMVSS No. 119.

(B) Tireco states that even though the size code is absent from the TIN, the tire size information is readily available to consumers in a more understandable way by virtue of the actual tire size marking on the sidewalls.

(C) Tireco also states that in the unlikely event that any of the subject tires are ever found to contain a defect or a substantive noncompliance that would warrant a recall, the recalled tires could be adequately identified through the partial [T]IN that is stamped on the sidewall.

(D) Tireco referenced inconsequentiality petitions NHTSA has previously granted in the past that have addressed what it believes are similar issues.

Tireco is not aware of any crashes, injuries, customer complaints, or field reports associated with the subject noncompliance.

Tireco has additionally informed NHTSA that the fabricating manufacturer has corrected the molds at the manufacturing plant so that no additional tires will be manufactured with the noncompliance.

In summation, Tireco believes that the described noncompliance of the subject tires is inconsequential to motor vehicle safety, and that its petition, to exempt Tireco 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'S Decision:

NHTSA's Analysis: Although the tire size codes were not included as part of the TINs on the effected tires, the actual size of each tire is clearly marked on its sidewall and should allow end-users to be able to select a tire size for their vehicles. In addition, in the event that the tires are subject to a recall or need to be identified as part of a defect investigation, the tires could be identified by the correctly stamped partial TIN on the sidewall. Subsequent to receiving the subject petition, NHTSA contacted Tireco and received its verification that a registration card submitted with an incomplete TIN for the subject tires would be accepted and registered correctly.

The subject noncompliance also has no effect on the operational safety of vehicles on which these tires are mounted. *NHTSA's Decision:* In consideration of the foregoing, NHTSA has decided that Tireco has met its burden of persuasion that the FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, Tireco's petition is hereby granted and Tireco is not obligated to provide notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

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 tires that Tireco no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Tireco 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 M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–27612 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. DOT–OST–2015–0139]

Proposed Agency Information Collection Request; Vendor Invoice Submission Pilot

AGENCY: U.S. Department of Transportation (DOT).

ACTION: Notice with request for comments.

SUMMARY: The DOT invites the public and other Federal agencies to comment on a proposed information collection request concerning a pilot program to evaluate new processes and procedures for vendor invoice submission. DOT will submit the proposed information collection request to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506 (c)(2)(A)). This notice sets forth new processes and procedures for vendors that submit invoices and receive payments from DOT Operating Administrations (OAs). DOT's objective is to improve efficiency and reduce manual processing through the use of electronic invoicing for vendors. This electronic invoicing process is currently used by DOT's grantee community and the Department and would like to pilot an automated invoicing process utilized by DOT grantees that would allow invoices to be submitted electronically. Automating and simplifying the DOT vendor payment process will save both the vendor and the Federal Government time and expense that come with paper-based invoice submission and payment administration.

DATES: Comments must be submitted on or before December 28, 2015.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to US Department of Transportation, Office of Financial Management, B–30, Room W93–431, 1200 New Jersey Avenue SE., Washington DC 20590–0001, Gayle Sienicki (202) 366–0448, *DOTElectronic Invoicing@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Procedures for Vendor Invoice Submission Pilot.

OMB Control Number: 2105–0139.

Type of Request: New information collection.

Background: This notice sets forth new processes and procedures for vendors that submit invoices and receive payments from DOT Operating Administrations (OAs). The vendors involved in the pilot must meet the following requirements to participate—

- Vendors will need to have electronic internet access to register in the Delphi eInvoicing system.
- Vendors will submit invoices electronically and DOT OAs must process invoices electronically.
- The identities of system users must be verified prior to receiving access to the Delphi eInvoicing system. Prospective Users must complete a user request form and provide the following information: full name, work address, work phone number, work email address, home address and home phone number. Prospective users must present the completed form to a Notary Public for verification. Prospective users will then return the notarized form to DOT to receive their login credentials.

Affected Public: DOT Vendors.

Total Estimated Number of Respondents: 255.

Total Estimated Number of Responses: 2603.

Estimated Total Annual Burden Hours: 5206 (initial registration only).

Frequency of Collection: One time.

Annual Estimated Total Annual Burden Costs: $52,060.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to US Department of Transportation, Office of Financial Management, B–30, Room W93–431, 1200 New Jersey Avenue SE., Washington DC 20590–0001, Gayle Sienicki (202) 366–0448, *DOTElectronic Invoicing@dot.gov.*

Comments: Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, as amended.

Issued in Washington, DC, on October 22, 2015.

David Rivait,

Deputy Chief Financial Officer, Department of Transportation.

[FR Doc. 2015–27577 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2014–0011]

National Freight Advisory Committee; Notice of Public Meeting

AGENCY: Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Transportation (DOT) announces a public meeting of its National Freight Advisory Committee (NFAC) to develop comments on the draft National Freight Strategic Plan (Plan). The meeting is open to the public and there will be an opportunity for public comment.

DATES: The meeting will be held on Friday, November 13, 2015 from 8:30 a.m. to 12:30 p.m., Eastern Standard Time.

Location: The meeting will be held at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: John Drake, Deputy Assistant Secretary for Transportation Policy at (202) 366–1999 or by email at *freight@dot.gov* or visit the NFAC Web site at *www.transportation.gov/nfac.*

SUPPLEMENTARY INFORMATION:

Background: The NFAC was established to provide advice and recommendations to the Secretary of Transportation on matters related to freight transportation in the United States, including (1) Implementation of the freight provisions of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141); (2) establishment of the National Freight Network; (3) development of the Plan; (4) development of strategies to help States implement State Freight Advisory Committees and State Freight Plans; (5) development of measures of conditions and performance in freight transportation; (6) development of freight transportation investment, data, and planning tools; and (7) legislative recommendations. The NFAC operates as a discretionary committee under the authority of the DOT, established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. See DOT's NFAC Web site for additional information about the committee's activities at *www.transportation.gov/nfac.*

On October 18, 2015, the DOT issued the draft National Freight Strategic Plan for public comment. The draft Plan describes the freight transportation system, including major corridors and gateways, and assesses the physical, institutional, and financial barriers to improvement. Importantly, the draft Plan also recommends specific strategies to help support our freight transportation system through improved planning, dedicated funding streams, and innovative technologies. The draft Plan and additional information about the DOT's freight activities are available at *www.transportation.gov/freight.*

Agenda: The agenda will include:

(1) Welcome and opening remarks;

(2) Discussion on the draft National Freight Strategic Plan;

(3) Public comment.

The meeting agenda will be posted on the NFAC Web site at *www.transportation.gov/nfac* in advance of the meeting.

Public Participation: This meeting will be open to the public. Members of the public who wish to attend in person are asked to RSVP to *freight@dot.gov* with your name and affiliation no later than November 6, 2015, in order to facilitate entry and guarantee seating.

Services for Individuals with Disabilities: The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify John Drake, at (202) 366–1999 or *freight@dot.gov* five (5) business days before the meeting.

Written comments: Persons who wish to submit written comments for consideration by the Committee must email *freight@dot.gov* or send them to John Drake, Deputy Assistant Secretary for Transportation Policy, National Freight Advisory Committee, 1200 New Jersey Avenue SE., W82–320, Washington, DC 20590 by November 6, 2015 to provide sufficient time for review. All other comments may be received at any time before or after the meeting.

Dated: October 26, 2015.

John Drake,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2015–27607 Filed 10–28–15; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2438

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael A. Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Undistributed Capital Gains Tax Return.

OMB Number: 1545–0144.

Form Number: 2438.

Abstract: Form 2438 is used by regulated investment companies and real estate investment trusts to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D) or 857(b)(3)(D). The IRS uses this information to determine the correct tax.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 9 hrs., 46 mins.

Estimated Total Annual Burden Hours: 976.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2015.

Michael A. Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27491 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to model amendments and prototype program for simple IRAS.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to LaNita Van Dyke, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Model Amendments and Prototype Program for SIMPLE IRAs.

OMB Number: 1545–1543. Revenue Procedure Number: 97–29.

Abstract: This revenue procedure (1) provides a model amendment that may be used, prior to January 1, 1999, by a sponsor of a prototype individual retirement account or annuity (IRA) to establish a SIMPLE IRA (an IRA designed to accept contributions under a SIMPLE IRA Plan described in § 408(p)) of the Internal Revenue Code; (2) provides guidance on obtaining opinion letters to drafters of prototype SIMPLE IRAs; (3) provides permissive amendments to sponsors of nonSIMPLE IRAs; (4) announces the opening of a program for prototype SIMPLE IRA Plans; and (5) provides transitional relief for users of SIMPLE IRAs and SIMPLE IRA Plans that have not been approved by the Internal Revenue Service.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 3,205.

Estimated Total Annual Reporting Burden hours: 25,870.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. Books or records relating to a collection must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27495 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–37

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to LaNita Van Dyke at Internal Revenue Service, room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.ov.*

SUPPLEMENTARY INFORMATION:

Title: Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Internet Expense Apportionment.

OMB Number: 1545–1833.

Revenue Procedure Number: Revenue Procedure 2003–37.

Abstract: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by § 1.861–9T(g)(1)(iii). It also sets forth the procedures to be followed in the case of elections to use the fair market value method.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents and/or Recordkeepers: 125.

Estimated Average Time Per Respondent/Recordkeeper: 5 hours.

Estimated Total Annual Reporting and/or Recordkeeping Burden: 625 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27494 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to LaNita Van Dyke, or at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *LaNita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 6662—Imposition of the Accuracy-Related Penalty.

OMB Number: 1545–1426.

Regulation Project Number: INTL–21–91 (TD 8656).

Abstract: These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 8 hours, 3 minutes.

Estimated Total Annual Burden Hours: 20,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27496 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning; Profit or Loss From Business; Form 8907.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Nonconventional Source Fuel Credit Form 8907

Form Number: Form 8907.

Abstract: Form 8907 will be used to determine the amount of credit that can be claimed for the production and sale of qualified nonconventional source fuel.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Individuals or Households.

Estimated Number of Respondents: 22,000.

Estimated Time per Respondent: 12 hrs., 41 min.

Estimated Total Annual Burden Hours: 278,960.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27493 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

OMB Number: 1545–1014.

Form Number: Form 1066 and Schedule Q (Form 1066).

Abstract: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 4,917.

Estimated Time per Respondent: 64 hours, 16 minutes.

Estimated Total Annual Burden Hours: 758,989.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

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

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27497 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13285–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13285–A, Reducing Tax Burden on America's Taxpayers.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael A. Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reducing Tax Burden on America's Taxpayers.

OMB Number: 1545–2009.

Form Number: 13285–A.

Abstract: The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should be used to refer ideas for reducing taxpayer burden to the TBR for consideration and implementation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 62.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2015.

Michael A. Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27490 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–CE, Certificate of Payment of Foreign Death Tax.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certificate of Payment of Foreign Death Tax.

OMB Number: 1545–0260.

Form Number: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by Internal Revenue Code section 2014. The information is used by IRS to verify that the proper credit has been claimed.

Current Actions: There are no changes being made to Form 706–CE at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households.

Estimated Number of Responses: 2,250.

Estimated Time per Response: 1 hr., 44 min.

Estimated Total Annual Burden Hours: 3,870.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 22, 2015.

Michael Joplin,

IRS Reports Clearance Officer.

[FR Doc. 2015–27489 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–T, Allocation of Estimated Tax Payments to Beneficiaries.

DATES: Written comments should be received on or before December 28, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Michael A. Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries.

OMB Number: 1545–1020.

Form Number: 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Number of Respondents: 59 minutes.

Estimated Total Annual Burden Hours: 990.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 19, 2015.

Michael A. Joplin,

IRS Reports Clearance Office.

[FR Doc. 2015–27492 Filed 10–28–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section

999(b)(3) of the Internal Revenue Code of 1986).

Iraq; Kuwait; Lebanon; Libya; Qatar; Saudi Arabia; Syria; United Arab Emirates; Yemen.

Dated: October 22, 2015.

Danielle Rolfes,

International Tax Counsel (Tax Policy).

[FR Doc. 2015–27564 Filed 10–28–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

- Brodi Fontenot, Assistant Secretary for Management
- Barbara Pabotoy, Associate Chief Human Capital Officer for Executives and Human Capital Services
- Daniel L. Glaser, Assistant Secretary for Terrorist Financing
- Mark Mazur, Assistant Secretary for Tax Policy
- David A. Lebryk, Fiscal Assistant Secretary
- Rosa G. Rios, Treasurer of the United States
- Anita K. Blair, Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer
- John J. Manfreda, Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Mary G. Ryan, Deputy Administrator, Alcohol and Tobacco Tax and Trade Bureau
- Jennifer Shasky-Calvery, Director, Financial Crimes Enforcement Network
- Jamal El-Hindi, Deputy Director, Financial Crimes Enforcement Network
- Sheryl Morrow, Commissioner, Bureau of Fiscal Service
- Wanda J. Rogers, Deputy Commissioner, Financial Services and Operations, Bureau of Fiscal Service
- Kimberly McCoy, Deputy Commissioner, Fiscal Accounting and Shared Services, Bureau of Fiscal Services
- Leonard Olijar, Director, Bureau of Engraving and Printing
- Matthew Rhett Jeppson, Principal Deputy Director of the Mint
- Richard A. Peterson, Deputy Director, for Manufacturing and Quality, U.S. Mint
- Jeffrey Tribiano, Deputy Commissioner, Operations Support, Internal Revenue Service

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Julia J. Markham, Human Resources Specialist (Executive Resources), 1500 Pennsylvania Avenue NW., ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: (202) 927–4370.

Barbara B. Pabotoy,

Associate Chief Human Capital Officer, Human Capital Services.

[FR Doc. 2015–27485 Filed 10–28–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Offices Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performances Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance Review Board (PRB). The purpose of this Board is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions in the Departmental Offices, excluding the Legal Division. The Board will perform PRB functions for other bureau positions if requested.

Composition of Departmental Offices PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Board members are as follows:

Names for Federal Register Publication

- Everett, Jordan, Deputy Assistant Secretary, Intelligence Community Integration
- Ho, Christina, Deputy Assistant Secretary, Accounting Policy and Financial Transparency
- Mackie, James B. II, Director Office of Tax Analysis
- McDonald, Gordon, Senior Advisor and Director, Strategic Management
- Cooper, Iris, Senior Procurement Executive
- Pabotoy, Barbara, Associate Chief Human Capital Officer for Executive & Human Capital Services
- Rasetti, Lorenzo, Chief Financial Officer for Office of Financial Stability (Alternate Member)

DATES: *Effective Date:* Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mario R. Minor and Sherri Coleman, Office of Executives and Human Capital Services, 1500 Pennsylvania Avenue NW., ATTN: 1722 Eye Street, 9th Floor, Washington, DC 20220, Telephone: 202–622–0774.

Barbara B. Pabotoy,

Associate Chief Human Capital Officer, Human Capital Services.

[FR Doc. 2015–27486 Filed 10–28–15; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

United States Mint

Suspension of Coin Exchange by United States Mint

ACTION: Suspension of Coin Exchange by United States Mint.

SUMMARY: Under the authority of 31 U.S.C. 5120, the United States Mint established a program by which people and businesses could exchange bent and partial coins for reimbursement. Fused or mixed coins cannot be redeemed by the United States Mint.

Because of the possibility of unlawful activity on the exchange program, the United States Mint is suspending its redemption of bent and partial coins for a period of six months to assess the security of the program and develop additional safeguards, as necessary, to ensure the integrity of United States coinage.

The redemption of uncurrent coins, as defined by 31 CFR 100.10(a), is unaffected by this suspension.

Uncurrent coins may still be redeemed by Federal Reserve banks and branches in accordance with the criteria and procedures set forth in 31 CFR 100.10.

DATES: *Effective Date:* November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Tom Jurkowsky, Director, Office of Corporate Communications, United States Mint, Washington, DC, at (202) 354–7222 or 354–7227 or *tom.jurkowsky@usmint.treas.gov.*

Authority: 31 U.S.C. 5120

Dated: October 22, 2015.

Richard A. Peterson,

Deputy Director for Manufacturing and Quality, United States Mint.

[FR Doc. 2015–27487 Filed 10–28–15; 8:45 am]

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Part II

National Credit Union Administration

12 CFR Parts 700, 701, 702, 703, et al.

Risk-Based Capital; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 703, 713, 723, and 747

RIN 3133–AD77

Risk-Based Capital

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending NCUA's current regulations regarding prompt corrective action (PCA) to require that credit unions taking certain risks hold capital commensurate with those risks. The risk-based capital provisions of this final rule apply only to federally insured, natural-person credit unions with assets over $100 million.

The overarching intent is to reduce the likelihood of a relatively small number of high-risk outliers exhausting their capital and causing systemic losses—which, by law, all federally insured credit unions would have to pay through the National Credit Union Share Insurance Fund (NCUSIF).

This final rule restructures NCUA's PCA regulations and makes various revisions, including amending the agency's current risk-based net worth requirement by replacing it with a new risk-based capital ratio for federally insured, natural-person credit unions (credit unions).

The risk-based capital requirement set forth in this final rule is more consistent with NCUA's risk-based capital measure for corporate credit unions and, as the law requires, more comparable to the regulatory risk-based capital measures used by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System, and Office of the Comptroller of Currency (Other Banking Agencies). The effective date is intended to coincide with the full phase-in of FDIC's risk-based capital measures in 2019.

The final rule also eliminates several provisions in NCUA's current PCA regulations, including provisions relating to the regular reserve account, risk-mitigation credits, and alternative risk weights.

DATES: This final rule is effective on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: *Policy and Accounting:* Larry Fazio, Director, Office of Examination and Insurance, at (703) 518–6360; JeanMarie Komyathy, Director, Division of Risk Management, Office of Examination and Insurance, at (703) 518–6360; John Shook, Loss/Risk Analyst, Division of Risk Management, Office of Examination and Insurance, at (703) 518–3799; Steven Farrar, Supervisory Financial Analyst, Division of Capital and Credit Markets, Office of Examination and Insurance, at (703) 518–6393; Tom Fay, Senior Capital Markets Specialist, Division of Capital and Credit Markets, Office of Examination and Insurance, at (703) 518–1179; Rick Mayfield, Senior Capital Markets Specialist, Division of Capital and Credit Markets, Office of Examination and Insurance, at (703) 518–6501; Aaron Langley, Risk Management Officer, Division of Analytics and Surveillance; Office of Examination and Insurance, at (703) 518–6360; or *Legal:* John H. Brolin or Justin Anderson, Senior Staff Attorneys, Office of General Counsel, at (703) 518–6540; or by mail at National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background

NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA performs this function by examining and supervising federally chartered credit unions, participating in the examination and supervision of federally insured, state-chartered credit unions in coordination with state regulators, and insuring members' accounts at all federally insured credit unions.[1] In its role as the administrator of the NCUSIF, NCUA insures and regulates approximately 6,270 federally insured credit unions, holding total assets exceeding $1.1 trillion and representing approximately 99 million members.

At its January 2014 meeting, the Board issued a proposed rule (the Original Proposal)[2] to amend NCUA's PCA regulations, part 702. The proposed amendments were intended to implement the statutory requirements of the Federal Credit Union Act (FCUA) and follow recommendations made by the Government Accountability Office (GAO) and NCUA's Inspector General. The proposal was also intended to amend NCUA's risk-based capital regulations to be more consistent with NCUA's risk-based capital measure for corporate credit unions and comparable to the new regulatory risk-based capital regulations finalized by the Other Banking Agencies in 2013.[3] In response to the Original Proposal, the Board received over 2,000 comments with many suggestions on how to improve the proposed regulation. The comments received addressed a wide range of issues. In general, however, the commenters nearly all agreed that, because the proposal assigned higher risk weights to some credit union asset classes, it would have placed credit unions at a competitive disadvantage to banks. The change most frequently recommended by commenters to address this concern was to adopt the same risk weights as the Other Banking Agencies. The Board generally agreed and, after reviewing all of the comments received, determined that it was appropriate to issue a second proposed rule.

So, at its January 2015 meeting, the Board issued a second proposed rule (the Second Proposal)[4] to amend NCUA's PCA regulations, part 702. The Second Proposal, which was based largely on the comments NCUA received on the Original Proposal, addressed the competitive disadvantage concerns raised by commenters and made the proposal more comparable to the Other Banking Agencies' risk-based capital requirements. Particular changes from the Original Proposal included: (1) Amending the definition of ''complex'' credit union, resulting in an increase in the asset threshold from $50 million to $100 million; (2) reducing the number of asset concentration thresholds for residential real estate loans and commercial loans (formerly classified as member business loans); (3) assigning the same risk weights to one-to-four family non-owner-occupied residential real estate loans and other types of residential real estate loans; (4) eliminating provisions intended to address interest rate risk (IRR); (5) eliminating the proposed individual minimum capital requirement; and (6) extending the effective date to January 1, 2019. These changes would have, among other things, substantially reduced the number of credit unions subject to the rule, and would have provided credit unions significantly

[1] Within the nine states that allow privately insured credit unions, approximately 129 state-chartered credit unions are privately insured and are not subject to NCUA regulation or oversight.

[2] 79 FR 11183 (Feb. 27, 2014).

[3] The Office of the Comptroller of Currency, and the Board of Governors of the Federal Reserve System: 78 FR 62017 (Oct. 11, 2013); *and* the Federal Deposit Insurance Corporation: 78 FR 55339 (Sept. 10, 2013).

[4] 80 FR 4339 (Jan. 27, 2015).

more time to prepare to implement the rule's requirements.

Summary of Public Comments on the Second Proposal

In response to the Second Proposal, the Board received over 2,100 comments. While the total number of comment letters received was higher than the number received in response to the Original Proposal, the comment letters responding to the Second Proposal were significantly shorter and raised fewer distinct concerns regarding the rule's provisions. In addition, significantly fewer credit unions sent in comment letters in response to the Second Proposal. In response to the Original Proposal, NCUA received comment letters from more than 1,100 different credit unions, while only 514 different credit unions sent in comment letters in response to the Second Proposal. In addition, more than 900 of the comment letters received in response to the Second Proposal provided no substantive input on the rule. Nearly all of these non-substantive letters simply stated that the commenter believed Congress should ''approve'' the rule, or that the commenter wanted to ''vote no'' on the rule.

A majority of significant comment letters received stated that the commenter opposed the proposal in its entirety and suggested that the Second Proposal be withdrawn. Most of these commenters stated they opposed the rule for one or more of the following reasons: A substantial number of commenters suggested that the strong performance of credit unions and the NCUSIF during and after the 2007–2009 financial crisis demonstrated there was no need for the proposal, and that the Board provided no evidence that the proposal would have reduced material losses to the NCUSIF if it had been in place before the financial crisis. Other commenters maintained that the proposal was unnecessary given how extremely well capitalized the industry is today. Commenters contended further that, given NCUA's own estimates that fewer than 30 credit unions would be less than well capitalized under the proposed risk-based capital ratio if it went into effect immediately, NCUA's current risk-based capital regulations and other supervisory tools seem to be doing an adequate job. Several commenters claimed that most credit union failures, including the corporate credit unions (Corporates), and significant losses to the NCUSIF were the result of high concentration levels in risky loans and investments, or were otherwise related to a lack of internal controls that should have been identified through the examination process. Commenters suggested that, instead of updating NCUA's risk-based capital regulations, the Board should focus on enhanced training to improve examiner skills. A substantial number of commenters also claimed that the proposal would regulate credit unions in the same general manner as banks. They argued credit unions should be regulated differently than banks because they are structured and operate differently. Other commenters argued the proposed rule would place credit unions at a competitive disadvantage to banks, because in these commenters' opinion, the proposed rule would require credit unions to hold incrementally more capital than banks given similar levels of asset concentration. At least one commenter suggested that the proposal would drive the largest credit unions to convert to bank charters. Other commenters argued that risk-based capital requirements, to which banks have been subject for approximately 25 years, have not worked well. In addition, they argued that bank regulators are now moving away from risk-based capital structures after they failed to help banks during the 2007–2009 recession. In support of this argument, many commenters cited a statement in which one FDIC Board Member, the FDIC's Vice Chairman, stated publicly that he believed the risk-based capital approach to regulation was a bad idea. A substantial number of commenters expressed concern that the proposal would stifle growth, innovation, diversification, and member services within credit unions by restricting credit unions' use of capital, and would impose excessive costs on credit unions and their members. At least one commenter suggested that the proposal would likely cause more risk, not less risk, to the system as a whole because the lower risk weightings assigned in some asset classes compared to others would force credit unions to take on excessive concentrations of lower risk-weighted assets. This, the commenter argued, would increase concentration risk compared to a diverse balance sheet.

Other commenters expressed concern that the proposal would be detrimental to the interests of many credit union members because credit unions would have to charge their members higher interest rates and fees and pay lower interest on deposits to raise the additional capital required under the proposal. A significant number of commenters maintained that the benefits of the proposal did not outweigh its costs to the credit union industry.

A significant number of commenters opposing the rule also argued that the Board failed to adequately justify the proposed changes to NCUA's current risk-based net worth requirement. At least one commenter suggested that the Board should not base its justification for the risk-based capital regulation on global financial trends. Other commenters claimed that the historical loss data and other information provided by NCUA in the proposed rule did not support establishing a higher capital standard for credit unions than banks. Some commenters disagreed with the Board's statutory justification for NCUA to maintain comparability with the capital rules of FDIC, and argued that the Board overemphasized the need for the regulation to be comparable to the other banking agency regulations. Commenters acknowledged that comparability is commendable where there are truly comparable institutions. Commenters suggested, however, that the fundamental structure of credit unions as not-for profit financial cooperatives is not comparable with the for-profit banking system. Commenters suggested further that member-owned credit unions generally have a different risk model than the profit-oriented banks, so if anything credit unions should have lower risk-based capital requirements than banks. Those commenters argued that the narrative accompanying the Second Proposal did not indicate sufficient research and analysis into the differences between banks and credit unions had been done or, if it had, that it was not presented in a transparent manner that adequately justified the structure of the proposal.

A substantial number of commenters pointed out that, of the 1,400 credit unions with more than $100 million in assets, only 27 would have a risk-based capital ratio below the 10 percent level proposed for a credit union to be well capitalized. Commenters contended that, based on these numbers, the current rule and other supervisory tools already at NCUA's disposal were already doing an adequate job. Other commenters argued that only 112 credit unions failed during the 2007–2009 recession, costing the insurance fund less than $1 billion, which they suggested was remarkable considering the dollars and number of commercial banks that failed. Of the natural-person credit unions that did fail during the crisis, the commenters acknowledged that most were under the $100 million asset size threshold proposed. Commenters contended that, from 1998 to 2012, the NCUSIF fund losses were only $989 million; $513 million came from 7 credit unions in the $200 million to $500 million asset range, and $343 million came from credit unions under $100 million that would not have been covered under the Second Proposal. At least one commenter claimed that its analysis of the 26 credit unions with more than $80 million in assets just before the crisis (as of December 2007) that subsequently failed revealed that only seven would have had a lower capital classification under Second Proposal. The commenter suggested that six of the 21 well-capitalized credit unions under current rules would have been downgraded—four to adequately capitalized and two to undercapitalized—and that one adequately capitalized credit union under the current rules would have been classified as undercapitalized under the proposal. In other words, the commenter maintained, of the 26 failures, a total of three credit unions would have been demoted to undercapitalized if the Second Proposal had been in effect before the crisis. And the amount of capital they would have been required to obtain to become adequately capitalized was only $7 million, as compared to the insurance loss of over $700 million. The commenter claimed that the amount of capital that would have been necessary for all seven downgraded credit unions to regain their previous capital classifications (six to well-capitalized, one to adequately-capitalized) would have totaled $43 million.

While most commenters did oppose finalizing the proposal, a substantial number of the commenters who opposed the rule acknowledged that the Board, in response to comments received on the Original Proposal, had made significant improvements to Second Proposal. Specific improvements mentioned included: The removal of the IRR provisions; the new zero percent risk weight assigned to cash held at the Federal Reserve; the reduction of the concentration thresholds from three to two tiers for residential mortgages, junior liens, and commercial loans; the removal of the 1.25 percent cap on allowance for loan and lease losses (ALLL); the lower 10 percent risk-based capital ratio threshold level required for credit unions to be classified as well capitalized; the removal of the enumerated processes to require that individual credit unions hold higher levels of capital under certain circumstances; the increase in the asset size threshold for defining credit unions as ''complex''; the extended implementation period; the lower risk-weights assigned to many categories of assets; and the designation of one-to-four family non-owner occupied mortgage loans as residential loans.

A small number of commenters stated that they supported the Second Proposal. These commenters generally agreed that the credit union system should have risk-based capital requirements that protect the Share Insurance Fund and other well run credit unions by requiring that credit unions with more complex balance sheets hold modestly more capital. Several commenters supported the proposal because they felt that the Board had listened to commenters following the Original Proposal and had made substantial improvements to the Second Proposal. Several commenters supported the proposal for various other reasons: One financial services consulting firm suggested that, overall, the proposal presented a fair alternative to the risk-based capital requirements applicable to banks. At least one state supervisory authority suggested that, on the whole, the proposal was sound and substantially better than NCUA's current risk-based capital rule. One credit union commenter stated that it supported the proposal because insured credit unions, which together hold assets of $1.1 trillion, are backed by the full faith and credit of the United States. And if insured credit unions engaging in high-risk lending fail in significant enough numbers, then the taxpayer is left holding the bill. One individual stated that he supported the proposal because, in his opinion, it would lower the number of loans credit unions could make by imposing higher risk weights on loans made to higher-risk persons. Another individual supported the proposal because he believed it would lower rates for consumers who utilize credit unions. Yet another individual suggested that he supported the proposal because credit unions should be given the same scrutiny as other major lenders and not be given a free pass because they have good intentions as non-profits. The commenter suggested further that credit unions should be subject to tough and robust regulations such as the proposed risk-based capital rule.

In addition to the comments on the Second Proposal discussed above, NCUA received the following general comments: At least one commenter agreed that NCUA's current risk-based net worth regulation is outdated and does not accurately reflect the level of risk in individual credit unions, but criticized that the statutory net worth ratio level is fixed at 7 percent. The commenter suggested that if the 7 percent net worth ratio level is inadequate, the Board should convince Congress to arrive at an appropriate net worth level rather than address risks through revisions to NCUA's risk-based capital regulations. Another commenter recommended that a risk-based capital requirement be developed to replace the statutory net worth ratio, instead of imposing a risk-based capital requirement in addition to the statutory net worth ratio requirement. The commenter argued that managing two different capital limits would place an unnecessary burden on credit unions and serve as an additional competitive disadvantage to the credit union charter. A significant number of commenters suggested that the proposed rule went too far in treating credit unions like banks, and that if credit unions are regulated and supervised as banks they will be forced to act more like banks, which would be to the detriment of their members. At least one state supervisory authority agreed with using a Basel III style capital model, but remained concerned that notable differences continued to exist between NCUA's proposed model and the one employed by FDIC and other federal bank regulators. In particular, the commenter suggested that the differences between the risk weightings for a number of the proposed asset categories represented a missed opportunity to reduce public confusion, and might actually increase confusion. The commenter explained that public users of government-provided Call Report data could assume that NCUA's risk-based capital ratio is the same as other institutions' measurements of capital using the same terminology, but, under the Second Proposal, the ratios could be materially different for banks and credit unions. A bank trade association recommended the Board adopt the same Basel III model adopted by the Other Banking Agencies because without comparable capital requirements, credit unions will be undercapitalized relative to community banks, and such undercapitalization, along with credit unions' limited access to alternative forms of capital when needed, could increase the bailout risk faced by the American taxpayer. The commenter suggested that because credit unions are not required to pay federal income taxes on earnings and can retain a larger percentage of their earnings than community banks, they should have little or no difficulty in maintaining very high levels of Tier 1 capital. The commenter also suggested that the Board impose a capital surcharge of 5 percent on credit unions when they exceed total consolidated assets of $10 billion because large credit unions, with their limited ability to react to depleted capital levels in times of economic uncertainty, should be subjected to increased scrutiny and additional capital reserves. Other commenters suggested that, before issuing a proposed rule, NCUA test regulatory approaches of the type included in the Second Proposal through the examination process and share the results with the industry. Some commenters suggested that the rule does not take into account that the vast majority of credit unions already have written policies to deal with balance sheet risk. At least one commenter suggested that the rule would not protect credit unions or NCUA in the event of another crisis that requires natural-person credit unions to pay out huge assessments. A few commenters recommended that the proposed risk-based capital ratio measure should be used as a modeling tool rather than a rigid rule, similar to interest rate risk monitoring tools. The commenters suggested that this would allow credit union risk to be calculated as a model by examiners using risk weights appropriate for each credit union's environment, and discuss with boards and management their views of risk for various asset classes. A model, the commenters suggested, would be far more flexible than a rule, and would allow for the pragmatic management of risk rather than through rule-based estimates of risk, which may or may not be accurate. Finally, one credit union supported making the risk-based capital framework as complicated as it needs to be to more accurately reflect the unique needs and structure of the credit union industry. The commenter suggested that the Board, for example, took a step in that direction in the Second Proposal when it created a risk-weight category for ''commercial loans'' as distinct from traditional member business loans for purposes of the risk-based capital ratio measure.

Discussion

Commenters calling for a withdrawal of the proposed rule altogether are ignoring NCUA's general statutory requirement to maintain a risk-based system comparable to the Other Banking Agencies' requirements.[5] In 2013, the Other Banking Agencies issued final rules updating the risk-based capital regulations for insured banks.[6] The changes to the Other Banking Agencies' risk-based capital regulations, the lessons learned from the 2007–2009 recession, and the fact that NCUA's current risk-based net worth requirement is ineffective and has not been materially updated since 2002, prompted the Board to propose revisions to NCUA's current risk-based net worth ratio requirement and other aspects of NCUA's current PCA regulations. The proposed changes were also prompted by specific recommendations to NCUA made by GAO in its January 2012 review of NCUA's system of PCA. In particular, GAO recommended that NCUA design a more forward-looking system to detect problems earlier.[7]

The Second Proposal addressed the important role and benefits of capital. The proposal discussed the impact of a financial crisis and the benefit a higher level of capital provided to insulate certain financial institutions from the effects of unexpected adverse developments in assets and liabilities. Higher levels of capital can reduce the probability of a systemic crisis, allow credit unions to continue to serve as credit providers during times of stress without government intervention, and produce benefits that outweigh the associated costs. The proposal also emphasized that credit unions' senior management and boards are accountable for ensuring that appropriate capital levels are in place based on the credit union's risk exposure.

Capital is the buffer that depository institutions, including credit unions, use to prevent institutional failure or dramatic deleveraging during times of strees. As evidenced by the 2007–2009 recession, during a financial crisis a buffer can mean the difference between the survival or failure of a financial insitution. Financial crises are very costly, both to the economy in general and to individual depository institutions.[8] While the onset of a financial crisis is inherently unpredictable, a review of the historical record over a range of countries and recent time periods has suggested that a significant crisis involving depository institutions occurs about once every 20 to 25 years, and has a typical cumulative discounted cost in terms of lost aggregate output relative to the precrisis trend of about 60 percent of precrisis annual output.[9] In other words, the typical crisis results in losses over time, relative to the precrisis trend economic growth, that amount to more than half of the economy's output before the onset of the crisis.

The 2007–2009 financial crisis and the associated economic dislocations during the Great Recession were particularly costly to the United States in terms of lost output and jobs. Real GDP declined more than four percent, almost nine million jobs were lost, and the unemployment rate rose to 10 percent.[10] The cited figures are just the

[5] *See* 12 U.S.C. 1790d(b)(1)(A)(ii), which requires that the NCUA's system of PCA be ''comparable'' to the PCA requirements in section 1831o of the Federal Deposit Insurance Act.

[6] 78 FR 55339 (Sept. 10, 2013) (FDIC published an interim final rule regarding regulatory capital for their regulated institutions separately from the Other Banking Agencies.) *and* 78 FR 62017 (Oct. 11, 2013) (The Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System later published a regulatory capital final rule for their regulated institutions, which is consistent with the requirements in FDIC's IFR.).

[7] *See* U.S. Govt. Accountability Office, GAO–12–247, *Earlier Actions Are Needed to Better Address Troubled Credit Unions* (Jan. 2012), *available at http://www.gao.gov/products/GAO-12-247.*

[8] Credit unions play a sizable role in the U.S. depository system. Assets in the credit union system amount to more than $1.1 trillion, roughly 8 percent of U.S. chartered depository institution assets (source: NCUA Calculation using the financial accounts of the United States, Federal Reserve Statistical Release Z.1, Table L.110, September 18, 2014). Data from the Federal Reserve indicate that credit unions account for about 12 percent of private consumer installment lending. (Source: NCUA calculations using data from the Federal Reserve Statistical Release G.19, Consumer Credit, September 2014. Total consumer credit outstanding (not mortgages) was $3,246.8 billion of which $826.2 billion was held by the federal government and $293.1 billion was held by credit unions. The 12 percent figure is the $293.1 billion divided by the total outstanding less the federal government total). Just over a third of households have some financial affiliation with a credit union. (Source: NCUA calculations using data from the Federal Reserve 2013 survey of Consumer Finance.) All Federal Reserve Statistical Releases are available at *http:\\www.federalreserve.gov\econresdata\statisticsdata.htm.*

[9] Basel Committee on Banking Supervision, *An assessment of the long-term economic impact of stronger capital and liquidity requirements* 3–4 (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.* These losses do not explicitly account for government interventions that ameliorated the observed economic impact. This is the median loss estimate.

[10] The National Bureau of Economic Research Business Cycle Dating Committee defines the beginning date of the recession as December 2007 (2007Q4) and the ending date of the recession as June 2009 (2009Q2). See the National Bureau of Economic Research Web site: *http://www.nber.org/cycles/cyclesmain.html.* The real GDP decline was calculated by NCUA using data for 2007Q4 and 2009Q2 from the National Income and Product Accounts, Bureau of Economic Analysis, U.S. Department of Commerce; see Table 1.1.3. Data are available at *http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1.* Data accessed November 11, 2014. The jobs lost figure was calculated by NCUA using data from the Bureau of Labor Statistics (BLS), U.S. Department of Labor, Current Employment Statistics, CES Peak-Trough Tables. The statistic cited is the decline in total nonfarm employees from December 2007 through February 2010, which BLS defines as the trough of the employment series. Data available at: *http://www.bls.gov/ces/cespeaktrough.htm* and accessed on November 11, 2014. The unemployment rate was taken from the

Continued

direct losses. Compared to where the economy would have been had it followed the precrisis trend, the losses in terms of GDP and jobs would be higher. For example, using the results described in the previous paragraph as a guide, the cumulative loss of output from the 2007–2009 financial crisis is roughly $10 trillion (2014 dollars).[11] Other estimates of the total loss, derived using approaches different than described in the previous paragraph, are similar. For example, researchers at the Federal Reserve Bank of Dallas, using a different approach that achieved results within the same range, estimated a range of loss of $6 trillion to $14 trillion due to the crisis.[12]

Research using bank data across several countries and time periods indicates that higher levels of capital insulate financial institutions from the effects of unexpected adverse developments in their asset portfolio or their deposit liabilities.[13] For the financial system as a whole, research on the banking sector has shown that higher levels of capital can reduce the probability of a systemic crisis.[14] By reducing the probability of a systemic financial crisis and insulating individual institutions from failure, higher capital requirements confer very large benefits to the overall economy.[15] With the median long-term output loss associated with a crisis in the range of 60 percent of precrisis GDP, a one percentage point reduction in the probability of a crisis would add roughly 0.6 percent to GDP each year (permanently).[16]

While higher levels of capital can insulate depository institutions from adverse shocks, holding higher levels of capital does have costs, both to individual institutions and to the economy as a whole. For the most part, the largest cost associated with holding higher levels of capital, in the long term, is foregone opportunities; that is, from the loss of potential earnings from making loans, from the cost to bank customers and credit union members of higher loan rates and lower deposit rates, and the downstream costs from the customers' and members' reduced spending.[17] Estimating the size of these effects is difficult. However, despite limitations on the ability to quantify these effects, the annual costs appear to be significantly smaller than the losses avoided by reducing the probability of a systemic crisis. For example, research using data on banking systems across developed countries indicates that a one percentage point increase in the capital ratio increases lending spreads (the spread between lending rates and deposit rates) by 13 basis points.[18] The research also shows that the long-run reduction in output (real GDP) consistent with a one percentage point increase in the Tier 1 common equity [19] to risks assets ratio would be on the order of 0.1 percent.[20] Thus, it is clear that the relatively large potential long-term benefits of holding higher levels of capital outweigh the relatively small long-term costs.

The 2007–2009 financial crisis revealed a number of inadequacies in the current approach to capital requirements. Banks, in particular, experienced an elevated number of failures and the need for federal intervention in the form of capital infusions.[21]

Credit unions also experienced elevated losses and the need for government intervention. From 2008 through 2012, five corporate credit unions failed. Had NCUA not intervened in 2009 and 2010 by providing over $20 billion in liquidity assistance, over $100 billion in guarantees, and borrowing over $5 billion from the U.S. Treasury, the resulting losses to consumer credit unions on their uninsured funds invested at these institutions would have exceeded $30 billion. NCUA estimates as many as 2,500 consumer credit unions would have failed at additional cost to the Share Insurance Fund.

In addition, during that same period, 27 consumer credit unions with assets greater than $50 million failed at a cost of $728 million to the NCUSIF.[22] NCUA performed back-testing of the 9 complex credit unions (those with over $100 million in assets) that failed during this period to determine whether this final rule would have resulted in earlier identification of emerging risks and reduced losses to the NCUSIF. The back-testing revealed that maintaining a risk-based capital ratio in excess of 10 percent would have required 8 of the 9 complex credit unions that failed to hold additional capital.

The failure of the 27 consumer credit unions was due in large part to holding inadequate levels of capital relative to the levels of risk associated with their assets and operations. In many cases, the capital deficiencies relative to elevated risk levels were identified by examiners and communicated through the examination process to officials at these credit unions.[23] Although the credit union officials were provided with notice of the capital deficiencies, they ignored the supervisory concerns

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Bureau of Labor Statistics, U.S. Department of Labor, Current Population Survey, series LNS14000000. Accessed November 11, 2014 at *http://data.bls.gov/pdq/SurveyOutputServlet.* The unemployment rate peaked at 10 percent in October 2009.

[11] NCUA calculations based on from the National Income and Product Accounts, Bureau of Economic Analysis, U.S. Department of Commerce. Data from Table 1.1.6 show real GDP at $14.992 trillion in 2007Q4 in chained 2009 dollars. Adjusting to 2014 dollars using the GDP price index and using the 60 percent loss figure cited yields an estimated loss of approximately $10 trillion in 2014 dollars. Data are available at *http://www.bea.gov/iTable/iTable.cfm?ReqID=9&step=1#reqid=9&step=1&isuri=1.*

[12] Tyler Atkinson, David Luttrell & Harvey Rosenblum, Fed. Reserve Bank of Dall, *How Bad Was It? The Costs and Consequences of the 2007–2009 Financial Crisis* (July 2013), available at *https://dallasfed.org/assets/documents/research/staff/staff1301.pdf.*

[13] *See* An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements, Basel Committee on Banking Supervision, August 2010. Pages 14–17. The study indicates that the seven percent TCE/RWA ratio is equivalent to a five percent ratio of equity to total assets. The average ratio of equity to total assets for the 14 largest OECD countries from 1980 to 2007 was 5.3 percent.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements, Basel Committee on Banking Supervision, August 2010. Pages 21–27.

[18] There are a number of simplifying assumptions involved in the calculation, including the assumption that banks fully pass through the increase in the cost of capital to their borrowers. *See* Basel Committee on Banking Supervision, *An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements* 21–27 (Aug. 2010).

[19] Tier 1 common equity is made up of common stock, retained earnings, accumulated other comprehensive income, and some miscellaneous minority interests and common stock as part of an employee stock ownership plan.

[20] To be clear, the 0.1 percent figure represents the one-time, long-term loss, which should be compared with the 60 percent loss potentially avoided by reducing the probability of a financial crisis by a little more than one percentage point. See *An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements,* Basel Committee on Banking Supervision, August 2010. Pages 21–27.

[21] For a readable overview of the 2007–2009 financial crisis and the government response see, *The Final Report of the Congressional Oversight Panel,* Congressional Oversight Panel, March 16, 2011. See also Ben S. Bernanke, ''Some Reflections on the Crisis and the Policy Response,'' Speech at the Russell Sage Foundation and The Century Foundation Conference on ''Rethinking Finance,'' New York, New York, April 13, 2012. Available at: *http://www.federalreserve.gov/newsevents/speech/2012speech.htm.*

[22] These figures are based on data collected by NCUA throughout the crisis, and do not include the costs associated with failures of corporate credit unions.

[23] *See, e.g.,* OIG–13–10, Material Loss Review of Chetco Federal Credit Union (October 1, 2013), OIG–13–05, Material Loss Review of Telesis Community Credit Union (March 15, 2013), OIG–10–15, Material Loss Review of Ensign Federal Credit Union, (Sept. 23, 2010), OIG–10–03, Material Loss Reviews of Cal State 9 Credit union (April 14, 2010).

or did not act in a timely manner to address the concerns raised. Furthermore, NCUA's ability to take enforcement actions to address supervisory concerns in a timely manner was cited by GAO as limited under NCUA's current regulations.

From 2008 to 2012, over a dozen very large consumer credit unions, and numerous smaller ones, also were in danger of failing and required extensive NCUA intervention, financial assistance, or both, along with increased reserve levels for the NCUSIF.[24] NCUA estimates these actions saved the NCUSIF over $1 billion in losses.

The clear implication from the impact of the 2007–2009 recession on the credit unions noted above is that capital levels in these cases were inadequate, especially relative to the riskiness of the assets that some institutions were holding on their books.

Unlike banks that can issue other forms of capital like common stock, credit unions that need to raise additional capital when faced with a capital shortfall generally have no choice except to reduce member dividends or other interest payments, raise lending rates, or cut non-interest expenses in an attempt to direct more income to retained earnings.[25] Thus, the first round impact of falling or low capital levels at credit unions is likely a direct reduction in credit union members' access to credit or interest bearing accounts. Hence, an important policy objective of capital standards is to ensure that financial institutions build sufficient capital to continue functioning as financial intermediaries during times of stress without government intervention or assistance.

NCUA's analysis of credit union Call Report data from 2006 forward, as detailed below, also makes it clear that higher capital levels keep credit unions from becoming undercapitalized during periods of economic stress. The table below summarizes the changes in the net worth ratio that occurred during the recent economic crisis. Of credit unions with a net worth ratio of less than eight percent in the fourth quarter of 2006, 80 percent fell below seven percent at some time during the 2007–2009 financial crisis and its immediate aftermath. Of credit unions with 8 percent to 10 percent net worth ratios in the fourth quarter of 2006, just under 33 percent fell below seven percent during the crisis period. However, of credit unions that entered the crisis with at least 10 percent net worth ratios, less than five percent fell below the seven percent well capitalized standard during the crisis or its immediate aftermath.

DISTRIBUTION OF NET WORTH RATIOS OF CREDIT UNIONS WITH AT LEAST $100 MILLION IN ASSETS BY LOWEST NET WORTH RATIO DURING THE FINANCIAL CRISIS

Net worth ratio in 2006Q4	Lowest net worth ratio between 2007Q1 and 2010Q4						
	<6%	6–7%	7–8%	8–10%	≥10%	Total	Number of credit unions
<8 percent	44.0	36.0	20.0	0.0	0.0	100.0	50
8–10 percent	13.0	19.6	38.0	29.4	0.0	100.0	316
≥10 percent	1.9	2.8	9.4	38.8	47.1	100.0	830

Similarly, the table below shows how credit unions with at least $100 million in assets in the fourth quarter of 2006 fared during the five years after the fourth quarter of 2007, which was the period that encompassed the 2007–2009 recession. The table shows that the credit unions that survived the crisis and recession had higher net worth ratios going into the Great Recession. In particular, credit unions with more than $100 million in assets before the crisis began, but failed during the crisis, had a median precrisis net worth ratio of less than nine percent, while similarly sized institutions that survived the crisis had, on average, precrisis net worth ratios in excess of 11 percent.

CHARACTERISTICS OF FICUS WITH ASSETS >$100 MILLION AT THE END OF 2006 BY FIVE YEAR SURVIVAL BEGINNING 2007Q4

	Number of institutions	Median				
		Assets ($M)	Net worth ratio (percent)	Loan to asset ratio (percent)	Real estate loan share (percent)	Member business loan share (percent)
Failures	27	162.7	8.97	84.0	58.0	8.3
Survivors	1138	237.9	11.20	71.0	49.0	0.7

Survivorship is determined based on whether a FICU stopped filing a Call Report over the five years starting in the fourth quarter of 2007. Failures exclude credit unions that merged or voluntarily liquidated. Note: All failures had precrisis net worth ratios in excess of seven percent.

Aside from demonstrating the differences in the capital positions of credit unions that failed from those that did not fail, the table above highlights two additional considerations. First, the table shows that other performance indicators were different between the two groups of credit unions. In particular, the survivors had a lower median loan-to-asset ratio, a lower median share of total loans in real estate loans, and a lower share of member business loans in their overall loan portfolio.

[24] As most of these credit unions are still active institutions, or have merged into other active institutions, NCUA cannot provide additional details publicly.

[25] Low-income designated credit unions can issue secondary capital accounts that count as net worth for PCA purposes. As of June 30, 2014, there are 2,107 low-income designated credit unions. Given the nature (*e.g.,* size) of these credit unions and the types of instruments they can offer, however, there is often a very limited market for these accounts.

A key limitation of the leverage ratio is that it is a lagging indicator because it is based largely on accounting standards. Accounting figures are point-in-time values largely based on historical performance to date. Further, the leverage ratio does not discriminate between low-risk and high-risk assets or changes in the composition of the balance sheet. A risk-based capital ratio measure is more prospective in that, as a credit union makes asset allocation choices, it drives capital requirements before losses occur and capital levels decline. The differences in indicators between the failure group and the survivors in the table above demonstrate that factors in addition to capital levels play an important role in preventing failure. For example, all of the failures listed in the table above had net worth ratios in excess of the well capitalized level at the end of 2006. The severe weakness of NCUA's current risk-based net worth requirement is further demonstrated by the fact that, of the 27 credit unions that failed during the Great Recession, only two of those credit unions were considered less than well capitalized due to the existing RBNW requirement.[26] A well designed risk-based capital ratio standard would have been more successful in helping credit unions avoid failure precisely because such standards are targeted at activities that result in elevated risk.

The need for a risk-based capital standard beyond a leverage ratio is further supported when considering a more comprehensive review of credit union failures. The figures below present data from NCUA's review of the 192 credit union failures that occurred over the past 10 years and indicates that 160 failed credit unions had net worth ratios greater than seven percent two years prior to their failure. Further, the failed credit unions exhibited a 12 percent average net worth ratio two years prior to their failure.

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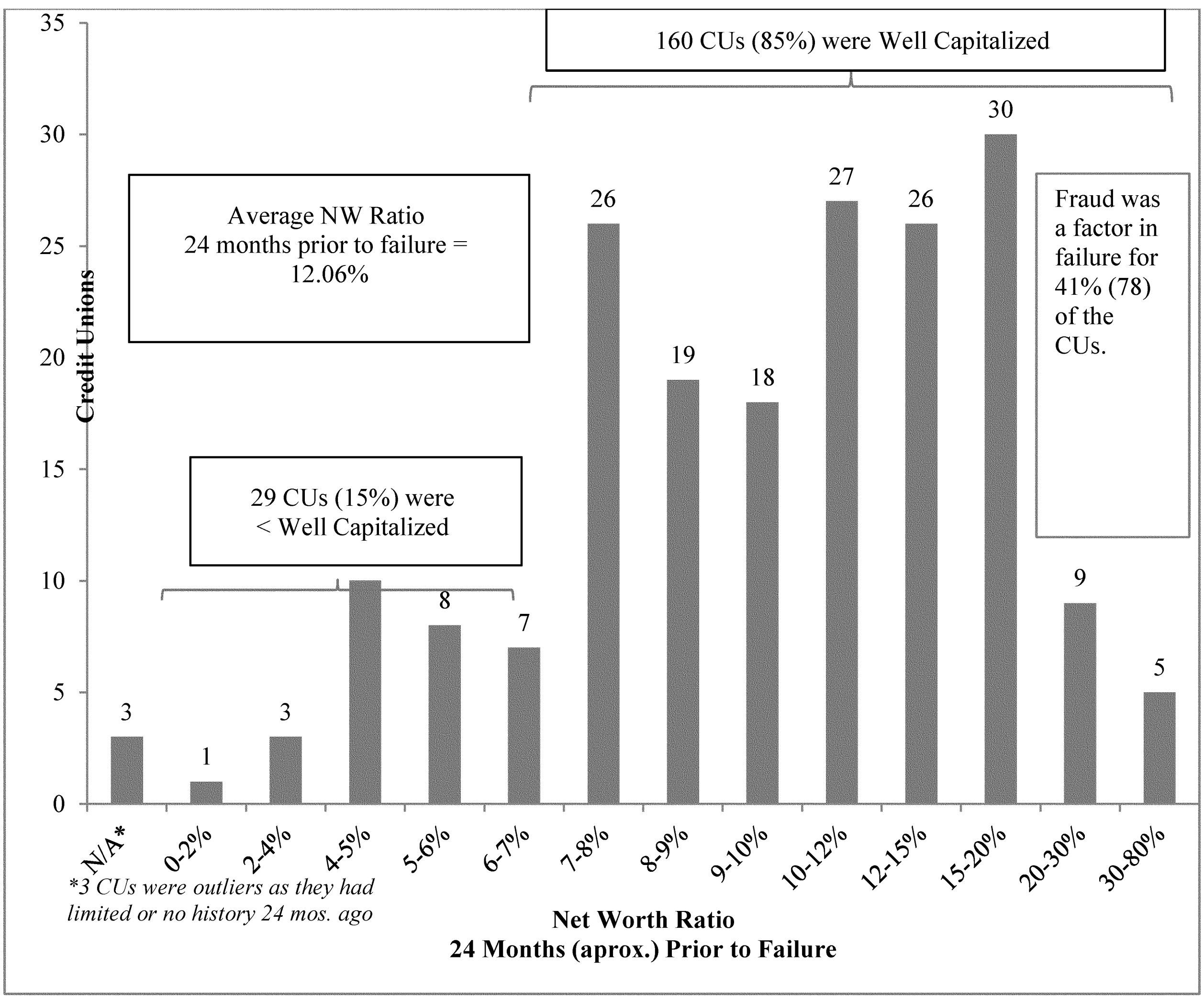
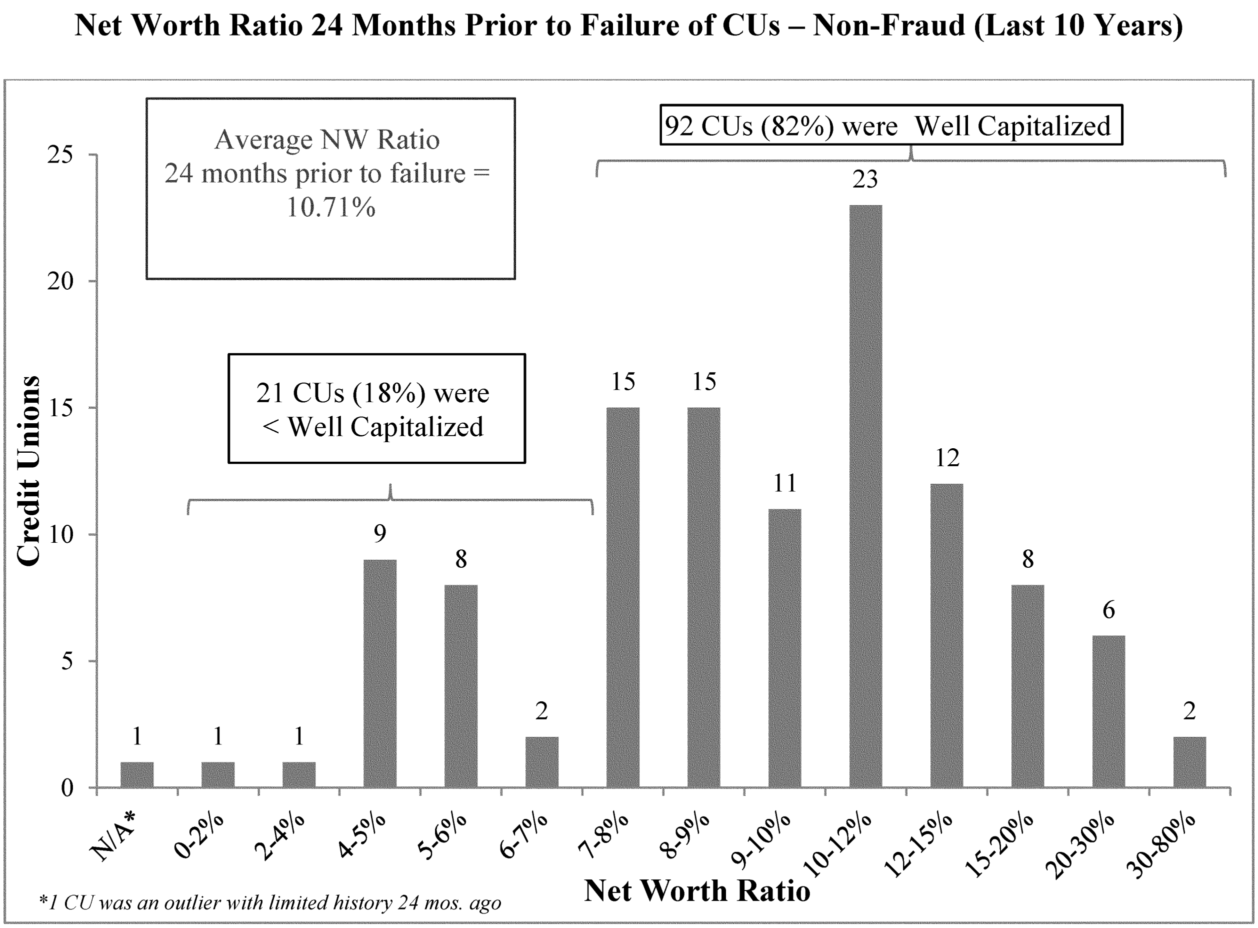
Net Worth Ratio 24 Months Prior to Failure (All CU Failures in the Last 10 Years)



[26] See table above (referencing the 27 failures of credit unions over $100 million in assets).



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The table above shows that credit unions with high net worth ratios can and have failed, demonstrating that a leverage ratio alone has not always proven to be an adequate predictor of a credit union's future viability. However, a more robust risk-based capital standard would reflect the presence of elevated balance sheet risk sooner, and in relevant cases would improve a credit union's odds of survival.

A recession or other source of financial stress poses more difficulties for credit unions with limited capital options and with capital levels lower than what their risks warrant. A capital shortfall reduces a credit union's ability to effectively serve its members. At the same time, the shortfall can cascade to the rest of the credit union system through the NCUSIF, potentially affecting an even broader number of credit union members. Credit unions are an important source of consumer credit and a capital shortfall that affects the credit union system could reduce general consumer access to credit for millions of credit union members.[27] Accordingly, a risk-based capital rule that is effective in requiring credit unions with low capital ratios and a large share of high-risk assets to hold more capital relative to their risk profile, while limiting the burden on already well capitalized credit unions, should provide positive net benefits to the credit union system and the United States economy. Improved resilience enhances credit unions' ability to function during periods of financial stress and reduce risks to the NCUSIF.

In a risk-based capital system, institutions that are holding assets that have historically shown higher levels of risk are generally required to hold more capital against those assets. At the same time, an institution's leverage ratio, which does not account for the riskiness of assets, can provide a baseline level of capital adequacy in the event that the approach to assigning risk weights does not capture all risks. A system including well-designed and well-calibrated risk-based capital standards is generally more efficient from the point of view of the overall economy, as well as for individual institutions. In general, risk-based capital standards increase capital requirements at those institutions whose asset portfolios have, on average, higher risk.

Conversely, risk-based capital standards generally decrease the cost of holding capital for institutions whose strategies focus on lower risk activities. In that way, risk-based capital standards generate the benefits of helping to insulate the economy from financial crises, while also preventing some of the potential costs that would occur from holding unnecessarily high levels of capital at low-risk institutions.

[27] Credit unions play a sizable role in the U.S. depository system. Assets in the credit union system amount to more than $1.1 trillion, roughly eight percent of U.S. chartered depository institution assets (source: NCUA calculation using the financial accounts of the United States, Federal Reserve Statistical Release Z.1, Table L.110, September 18, 2014). Data from the Federal Reserve indicate that credit unions account for about 12 percent of private consumer installment lending. (Source: NCUA calculations using data from the Federal Reserve Statistical Release G.19, Consumer Credit, September 2014. Total consumer credit outstanding (not mortgages) was $3,246.8 billion of which $826.2 billion was held by the federal government and $293.1 billion was held by credit unions. The 12 percent figure is the $293.1 billion divided by the total outstanding less the federal government total). Just over a third of households have some financial affiliation with a credit union. (Source: NCUA calculations using data from the Federal Reserve 2013 survey of Consumer Finance.) All Federal Reserve Statistical Releases are available at *http://www.federalreserve.gov/econresdata/statisticsdata.htm.*

This final rule replaces the current method for calculating a credit union's risk-based net worth ratio with a new method for calculating a credit union's risk-based capital ratio. Under the current risk-based net worth ratio measure, a lower ratio is reflective of financial strength. So the current measure is not intuitive, and, more importantly, can't be compared against the risk-based capital measures of other financial institutions. The new risk-based capital ratio, however, is more commonly applied to depository institutions worldwide. Generally, the new risk-based capital ratio is the percentage of equity and accounts available to cover losses divided by risk-weighted assets. Under this approach, a higher risk-based capital ratio is an indicator of financial strength.

The new risk-based capital ratio adopted in this final rule is designed to complement the statutory net worth ratio, which is often referred to as the leverage ratio. The net worth ratio is a measure of statutorily defined capital divided by total assets. The net worth ratio does not assign relative risk weights among asset classes, making it more difficult to manipulate and provides a simple picture of a financial institution's ability to absorb losses, regardless of the source of the loss. The new risk-based capital ratio, on the other hand, is a measure of loss absorption ability to assets weighted based on the associated risk, and is intended to be more forward looking and reactive to changes in the risk profile of a credit union. In general, a risk-based capital requirement increases capital requirements at those institutions with asset portfolios that are, on average, higher risk. Conversely, risk-based capital standards generally decrease capital requirements at institutions with lower risk profiles. In that way, risk-based capital standards generate the benefits of helping to insulate the economy from financial crises, while also preventing some of the potential costs that would occur from holding unnecessarily high levels of capital at low-risk institutions.

Many commenters suggested that the Board withdraw the Second Proposal and retain the existing risk-based capital requirement and the related risk-weights, which are based largely on interest rate risk and liquidity risk. Ironically, most of the commenters objected to the Original Proposal because it included IRR and liquidity risk in the proposed risk weights. As discussed in the Original Proposal, since its implementation, the current risk-based net worth requirement has required less than a handful of credit unions to hold higher levels of capital than required by the net worth ratio. Under the current risk-based net worth requirement, those credit unions that invest in longer-term, low-credit risk investments experience a higher risk-based net worth requirement and thus have a lower buffer above the net worth ratio than they will have under the final rule.

The current risk-based net worth requirement also fails to allow for comparison of capital adequacy on a risk-weighted level across financial institutions. A creditor or uninsured depositor is able to obtain and understand the capital measures available for all banks. Creditors generally know that, for banks, a higher capital ratio is an indication of better financial strength and a reduction in their risk of loss. Creditors and uninsured shareholders in credit unions, however, generally do not understand the application of the risk-based net worth requirement where a lower ratio is an indicator of financial strength; nor are they generally aware that the risk-based net worth requirement is only available by reviewing a specific page of the Call Report. The current lack of a comparable risk-based capital measure for credit unions deprives creditors and uninsured shareholders of a useful measure in determining the financial strength of credit unions.

The Board also disagrees with commenters who called for a withdrawal of the Second Proposal because a limited number of credit unions may experience a decline in their capital classification, or because commenters claimed that back-testing the proposal would have resulted in only minor savings to the NCUSIF had the proposal's capital requirement been in place during the 2007–2009 recession. The Original Proposal would have imposed higher risk-weights for concentrations of MBLs, junior-lien real estate loans, and equity investments, which would have resulted in approximately 199 credit unions experiencing a decline in their capital classification and could have reduced losses to the NCUSIF to a greater degree had those requirements been in place prior to the 2007–2009 recession. Due to legitimate concerns raised by commenters regarding the impacts of the Original Proposal, however, the Board reduced the risk-weights for concentrations of MBLs and real estate loan concentrations in the Second Proposal. Thus, the potential impacts of the Second Proposal were lower, but still require that credit unions taking higher levels of risk hold higher levels of capital. Based on the comments received on the Original Proposal and the Second Proposal, the risk weights in the Second Proposal are calibrated to appropriately balance the impact of the proposed changes on credit unions while also providing meaningful improvement to the risk-based capital standards to which credit unions will be held in the future.

The Board disagrees with commenters who suggested that the Board not finalize the proposal and instead focus on enhancing training to improve examiner skills to reduce the number of failures and losses to the NCUSIF. NCUA already continually seeks to enhance the training and skills of examiner staff within budget limitations. NCUA already performs analyses of all material losses to the NCUSIF, including material loss reviews prepared by NCUA's Inspector General on losses that exceed $25 million. The loss reviews include analyses of NCUA's and the State Supervisory Authorities' supervision of credit unions and include recommendations to addresses any weaknesses in related supervision policies and approaches. Additionally, not issuing a final rule would result in retention of the current risk-based net worth measure, which is not a comparable measure across financial institutions and contains risk-weights that are less closely associated with credit risk.

Moreover, the Board disagrees with commenters who suggested that credit unions should have less stringent regulatory capital standards than banks. The combined statutory requirement for a minimum net worth ratio and the risk-based capital requirement, supported by the supervision process, is the backbone of protection for both the credit union and bank insurance funds. In addition, prudent capital standards serve to protect taxpayers who ultimately must fund any reliance by the insurance funds on the full faith and credit of the United States.

Commenters claimed that the Second Proposal would place credit unions at a competitive disadvantage to banks by requiring credit unions to hold incrementally more capital than banks given similar asset-concentration levels. The net worth ratio, which is defined by statute, requires credit unions to hold more capital than banks are required to hold using the comparable Tier 1 leverage ratio for banks.[28] Congress

[28] The net worth ratio and a bank's Tier 1 leverage ratio are both based on the total assets of the institution. Congress set the net worth ratio 200 basis points higher than the Tier 1 leverage ratio

required NCUA to develop PCA regulations that are comparable to those of banks, including the risk-based net worth requirement for complex credit unions. The Board ensured compliance with the law while issuing the Second Proposal, which would not place credit unions at a competitive disadvantage to banks. The vast majority of risk weights for credit unions would be comparable to the risk weights for banks, and some risk weights for credit unions would actually be lower than the risk weights for banks. Because the Second Proposal generally used the same overall risk-based capital levels as banks, the differences in the individual elements of the calculation can be easily identified and understood. For example, the proposed risk weight for secured consumer loans, which represent about 20 percent of total assets for complex credit unions, is 25 basis points less than the corresponding risk weight for banks. The Second Proposal also would not cap credit unions' allowance for loan and lease losses at 1.25 percent of risk assets, while the Other Banking Agencies impose such a cap in the risk-based capital ratio calculation for banks. In the few instances where the risk weights are higher for credit unions, they apply to a very low percentage of total assets and are directly tied to sources of higher losses to the NCUSIF, primarily concentrations of real estate and business assets.

The table below contains an estimate of how risk-weights generally compare between the risk-weights in this final rule to the risk-weights applied to FDIC insured institutions.

	Sub-category as % of total assets	Category as % of total assets
Lower Risk Weight Than FDIC		
Secured Consumer Loans		21.09%
More Conservative Risk Weight Than FDIC		
First-Lien Real Estate Loans >35 percent of assets	1.19%	
Junior-Lien Real Estate Loans >20 percent of assets	0.11%	
Commercial Loans >50 percent of assets	0.13%	
Non-Current Junior-Lien Real Estate Loans	0.02%	
Unfunded Non-Commercial Loans	1.46%	2.91%
Not Directly Comparable to FDIC		
CUSO Investments and Corporate Capital		0.34%
Comparable Risk Weight to FDIC		
All Other Assets		75.66%

Commenters asserted that bank regulators are moving away from risk-based capital structures and referenced the FDIC Vice Chairman's related statements. The FDIC Vice Chairman, however, has favored higher generally accepted accounting principles (GAAP) equity ratios at banks of at least 10 percent of assets as an alternative to risk-based capital structures.[29] The NCUA Board lacks authority to impose higher GAAP equity-to-asset ratios because the FCUA specifically defines the net worth ratio for credit unions and sets forth the minimum ratio levels required. Moreover, the current statutory net worth ratio requirement, combined with a reasonable risk-based capital ratio requirement to address institutions taking higher levels of risk, provides a well targeted level of protection to the NCUSIF.

The Board disagrees with commenters who suggested that the proposal would stifle growth, innovation, diversification, and member services. The commenters' suggested revisions to the proposal revealed there is clear disagreement among credit unions and other interested parties regarding how the proposal would have impacted factors such as growth, innovation, diversification, and member services at credit unions. This final rule better reflects each individual credit union's risk profile, provides for more active management of risk in relation to capital, further ensures individual credit unions can continue to serve as credit providers even during times of stress, and promotes the safety and soundness of the credit union system.

Commenters asserted that credit unions would need to charge higher interest rates, higher fees, and pay lower rates on deposits to raise capital because of the new risk-based capital measure. Credit unions, however, would have more than three years before the new risk-based capital requirement goes into effect. A credit union that determines it is in danger of having a risk-based capital ratio level below the required minimum level has the option of: Reducing the amount of risk-weighted assets it holds; raising additional capital, primarily through earnings; or both.

NCUA's analysis of credit union Call Report data indicates that the overwhelming majority of complex credit unions already have sufficient capital to comply with the proposed risk-based capital regulation. In particular, NCUA estimates that over 98 percent of complex credit unions would be in compliance with the regulatory capital minimums under the final rule if it were in effect today. The final rule is designed to ensure that these credit unions maintain their capacity to absorb losses in the future. A few credit unions, however, will likely want to take advantage of the three-year implementation period provided in this final rule to accumulate retained earnings, reduce their level of risk-assets, or both. As noted above, the overwhelming majority of credit unions have sufficient capital to comply with the revised capital rules, and the resulting improvements to the stability and resilience of the credit union

level for banks due to the nature of the 1 percent NCUSIF deposit, the level of investment within the corporate credit union system, and credit unions' limited access to capital other than retained earnings. U.S. Department of Treasury, *Credit Unions* (1997).

[29] Thomas M. Hoening, American Banker, *The Safe Way to Give Traditional Banks Regulatory Relief,* (June 22, 2015), *available at https://www.fdic.gov/news/letters/reg-relief.html.*

system outweigh any costs associated with its implementation.

In this final rule, the Board complied with the statutory requirement to take into account the cooperative character of credit unions in that they are not-for-profit, do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers. To do this, the Board avoided undue complexity within the rule by, among other things, not implementing a complex conservation buffer requirement; establishing a simple and straightforward proxy for the definition of a complex credit union; reducing the number of asset concentration thresholds; and requiring only complex credit unions to have a written strategy for maintaining an appropriate level of capital.

Accordingly, and for the reasons discussed in more detail below, the Board is now adopting this final rule to revise NCUA's current regulations regarding PCA to require that complex credit unions taking certain risks hold capital commensurate with those risks.

II. Summary of the Final Rule

This final rule replaces the method currently used by complex credit unions to apply risk weights to their assets with a new risk-based capital ratio measure that is generally comparable to that applied to depository institutions worldwide. As discussed in more detail in the Legal Authority part of this preamble, the FCUA gives NCUA broad discretion in designing the risk-based net worth requirement applicable to complex credit unions. Accordingly, this final rule revises part 702 of NCUA's current regulations to establish a risk-based capital ratio measure that is the percentage of a credit union's capital available to cover losses, divided by the credit union's defined risk-weighted asset base.

This final rule adopts a broadened definition of capital to be used as the numerator in the new risk-based capital ratio measure. The Board is adopting this change to provide a more comparable measure of capital across all financial institutions and to better account for related elements of the financial statement that are specifically available to cover losses and protect the NCUSIF. This broader definition of capital more accurately reflects the amount of capital that is actually available at a credit union to absorb losses.

In terms of the denominator for the risk-based capital ratio measure, section 216(d)(2) of the FCUA requires that the Board, in designing a risk-based net worth requirement, ''take account of *any material risks* against which the net worth ratio required for [a federally] insured credit union to be adequately capitalized may not provide adequate protection.'' [30] Section 216(d)(2) of the FCUA differs from the corresponding provision in section 38 of the FDI Act,[31] which requires the Other Banking Agencies to implement risk-based capital requirements, because section 216(d)(2) specifically requires that NCUA's risk-based requirement address ''*any material risks*.'' Accordingly, the Board is required to account for any material risks in the risk-based requirement unless the risk is deemed *immaterial* because of the existence of another mechanism that the Board believes adequately accounts for the risk.

NCUA's risk-based net worth requirement has included some aspect of IRR since its inception in 2000. Further, IRR, if not adequately addressed through some regulatory, statutory or supervisory mechanism, can represent a material risk for purposes of NCUA's risk-based requirement. Based on long-term balance sheet trends at credit unions, the comments received on the Second Proposal, and NCUA's experiences dealing with problem institutions, however, the Board concluded that NCUA can adequately address IRR through its other regulations and supervisory processes. Accordingly, the final rule generally excludes IRR from NCUA's risk-based capital ratio calculation. But the Board may consider adopting additional regulatory or supervisory approaches for addressing IRR at credit unions if the need arises in the future.

With the removal of the IRR component from the current rule, this final rule narrows the list of risks accounted for in the denominator of the new risk-based capital ratio measure. The methodology for assigning risk weights in this final rule primarily accounts for credit risk and concentration risk.

This final rule incudes a tiered risk weight framework [32] for high concentrations of residential real estate loans and commercial loans [33] in NCUA's risk-based capital ratio measure. As a credit union's concentration in these asset classes increases, incrementally higher levels of capital are required. This approach addresses concentration risk as it relates to minimum required capital levels through a transparent, standardized, regulatory requirement. The concentration thresholds do not limit a credit union's lending activity; rather, the thresholds merely require the credit union to hold additional capital to account for the elevated concentration risk. The inclusion of concentration risk in the final rule does not put credit unions at a competitive disadvantage to banks because most real estate and member business loans (except for loans held in high concentrations) would still be assigned risk weights similar to those applicable to banks.

Consistent with many commenters and with section 216(b)(1)(A)(ii) of the FCUA, which requires NCUA's PCA requirement be comparable to the Other Banking Agencies' PCA requirements, the Board relied primarily on the risk weights assigned to various asset classes under the Basel Accords and the Other Banking Agencies' risk-based capital regulations for this final rule.[34] So this final rule provides for greater comparability to the Other Banking Agencies' risk weights than NCUA's current risk-based net worth regulation. The Board, however, has tailored the risk weights in this final rule for certain assets that are unique to credit unions or where a demonstrable and compelling case exists, based on contemporary and sustained performance differences, to differentiate for certain asset classes (such as consumer loans) between banks and credit unions, or where a provision of the FCUA requires doing so.

[30] 12 U.S.C. 1790d(d)(2) (emphasis added).

[31] 12 U.S.C. 1831o.

[32] The tiered framework would provide for an incrementally higher capital requirement resulting in a blended rate for the corresponding portfolio. That is, the portion of the portfolio below the threshold would receive a lower risk weight, and the portion above the threshold would receive a higher risk weight. The higher risk weight would be consistent across asset categories as a 50 percent increase from the base rate. Some comments on the Original Proposal suggested NCUA should have combined similar exposures across asset classes, such as investments and loans. For example, residential mortgage-backed security concentrations could have been included with the real estate loan thresholds due to the similarity of the underlying assets. However, given the more liquid nature and price transparency of a security, the Board believes including this with the risk thresholds for real estate lending is not necessary.

[33] The definition of commercial loans and the differences between commercial loans and MBLs are discussed in more detail in the section-by-section analysis.

[34] The Board has simplified certain aspects of this final rule to take into account the cooperative character of credit unions while still imposing risk-based capital standards that are substantially similar and equivalent in rigor to the standards imposed on banks. *See* 12 U.S.C. 1790d(b)(1)(B).

The following is a table showing a summary of the risk weights included in this final rule. See the section-by-section analysis part of the preamble below for more details on the changes to the asset classes and risk weights.

SUMMARY OF THE RISK WEIGHTS

	0%	20%	50%	75%	100%	150%	250%	300%	400%	1250%
Cash/Currency/Coin	X									
Investments:										
Unconditional Claims—U.S. Government	X									
Balances Due from Federal Reserve Banks	X									
Federally Insured Deposits in Financial Institutions	X									
Debt Instruments issued by NCUA and FDIC	X									
Central Liquidity Facility Stock	X									
Uninsured deposits at U.S. Federally Insured Institutions		X								
Agency Obligations		X								
FNMA and FHLMC pass through Mortgage Backed Securities (MBS)		X								
General Obligation Bonds Issued by State or Political Subdivisions		X								
Federal Home Loan Bank Stock and Balances		X								
Senior Agency Residential MBS or Asset-Backed Securities (ABS) Structured		X								
Revenue Bonds Issued by State or Political Subdivisions			X							
Senior Non-Agency Residential MBS Structured			X							
Corporate Membership Capital					X[c]					
Industrial Development Bonds					X					
Agency Stripped MBS (Interest Only)					X					
Part 703 Compliant Investment Funds[a]					X					
Value of General Account Insurance (bank owned life insurance, and credit union owned life insurance)[a]					X					
Corporate Perpetual Capital					X[c]	X[c]				
Mortgage Servicing Assets							X			
Separate Account Life Insurance[a]								X		
Publicly Traded Equity Investment (non-CUSO)					X[c]			X[c]		
Mutual Funds Part 703 Non-Compliant[a]								X		
Non-Publicly Traded Equity Investments (non-CUSO)					X[c]				X[c]	
Subordinated Tranche of Any Investment[b]										X
Consumer Loans:										
Share-Secured (shares held at the credit union)	X									
Share-Secured (shares held at another depository institution)		X								
Current Secured				X						
Current Unsecured					X					
Non-Current						X				
Real Estate Loans:										
Share-Secured (shares held at the credit union)	X									
Share-Secured (shares held at another depository institution)		X								
Current First Lien <35% of Assets			X							
Current First Lien >35% of Assets				X						
Not Current First Lien					X					
Current Junior Lien <20% of Assets					X					
Current Junior Lien >20% of Assets						X				
Noncurrent Junior Lien						X				
Commercial Loans:										
Share-Secured (shares held at the credit union)	X									
Share-Secured (shares held at another depository institution)		X								
Portion of Commercial Loans with Compensating Balance		X								
Commercial Loans <50% of Assets					X					
Commercial Loans >50% of Assets						X				
Non-current						X				
Miscellaneous:										
Loans to CUSOs					X					
Equity Investment in CUSO					X[c]	X[c]				
Other Balance Sheet Items not Assigned					X					

[a] With the option to use the look-through options.[35]
[b] With the option to use the gross-up approach.[36]
[c] If a credit union's total equity exposures are "non-significant"[37] under § 702.104(c)(3)(i), then the risk weight is 100 percent. This lowers the risk weight to 100 percent for CUSO equity exposures, corporate perpetual capital, and all other equity investments when they are part of a credit union's non-significant equity exposures.

[35] The "look-through" approaches are discussed in more detail in the part of this preamble discussing § 702.104(c)(3)(iii)(B).

[36] The "gross-up" approach is discussed in more detail in the part of this preamble discussing § 702.104(c)(3)(iii)(A).

[37] Under § 702.104(c)(3)(i) of this final rule, a credit union has non-significant equity exposures if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator (as defined under paragraph § 702.104(b)(1)). To determine its aggregate amount of its equity exposures, the credit union must include the total amounts (as recorded on the statement of financial condition in accordance with GAAP) of the following (1) equity investments in CUSOs, (2) perpetual contributed capital at corporate credit unions, (3) nonperpetual capital at corporate credit unions, and (3) equity investments subject to a risk weight in excess of 100 percent.

The following table provides an estimate of the risk weighting for aggregate assets held by complex credit union assets as of December 31, 2014.

Risk weight	Complex credit union assets (in millions) [38]	Percent of complex credit union assets	Cumulative percent of complex credit union assets
0%	$18,713	1.82	1.82
20%	289,932	28.15	29.97
50%	224,618	21.81	51.78
75%	270,440	26.24	78.02
100%	217,159	21.08	99.01
150%	8,017	0.78	99.88
250% or greater	1,195	0.12	100.00

The following table compares on-balance sheet risk weights in this final rule to the applicable risk weights assigned by other federal banking agencies:

	NCUA Risk-weight	FDIC Risk-weight
Cash/Currency/Coin	0%	0%
Investments:		
Unconditional Claims—U.S. Government	0%	0%
Balances Due from Federal Reserve Banks	0%	0%
Federally Insured Deposits in Financial Institutions	0%	0%
Debt Instruments issued by NCUA and FDIC	0%	0%
Central Liquidity Facility Stock	0%	n/a
Uninsured deposits at U.S. Federally Insured Institutions	20%	20%
Agency Obligations	20%	20%
FNMA and FHLMC pass through Mortgage Backed Securities (MBS)	20%	20%
General Obligation Bonds Issued by State or Political Subdivisions	20%	20%
Federal Home Loan Bank Stock and Balances	20%	20%
Senior Agency Residential MBS or Asset-Backed Securities (ABS) Structured	20%	20%
Revenue Bonds Issued by State or Political Subdivisions	50%	50%
Senior Non-Agency Residential MBS Structured	50%	Gross-up or Simplified Supervisory Formula
Corporate Membership Capital	100%	n/a
Industrial Development Bonds	100%	100%
Agency Stripped MBS (Interest Only)	100%	100%
Part 703 Compliant Investment Funds	100% [a]	n/a
Value of General Account Insurance (bank owned life insurance, and credit union owned life insurance) [a]	100%	100%
Corporate Perpetual Capital	100%/150% [c]	n/a
Mortgage Servicing Assets	250%	250%
Separate Account Life Insurance	300% [a]	Look-through
Publicly Traded Equity Investment (non-CUSO)	100%/300% [c]	300%
Mutual Funds Part 703 Non-Compliant	300% [a]	n/a
Non-Publicly Traded Equity Investments (non-CUSO)	100%/400% [c]	400%
Subordinated Tranche of Any Investment	1,250% [b]	Gross-up or Simplified Supervisory Formula
Consumer Loans:		
Share-Secured (shares held at the credit union)	0%	0%
Share-Secured (shares held at another depository institution)	20%	20%
Current Secured	75%	100%
Current Unsecured	100%	100%
Non-Current Consumer	150%	150%
Real Estate Loans:		
Share-Secured (shares held at the credit union)	0%	0%
Share-Secured (shares held at another depository institution)	20%	20%
Current First Lien <35% of Assets	50%	50%
Current First Lien >35% of Assets	75%	50%
Not Current First Lien	100%	100%
Current Junior Lien <20% of Assets	100%	100%
Current Junior Lien >20% of Assets	150%	100%
Noncurrent Junior Lien	150%	100%
Commercial Loans:		

[38] Includes off-balance sheet items after application of the credit conversion factor.

	NCUA Risk-weight	FDIC Risk-weight
Share-Secured (shares held at the credit union)	0%	0%
Share-Secured (shares held at another depository institution)	20%	20%
Portion of Commercial Loans with Compensating Balance	20%	n/a
Commercial Loans <50% of Assets	100%	100%/150% [d]
Commercial Loans >50% of Assets	150%	100/150% [d]
Non-current Commercial	150%	150%
Miscellaneous:		
Loans to CUSOs	100%	100%
Equity Investment in CUSO	100%/150% [c]	100%–600%
Other Balance Sheet Items not Assigned	100%	100%

[a] *With the option to use the look-through options.*

[b] *With the option to use the gross-up approach.*

[c] *If a credit union's total equity exposures are "non-significant" under § 702.104(c)(3)(i), then the risk weight is 100 percent. This lowers the risk weight to 100 percent for CUSO equity exposures, corporate perpetual capital, and all other equity investments when they are part of a credit union's non-significant equity exposures.*

[d] FDIC identifies certain commercial loans as High Volatility Commercial Real Estate (HVCRE) and assigns a 150% risk weight.

The Board notes that FDIC's capital standards are the "minimum capital requirements and overall capital adequacy standards for FDIC-supervised institutions . . . include[ing] methodologies for calculating minimum capital requirements . . . ." [39] In other words, FDIC may require an FDIC-supervised institution to hold an amount of regulatory capital greater than otherwise required under its capital rules if FDIC determines that the institution's capital requirements under its capital rules are not commensurate with the institution's credit, market, operational, or other risks.[40]

As indicated above, FDIC's approach to risk weights is calibrated to be the minimum regulatory capital standard. Similarly, this final rule is calibrated to be the minimum regulatory capital standard. Accordingly, the final rule incorporates a broader regulatory provision reminding complex credit unions that, as a matter of safety and soundness, they are required to maintain capital commensurate with the level and nature of all risks to which they are exposed.[41] In addition, the final rule adds a new provision requiring complex credit unions to maintain a written strategy for assessing capital adequacy and maintaining an appropriate level of capital.

Capital ratio thresholds are largely a function of risk weights; and this final rule more closely aligns NCUA's risk weights with those assigned by the Other Banking Agencies.[42] Accordingly, the final rule adopts a 10 percent risk-based capital ratio level for well capitalized credit unions, and an 8 percent risk-based capital ratio level for adequately capitalized credit unions. To take into account the cooperative character of credit unions, the Board set the risk-based capital ratio level for well capitalized credit unions at 10 percent, and omitted the capital conservation buffer imposed on banks.[43] The omission of the capital conservation buffer simplifies NCUA's risk-based capital requirement relative to the Other Banking Agencies' rules without appreciably lowering the protections provided by NCUA's risk-based capital regulations.[44]

The final rule defines a credit union as "complex" if it has assets of more than $100 million.[45] Credit unions meeting this threshold have a portfolio of assets and liabilities that is complex, based upon the products and services in which they are engaged. As discussed later in this document, the $100 million asset threshold is a proxy measure based on detailed analysis, and a clear demarcation line above which all credit unions engage in complex activities and where almost all such credit unions (99 percent) are involved in multiple complex activities.

An asset size threshold is clear, logical, and easy to administer when compared with the more complicated formula used to determine whether a credit union is complex under the current rule.[46] Using a more straightforward proxy for determining complexity also helps account for the cooperative character of credit unions, particularly, the fact that credit unions have boards of directors that consist primarily of volunteers. The $100 million asset size threshold exempts approximately 76 percent of credit unions [47] from many of the regulatory burdens associated with complying with this rule; yet it will cover almost 90 percent of the assets in the credit union system. The threshold is consistent with the fact that the majority of losses (as measured as a proportion of the total dollar cost) to the NCUSIF result from credit unions with assets greater than $100 million. For a more detailed discussion of the rationale the Board considered in defining complex, see the detailed discussion associated with section 702.103 in the Section-By-Section Analysis part of the preamble below.

In response to public comments received, the final rule also makes a number of changes to the Second Proposal. These changes include: Assigning a lower risk weight to non-significant equity exposures and certain share-secured loans; giving credit unions the option to assign a 100 percent risk weight to certain charitable donation accounts; permitting credit unions to use the gross-up approach for non-subordinated investment tranches; assigning principal-only mortgage-backed-security STRIPS a risk-weight based on the underlying collateral; extending the period during which credit unions can count supervisory goodwill and supervisory other intangible assets in the risk-based capital ratio numerator; and incorporating the text of the gross-up and look-through approaches into a new appendix A to the PCA regulation. As discussed in more detail below, for certain assets, these changes will lower the risk weights that would have been assigned under the Second Proposal, extend the period during which certain assets can be included in a credit union's risk-based capital ratio

[39] *See, e.g.,* 12 CFR 324.1(a).

[40] *See, e.g.,* 12 CFR 324.1(d).

[41] *See, e.g.,* 12 U.S.C. 1786.

[42] *See, e.g.,* 12 CFR 324.32; *and* 12 CFR 324.403.

[43] The "capital conservation buffer" is explained in more detail in the discussion on § 702.102(a) in the section-by-section analysis part of this preamble.

[44] *See, e.g.,* 12 CFR 324.403.

[45] There is no exemption for banks from the risk-based capital requirements of the other banking agencies. There are 1,872 FDIC-insured banks with assets less than $100 million as of December 2014.

[46] 12 CFR 702.106.

[47] Based upon December 31, 2014 Call Report data.

numerator—effectively lowering certain credit unions' overall capital requirement for 10 years—and lower the impact of the rule for certain complex credit unions. The final rule also makes conforming and other minor changes to NCUA's regulations, which are also discussed in more detail below.

To provide credit unions and NCUA sufficient time to make the necessary adjustments, such as systems, processes, and procedures, and to reduce the burden on affected credit unions, the revisions adopted in this final rule will not become effective until January 1, 2019. This effective date is intended to coincide with the full phase-in of FDIC's risk-based capital measures in 2019.

III. Legal Authority

In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).[48] Section 301 of CUMAA added new section 216 to the FCUA,[49] which requires the Board to maintain, by regulation, a system of PCA to restore the net worth of credit unions that become inadequately capitalized. Section 216(b)(1)(A) requires that NCUA's system of PCA for federally insured credit unions be ''*consistent with*'' section 216 of the FCUA, and ''*comparable to*'' section 38 of the Federal Deposit Insurance Act (FDI Act).[50] Section 216(b)(1)(B) requires that the Board, in designing the PCA system, take into account credit unions' cooperative character: That credit unions are not-for-profit cooperatives that do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers.[51] In 2000, the Board first implemented the required system of PCA [52] and, prior to this rulemaking, had made only minor adjustments to the rule's original requirements.[53]

The stated purpose of section 216 of the FCUA is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [NCUSIF].'' [54] To carry out that purpose, Congress set forth a basic structure for PCA in section 216 that consists of three principal components: (1) A statutory framework that requires certain mandatory classifications of credit unions and that NCUA take certain mandatory and discretionary actions against credit unions based on their classification; (2) an alternative system of PCA to be developed by NCUA for credit unions defined as ''new''; and (3) a ''risk-based net worth requirement'' that applies to credit unions that NCUA defines as ''complex.'' This final rule focuses primarily on principal components (1) and (3), although amendments to part 702 of NCUA's regulations relating to principal component (2) are also included as part of this final rule.

Among other things, section 216(c) of the FCUA requires that NCUA use a credit union's net worth ratio to determine its classification among the five ''net worth categories'' set forth in the FCUA.[55] Section 216(o) generally defines a credit union's ''net worth'' as its retained earnings balance,[56] and a credit union's ''net worth ratio'' [57] as the ratio of its net worth to its total assets.[58] As a credit union's net worth ratio declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.[59]

Section 216(d)(1) of the FCUA requires that NCUA's system of PCA include, in addition to the statutorily defined net worth ratio requirement, ''a risk-based net worth requirement [60] for insured credit unions that are complex, as defined by the Board . . . .'' [61] Unlike the terms ''net worth'' and ''net worth ratio,'' which are specifically defined in section 216(o), the term ''risk-based net worth'' is not defined in the FCUA.[62] While Congress prescribed the net worth ratio requirement in detail in section 216, it elected not to define the term ''risk-based net worth,'' leaving the details of the risk-based net worth requirement to be filled in by the Board through the notice and comment rulemaking process. Section 216, when read as a whole, grants the Board broad authority to design reasonable PCA regulations, including a risk-based net worth requirement, so long as the regulations are comparable to the Other Banking Agencies' PCA requirements, are consistent with the requirements of section 216 of the FCUA, and take into account the cooperative character of credit unions.

Section 216(d)(1) of the FCUA directs NCUA, in determining which credit unions will be subject to the risk-based net worth requirement, to base its definition of complex ''on the portfolios of assets and liabilities of credit unions.'' [63] The statute does not require, as some commenters have argued, that the Board adopt a definition of ''complex'' that takes into account the portfolio of assets and liabilities of each credit union on an individualized basis. Rather, section 216(d)(1) authorizes the Board to develop a single definition of complex that takes into account the portfolios of assets and liabilities of all credit unions.

In addition, section 216(d)(2) specifies that the risk-based net worth requirement must ''take account of any material risks against which the *net worth ratio* required for [a federally] insured credit union to be adequately capitalized [(six percent)] *may* not provide adequate protection.'' [64] In the Senate Report on CUMAA, Congress expressed its intent with regard to the design of the risk-based net worth requirement and the meaning of section 216(d)(2) by providing:

> The NCUA must design the risk-based net worth requirement to take into account any

[48] Public Law 105–219, 112 Stat. 913 (1998).

[49] 12 U.S.C. 1790d.

[50] 12 U.S.C. 1790d(b)(1)(A); *see also* 12 U.S.C. 1831o (Section 38 of the FDI Act setting forth the PCA requirements for banks).

[51] 12 U.S.C. 1790d(b)(1)(B).

[52] *See* 65 FR 8584 (Feb. 18, 2000); *and* 65 FR 44950 (July 20, 2000) (The risk-based net worth requirement for credit unions meeting the definition of ''complex'' was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001.)

[53] NCUA's risk-based net worth requirement has been largely unchanged since its implementation, with the following limited exceptions: Revisions were made to the rule in 2003 to amend the risk-based net worth requirement for MBLs. 68 FR 56537 (Oct. 1, 2003). Revisions were made to the rule in 2008 to incorporate a change in the statutory definition of ''net worth.'' 73 FR 72688 (Dec. 1, 2008). Revisions were made to the rule in 2011 to expand the definition of ''low-risk assets'' to include debt instruments on which the payment of principal and interest is unconditionally guaranteed by NCUA. 76 FR 16234 (Mar. 23, 2011). Revisions were made in 2013 to exclude credit unions with total assets of $50 million or less from the definition of ''complex'' credit union. 78 FR 4033 (Jan. 18, 2013).

[54] 12 U.S.C. 1790d(a)(1).

[55] 12 U.S.C. 1790d(c).

[56] 12 U.S.C. 1790d(o)(2).

[57] Throughout this document the terms ''net worth ratio'' and ''leverage ratio'' are used interchangeably.

[58] 12 U.S.C. 1790d(o)(3).

[59] 12 U.S.C. 1790d(c)–(g); *and* 12 CFR 702.204(a) & (b).

[60] For purposes of this rulemaking, the term ''risk-based net worth requirement'' is used in reference to the statutory requirement for the Board to design a capital standard that accounts for variations in the risk profile of complex credit unions. The term ''risk-based capital ratio'' is used to refer to the specific standards this rulemaking proposes to function as criteria for the statutory risk-based net worth requirement. For example, this rulemaking's proposed risk-based capital ratio would replace the risk-based net worth ratio in the current rule. The term ''risk-based capital ratio'' is also used by the Other Banking Agencies and the international banking community when referring to the types of risk-based requirements that are addressed in this proposal. This change in terminology throughout the proposal would have no substantive effect on the requirements of the FCUA, and is intended only to reduce confusion for the reader.

[61] 12 U.S.C. 1790d(d)(1).

[62] *See* 12 U.S.C. 1790d(o) (Congress specifically defined the terms ''net worth'' and ''net worth ratio'' in the FCUA, but did not define the statutory term ''risk-based net worth.'').

[63] 12 U.S.C. 1790d(d).

[64] 12 U.S.C. 1790d(d)(2) (emphasis added).

material risks against which the 6 percent net worth ratio required for a credit union to be adequately capitalized may not provide adequate protection. Thus the NCUA should, for example, consider whether the 6 percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved.[65]

As indicated by the language above, Congress intended the Board, in designing the risk-based net worth requirement, to address any risks that may not be adequately accounted for by the statutory 6 percent net worth ratio requirement. The legislative history is silent on why Congress chose to tie the provision in section 216(d)(2) to the statutory 6 percent net worth ratio requirement for adequately capitalized credit unions and not the 7 percent net worth ratio requirement for well capitalized credit unions.

Section 216(c) of the FCUA provides that, if a credit union meets the definition of ''complex'' and it meets or exceeds the net worth ratio requirement to be classified as either adequately capitalized or well capitalized, the credit union must also satisfy the corresponding risk-based net worth requirement to be classified as either adequately capitalized or well capitalized.[66] Accordingly, under the separate risk-based net worth requirement, a complex credit union must, in addition to meeting the statutory net worth ratio requirement, also meet or exceed the corresponding minimum risk-based net worth requirement in order to receive a capital classification of adequately capitalized or well capitalized, as the case may be.[67] For example, a complex credit union must meet or exceed both the applicable net worth ratio requirement and the applicable risk-based net worth requirement to be classified as well capitalized. If the credit union fails to meet either requirement, it is classified in the lowest category for which it meets both the net worth ratio requirement and the risk-based net worth requirement.

If a complex credit union meets or exceeds the net worth ratio requirement to be classified as well capitalized or adequately capitalized, but fails to meet the corresponding minimum risk-based net worth requirement to be adequately capitalized, then the credit union's capital classification is ''undercapitalized'' based on the risk-based net worth requirement. Similarly, if a complex credit union's net worth ratio meets or exceeds the requirement that corresponds to the well capitalized category, but its risk-based net worth ratio meets only the requirement that corresponds with the adequately capitalized capital category, then that credit union's capital classification is adequately capitalized. In either case, the credit union is subject to the mandatory supervisory and discretionary supervisory actions applicable to its capital classification category.[68]

In response to the Second Proposal, a significant number of commenters questioned the Board's legal authority to impose a risk-based net worth requirement on both well capitalized and adequately capitalized credit unions. As also discussed in the Section-by-Section part of the preamble below, the commenters' selective reading of section 216 of the FCUA is a misinterpretation. NCUA is legally authorized to impose a risk-based net worth requirement on both well capitalized and adequately capitalized credit unions under the FCUA. Section 216(c)(1)(A) specifically provides that, to be classified as well capitalized, a complex credit union must meet the statutory net worth ratio requirement *and* any applicable risk-based net worth requirement. Section 216(c)(1)(A)(ii) provides that a credit union must meet *any* applicable risk-based net worth requirement under section 216(d) of this section to be classified as well capitalized. The plain language of sections 216(c)(1)(A)(ii) and (c)(1)(B)(ii),, read in conjunction with the language in section 216(d), indicates Congress' intent to authorize the Board to impose risk-based net worth requirements on both well capitalized and adequately capitalized credit unions.

Section 216(d)(2) of the FCUA sets forth specific requirements for the design of the risk-based net worth requirement mandated under section 216(d)(1).[69] Specifically, section 216(d)(2) requires that the Board ''design the risk-based net worth requirement to take account of *any material risks* against which *the net worth ratio* required for an insured credit union to be adequately capitalized *may not* provide adequate protection.''[70] Under section 216(c)(1)(B) of the FCUA, the *net worth ratio* required for an insured credit union to be adequately capitalized is six percent.[71] The plain language of section 216(d)(2) supports NCUA's interpretation that Congress intended for the Board to design a risk-based net worth requirement to take into account any material risks that may not be addressed adequately through the statutory 6 percent *net worth ratio* required for a credit union to be adequately capitalized.[72]

In other words, the language in section 216(d)(2) of the FCUA simply identifies the types of risks that NCUA's risk-based net worth requirement should address (*i.e.,* those risks not already addressed by the statutory six percent net worth ratio requirement). It is a misinterpretation of section 216(d)(2) to argue, as some commenters have, that Congress's use of the term ''adequately capitalized'' in section 216(d)(2) somehow limits the Board's authority to require that complex credit unions maintain a higher risk-based capital ratio level to be classified as well capitalized. Rather than prohibiting the Board from imposing a higher risk-based capital ratio level for credit unions to be classified as well capitalized, section 216(d)(2) simply requires that the Board design the risk-based net worth requirement to take into account those risks that may not adequately be addressed by the statute's six percent *net worth ratio* requirement. Thus, the plain language of section 216(d) does not support those commenters' interpretation.

The Board's legal authority to impose a risk-based net worth requirement on both well capitalized and adequately capitalized credit unions is further supported by the Other Banking

[65] S. Rep. No. 193, 105th Cong., 2d Sess. 13 (1998).

[66] *See* 12 U.S.C. 1790d(c)(1)(A) & (c)(1)(B).

[67] The risk-based net worth requirement also indirectly impacts credit unions in the ''undercapitalized'' and lower net worth categories, which are required to operate under an approved net worth restoration plan. The plan must provide the means and a timetable to reach the ''adequately capitalized'' category. *See* 12 U.S.C. 1790d(f)(5) *and* 12 CFR 702.206(c). However, for ''complex'' credit unions in the ''undercapitalized'' or lower net worth categories, the minimum net worth ratio ''gate'' to that category will be six percent or the credit union's risk-based net worth requirement, if higher than 6 percent. In that event, a complex credit union's net worth restoration plan will have to prescribe the steps a credit union will take to reach a higher net worth ratio ''gate'' to that category. *See* 12 CFR 702.206(c)(1)(i)(A) *and* 12 U.S.C. 1790d(c)(1)(A)(ii) & (c)(1)(B)(ii).

[68] 12 U.S.C. 1790d(c)(1)(c)(ii).

[69] 12 U.S.C. 1790d(d).

[70] 12 U.S.C. 1790d(d)(2) (emphasis added).

[71] 12 U.S.C. 1790d(c)(1)(B).

[72] *See* S. Rep. No. 193, 105th Cong., 2d Sess. (1998) (providing in relevant part: ''The NCUA must design the risk-based net worth requirement to take into account any material risks against which the 6 percent net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'').

Agencies' PCA statute and regulations.[73] Some commenters have argued that Congress's use of the singular noun ''requirement'' in Section 216(d) of the FCUA indicates its intent that there be only one risk-based net worth ration level tied to the adequately capitalized level. Section 38(c)(1)(A) of the FDI Act, upon which section 216 of the FCUA was modeled,[74] however, requires that the Other Banking Agencies' ''relevant capital measures'' include ''(i) a leverage limit; and (ii) a risk-based capital *requirement.*'' [75] Despite Congress' use of the singular noun ''requirement'' in section 38 of the FDI Act, the Other Banking Agencies' PCA regulations, which went into effect before Congress passed CUMAA, have long required that their regulated institutions meet different risk-based capital ratio levels to be classified as well capitalized, adequately capitalized, undercapitalized, or significantly undercapitalized. Moreover, the United States Code addresses the singular—plural question in its rules of statutory construction: ''In determining the meaning of any Act of Congress, unless the context indicates otherwise . . . words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular . . .'' [76] Therefore, setting different risk-based capital ratio levels for credit unions to be adequately and well capitalized, is consistent with the requirements of section 216 of the FCUA and is ''comparable'' to the Other Banking Agencies' PCA regulations.

As explained in the Second Proposal, the FCUA requires NCUA to establish a risk-based capital system that is comparable to that in place for FDIC insured banks, *and* to take into account the cooperative character of credit unions. Some commenters criticized, however, that the Second Proposal took into account only the comparability requirement, and ignored the requirement to take into consideration the cooperative nature of credit unions. In support of their assertion, the commenters suggested that, because of their unique cooperative structure, strong member focus, and the absence of stock options for executives or pressure from stockholders, credit unions eschew excessive risk taking. The commenters suggested further, that in the face of the 2007–2009 financial crisis, credit unions—unlike their counterparts in the for-profit banking sector—served as both a counter-cyclical force and a safe haven, with much stronger loan and deposit growth than banking institutions. Accordingly, many commenters suggested that the Board, to take into account the cooperative character of credit unions, must impose risk-based capital requirements that are equal to or lower than the standards applicable to banks.

The Board disagrees with the claim that NCUA failed to take into account the cooperative character of credit unions in designing the risk-based capital requirement. In the Original Proposal, which varied to a greater degree from the Other Banking Agencies' capital regulations than the Second Proposal, the Board proposed a significant number of alternative provisions, many of which were specifically intended to take into account the cooperative character of credit unions. The overwhelming response from credit unions in relation to that proposed approach, however, was to recommend that the Board revise the proposal to be more like the capital requirements adopted by the Other Banking Agencies to avoid putting credit unions at a competitive disadvantage to banks. As discussed in more detail below, the Board generally agreed with commenters' recommendations in that regard, and designed the Second Proposal to be more like the Other Banking Agencies' capital regulations. In the preamble to the Second Proposal, however, the Board specifically discussed ways in which the proposal continued to deviate from the Other Banking Agencies' capital requirements to take into account the cooperative character of credit unions. Furthermore, while it may generally be true that ''credit unions eschew excessive risk taking,'' as suggested by some commenters, that fact alone does not support assigning lower risk weights to credit union assets, or requiring that credit unions meet lower risk-based capital ratio levels to be adequately or well capitalized. To the contrary, for reasons explained in more detail below, a credit union that eschews excessive risk taking should have no trouble maintaining a high risk-based capital ratio level under this final rule.

At least one commenter also suggested that credit unions' reliance primarily on retained earnings to build capital and operate make their operational structures both unique and challenging. Thus, the commenter concluded that, by requiring a higher risk-based capital ratio level for well capitalized credit unions, the Second Proposal failed to take these factors into consideration, as required by section 216(b)(1)(B) of the FCUA. The Board disagrees. Credit unions' limited access to supplemental forms of capital and reliance primarily on retained earnings for building capital suggests, if anything, that requiring credit unions to maintain higher levels of capital is appropriate. In a financial downturn, the retained earnings of a financial institution are likely to decrease. Under such circumstances, an institution with limited access to other alternative forms of capital needs a higher level of capital on hand to ensure its survival. In the case of NCUA's capital requirements, that higher level of capital is already required under the statutory net worth ratio requirement, which requires credit unions maintain higher leverage (net worth) ratios than banks. Accordingly, consistent with the Second Proposal, the risk-based capital ratio levels adopted in this final rule for adequately and well capitalized credit unions are designed to be generally equivalent to the corresponding risk-based capital ratio levels required for banks.

IV. Section-by-Section Analysis

Part 702—Capital Adequacy

Revised Structure of Part 702

Consistent with the Second Proposal, this final rule reorganizes part 702 by consolidating NCUA's PCA requirements, which are currently included under subsections A, B, C, and D, under new subparts A and B. New subpart A is titled ''Prompt Corrective Action'' and new subpart B is titled ''Alternative Prompt Corrective Action for New Credit Unions.'' The reorganization is designed so that a credit union need only reference the subpart that applies to its institution, rather than having to flip back-and-forth between multiple subparts in part 702 to identify the applicable minimum capital standards and PCA regulations. Consolidating these sections reduces confusion and will save credit union staff from having to frequently flip back and forth through the four subparts of the current PCA rule.

In general, this final rule restructures part 702 by consolidating most of the sections relating to capital and PCA that are applicable to only credit unions that are not ''new'' under new subpart A. The specific sections that would be included in new subpart A and the changes to those sections are discussed in more detail below.

[73] *See* 12 U.S.C. 1831o, *and, e.g.,* 12 CFR 324.403(b).

[74] *See* S. Rep. No. 193, 105th Cong., 2d Sess., 12 (1998) (Providing in relevant part: ''New section 216 [of the FCUA] is modeled on section 38 of the Federal Deposit Insurance Act, which has applied to FDIC-insured depository institutions since 1992.'').

[75] 12 U.S.C. 1831o(c)(1)(A) (emphasis added).

[76] 1 U.S.C. 1.

Similarly, this final rule consolidates most of NCUA's rules relating to alternative capital and PCA requirements for ''new'' credit unions under new subpart B. The sections under new subpart B remain largely unchanged from the requirements of current part 702 relating to alternative capital and PCA, except for revisions to the sections relating to reserves and the payment of dividends. The specific sections included in new subpart B and the specific changes to the sections are discussed in more detail below.

Finally, this final rule retains subpart E of part 702, Stress Testing, but re-designates and re-numbers the current subpart as subpart C. Other than re-designating and re-numbering the subpart, the language and requirements of current subpart E are unchanged by this final rule.

Section 702.1 Authority, Purpose, Scope, and Other Supervisory Authority

Consistent with the Proposal, § 702.1 of the final rule remains substantially similar to current § 702.1, but is amended to update terminology and internal cross references within the section, consistent with the changes that are being made in other sections of part 702. No substantive changes to the section are intended.

Section 216(b)(1) of the FCUA requires the Board to adopt by regulation a system of PCA for insured credit unions that is ''comparable to'' the system of PCA prescribed in the FDI Act, that is also ''consistent'' with the requirements of section 216 of the FCUA, and that takes into account the cooperative character of credit unions.[77] Paragraph (d)(1) of the same section requires that NCUA's system of PCA include ''a risk-based net worth requirement for insured credit unions that are complex . . .'' When read together, these sections grant the Board broad authority to design reasonable risk-based capital regulations to carry out the stated purpose of section 216, which is to ''resolve the problems of [federally] insured credit unions at the least possible long-term loss to the [National Credit Union Share Insurance] Fund.''[78] As explained in more detail below, this final rule is comparable, although not identical in detail, to the PCA and risk-based capital requirements for banks. In addition, as explained throughout the preamble to this final rule, this rule deviates from the PCA and risk-based capital requirements applicable to banks as required by section 216 of the FCUA, and to take into account the cooperative character of credit unions. Accordingly, the revised risk-based net worth requirement and this final rule are consistent with section 216 of the FCUA.

Section 702.2—Definitions

The Second Proposal would have removed the paragraph numbers assigned to each of the definitions under current § 702.2 and would have reorganized the section so the new and existing definitions were listed in alphabetic order. Many of the definitions in current § 702.2 were retained, however, with no substantive changes. The reorganization of the section and the removal of the paragraph numbering made proposed § 702.2 more consistent with current §§ 700.2, 703.2 and 704.2 of NCUA's regulations.[79] In addition, proposed § 702.2 included a number of new definitions, and would have amended some of the definitions in current § 702.2.

Consistent with section 202 of the FCUA,[80] the Second Proposal also incorporated the phrase 'in accordance with GAAP' into many of the definitions to clarify that generally accepted accounting principles must be used determine how an item is recorded on the statement of financial condition from which it would be incorporated into the risk-based capital calculation. This proposed change was intended to help clarify the meaning of terms used in the Second Proposal.

The Board received no comments on the proposed technical changes to § 702.2. The Board did, however, receive one general comment on the definitions section: At least one commenter stated that the revisions to the definitions, particularly those that now rely on GAAP definitions, seemed fair and reasonable. At least one commenter also suggested that the proposed changes to the definitions were all for the better and made the rule much clearer. The Board agrees with the commenters and has decided to retain the changes described above in this final rule.

The following definitions, consistent with the Second Proposal, are also added to, amended in, or removed from § 702.2 by this final rule:

Allowances for loan and lease losses (ALLL). The Second Proposal defined the term ''allowances for loan and lease losses'' as valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP.

The Board received no comments on the proposed definition and has decided to retain the definition in this final rule without change.

Amortized cost. The Second Proposal defined the term ''amortized cost'' as the purchase price of a security adjusted for amortizations of premium or accretion of discount if the security was purchased at other than par or face value.

The Board received no comments on the proposed definition and has decided to retain the definition in this final rule without change.

Appropriate regional director. The Second Proposal would have amended current § 702.2 to remove the definition of the term ''appropriate regional director'' from the current rule.

The Board received no comments on this proposed revision and has decided to retain the revision in this final rule without change.

Appropriate state official. Under the Second Proposal, the Board proposed revising the definition of the term ''appropriate state official'' by adding the italicized words (''state'' and ''the'') to the current definition, and by removing the words ''chartered by the state which chartered the affected credit union.'' The revised definition would have provided that the term ''appropriate state official'' means the state commission, board or other supervisory authority having jurisdiction over the credit union.

Public Comments on the Second Proposal

One commenter suggested that, although the proposed revision to the definition was meant to provide clarity, it might obfuscate the role of state supervisors in the PCA process because several states could have ''jurisdiction'' over a given credit union on a particular issue. In contemplating the possible effects of the proposed revision, the commenter asked a number of questions: Will NCUA consult with all state regulators where an affected credit union has a branch or member when taking discretionary supervisory action?[81] Will a credit union have to obtain approval from all states that it operates in before issuing dividends when less than adequately capitalized?[82] The commenter suggested further that while timely sharing of information across all

[77] 12 U.S.C. 1790d(b)(1).

[78] 12 U.S.C. 1790d(a)(1).

[79] 12 CFR 700.2; 12 CFR 703.2; *and* 12 CFR 704.2.

[80] 12 U.S.C. 1782(a)(6)(C)(i).

[81] 12 CFR 702.110(c).

[82] 12 CFR 702.114(b).

affected regulators was a laudable goal, crucial and time sensitive decisions regarding the reclassification or conservatorship of a credit union should be made by only the primary chartering authority of the institution in consultation with the deposit insurer. Accordingly, the commenter recommended that the Board should amend this definition to read ''the state commission, board or other supervisory authority which chartered the affected credit union.''

Discussion

The Board generally agrees with the commenter and is adopting the proposed revisions to the definition of ''appropriate state official'' by making the following changes: At the end of the proposed the definition, the final rule deletes the words ''having jurisdiction over the'' from the proposed definition, and adds in their place the words ''that chartered the affected.'' This change clarifies that NCUA must consult with only the state authority that chartered the credit union; not every state agency having some form of jurisdiction over the credit union.

Accordingly, the final rule defines ''appropriate state official'' as the state commission, board or other supervisory authority that chartered the affected credit union.

Call Report. The Second Proposal defined the term ''Call Report'' as the Call Report required to be filed by all credit unions under § 741.6(a)(2).

The Board received no comments on the definition and has decided to retain the proposed definition in this final rule without change.

Carrying value. The Second Proposal defined the term ''carrying value,'' with respect to an asset, as the value of the asset on the statement of financial condition of the credit union, determined in accordance with GAAP.

The Board received no comments on the proposed definition, but is clarifying in this final rule that ''carrying value'' applies to both assets and liabilities. Accordingly, this final rule defines ''carrying value'' as the value of the asset or liability on the statement of financial condition of the credit union, determined in accordance with GAAP.

Central counterparty (CCP). The Second Proposal defined the term ''central counterparty'' as a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

The Board received no comments on the definition and has decided to retain the proposed definition in this final rule without change.

Charitable donation account. The Second Proposal did not use or define the term ''charitable donation account.'' Under the proposal, such accounts, which federal credit unions are authorized to establish under § 721.3(b)(2) of NCUA's regulations, would have been assigned a risk weight based on the risk-weight of each individual asset type in the account.

Public Comments on the Second Proposal

NCUA received several comments regarding the risk weights assigned to charitable donation accounts under the Second Proposal. Commenters suggested that the proposed risk weights assigned to charitable donation accounts would contravene the appeal for credit unions to put money into these investments to fund charitable activities. The commenters pointed out that the risk-based capital regulation from the Office of the Comptroller of the Currency (OCC) recognizes the importance of community development investments and assigns a risk weight of 100 percent to such assets. Commenters suggested that the NCUA Board should adopt a similar approach to encourage charitable donation accounts to support charitable goals and purposes.

Discussion

The Board generally agrees with the commenters and, as also discussed in the part of the preamble associated with § 702.104(c), has decided to assign a 100 percent risk weight to certain charitable donation accounts under this final rule, at the credit union's option. Under the Second Proposal, the assets held in a charitable donation account were each assigned a risk weight based on each individual asset type in the account. After reviewing the comments received, however, the Board generally agrees with commenters who suggested that charitable donation account equity exposures, which are held at credit unions, have a role analogous to community development equity exposures, which are held at banks, and therefore warrant assigning such accounts an equivalent risk weight. Community development equity exposures are assigned a 100 percent risk weight under the Other Banking Agencies' regulations. Thus, this final rule gives credit unions the option for risk weighting charitable donation accounts in a manner that is generally equivalent to the Other Banking Agencies' 100 percent risk weight for community development investment equity exposures. Under this final rule, a credit union has the option of applying risk weights to the individual assets within a charitable donation account, or just applying a 100 percent risk weight to the whole charitable donation account. A credit union cannot, however, use a combination of the two methods described to assign a risk weight to the same charitable donation account.

In defining ''charitable donation account,'' the Board chose to limit the types of accounts that would qualify for the 100 percent risk weight. In particular, the Board chose allow such treatment for accounts only if they met certain restrictions in 12 CFR 721.3(b)(2)(i), (b)(2)(ii), and (b)(2)(v). Thus, to qualify for the optional 100 percent risk weight under § 702.104(c)(3)(ii) of this final rule, an account must meet the following criteria:

- The book value of the credit union's investments in all charitable donation accounts (CDAs), in the aggregate, as carried on its statement of financial condition prepared in accordance with generally accepted accounting principles, must be limited to 5 percent of the credit union's net worth at all times for the duration of the accounts, as measured every quarterly Call Report cycle. This means that regardless of how many CDAs the credit union invests in, the combined book value of all such investments must not exceed 5 percent of its net worth. The credit union must bring its aggregate accounts into compliance with the maximum aggregate funding limit within 30 days of any breach of this limit.
- The assets of a charitable donation account must be held in a segregated custodial account or special purpose entity and must be specifically identified as a charitable donation account.
- The credit union is required to distribute to one or more qualified charities, no less frequently than every 5 years, and upon termination of a charitable donation account regardless of the length of its term, a minimum of 51 percent of the account's total return on assets over the period of up to 5 years. Other than upon termination, the credit union may choose how frequently charitable donation account distributions to charity will be made during each period of up to 5 years. For example, the credit union may choose to make periodic distributions over a period of up to 5 years, or only a single distribution as required at the end of that period. The credit union may choose to donate in excess of the minimum distribution frequency and amount;

The three criteria above are included in the definition of charitable donation account to ensure that such accounts, if assigned a 100 percent risk weight, will be used primarily for charitable purposes and not present a material risk to a credit union regardless of the types of assets held in the accounts. The definition includes a 5 percent of net worth limit on charitable donation accounts to reflect an amount that allows a credit union to generate income for the charity while ensuring any risks associated with such accounts do not pose safety and soundness issues. In determining the 5 percent of net worth limit, the Board considered the investment types a credit union could purchase in a charitable donation account, which can include investments with significant credit risk. The Board determined that a 5 percent of net worth limit was reasonable given NCUA's charitable donation account regulations and necessary to ensure that the accounts were small enough to not pose a safety and soundness issue to the NCUSIF if assigned a 100 percent risk weight.

The definition also specifies that charitable donation accounts must be held in segregated custodial accounts or special purpose entities, and must be specifically identified as charitable donation accounts, to ensure holdings can be measured for exposure and monitored for performance and distribution. The Board determined the segregation of accounts is necessary to ensure a credit union and NCUA could measure compliance with the net worth and distribution criteria, consistent with safety and soundness and the account's purpose.

Finally, the definition specifies that distributions must be made in a particular manner to ensure such accounts are used primarily for charitable giving. By specifying the distribution manner, the definition of charitable donation account ensures that the account will primarily be used for charitable giving. This distinction is generally consistent with the Other Banking Agencies' regulations, which assign a 100 percent risk-weight to community development investment equity exposures.

Without each of the three criteria discussed above, a charitable donation account would primarily be an investment vehicle for a credit union and could present a material risk to the credit union and the NCUSIF. Accordingly, this final rule defines ''charitable donation account'' as an account that satisfies all of the conditions in 12 CFR 721.3(b)(2)(i), (b)(2)(ii), and (b)(2)(v).

Commercial loan. The Second Proposal defined the new term ''commercial loan'' as any loan, line of credit, or letter of credit (including any unfunded commitments) to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes. The definition would have also provided that the term commercial loan excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans.

Public Comments on the Second Proposal

The Board received many comments regarding the proposed new term ''commercial loan'' and its definition. Several commenters agreed with creating a category of ''commercial loans'' as distinct from traditional member business loans for purposes of the risk-based capital ratio requirement. At least one commenter stated that, while differentiating between ''commercial loans'' for risk-based capital purposes and ''member-business loans'' as defined for lending purposes is appropriate, the subtle differences in these definitions may cause confusion. Similarly, another commenter suggested that even though it would require changes to the call report and how credit union classify these loans, the Board was right to use the broader definition of commercial loans in the proposal because there is no difference in the credit risk of member business loans and commercial loans.

Conversely, other commenters suggested that replacing the term ''member business loan,'' which credit unions and NCUA's regulations already use, with the new term ''commercial loan'' for purposes of the risk-based capital regulation would cause unnecessary confusion. Other commenters suggested that the proposed definition of ''commercial loan'' should be revised to be consistent with the definition of ''member business loan'' in part 723 of NCUA's regulations because they believed the differences between the two definitions were immaterial to a credit union's capital requirement, but would add unnecessary administrative burden to the Call Report.

In addition, a trade association commenter pointed out that the proposed definition of a ''commercial loan'' specifies that it is a loan ''to individuals, sole proprietorships, partnerships, corporations, or other business enterprises,'' and explicitly excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans. The commenter pointed out, however, that the preamble to the Second Proposal seemed to indicate that whether or not a loan is ''commercial'' will be based exclusively on the purpose of the loan, use of the proceeds, and type of collateral. The Commenter suggested that if a loan can be considered commercial regardless of the type of borrower, the Board should consider removing the list of potential borrowers and simply retaining the exclusions of specific loan types. The commenter suggested further that the proposal specified that a commercial loan is a loan made for ''commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes.'' But, under part 723 of NCUA's regulations, MBLs are made for commercial, corporate, other business investment property or venture, or agricultural purposes.[83] The commenter recommending clarifying the alignment of these two definitions in the final rule, and that if the only intended differences in treatment arise from the definitions of loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans, then the Board should consider adopting the member business loan language and retaining those explicit exclusions. At least one commenter also pointed out that current § 723.1(d) and (e) of NCUA's member business lending regulations reference treatment of purchased member and non-member loans and loan participations for risk-weight purposes under part 702, and encouraged the Board to review those sections for consistency with the proposed definition of commercial loan. Another commenter requested that the Board clarify whether the definition of ''commercial loans'' includes loans to non-profits. One state supervisory authority commenter requested clarification on whether the definition, which lists a number of specific asset types, would include agricultural loans.

Discussion

As stated in the Second Proposal, the new term ''commercial loan'' and its proposed definition more accurately capture the risks these loans present than the term MBL, and better identifies loans that are made for a commercial purpose and have similar risk characteristics. While there could be some initial confusion associated with the use of this new term, the Board notes that such confusion can be addressed during the implementation period and in guidance before the final rule becomes effective in 2019.

[83] 12 CFR 723.1(a).

Guidance contained in the Call Report for the proper reporting of commercial loans will also provide information to credit unions to ensure proper reporting of both ''commercial'' loans for the purpose of assigning risk weights and the reporting of MBLs for the purpose of monitoring compliance with the statutory limit.

The Board agrees, however, with commenters who suggested that the purpose of a loan determine its classification as a ''commercial'' loan. The risks associated with a commercial loan are related to its purpose. Moreover, the proposed list of entities that could have received the loans encompassed all possibilities, including non-profit organizations. Thus the removal of the list of parties who could receive the loans would be inconsequential. Accordingly, the Board is amending the definition of ''commercial loan'' to remove the words ''to individuals, sole proprietorships, partnerships, corporations, or other business enterprises.''

The Board maintains, however, that the listing of commercial purposes in the proposed definition was adequate and plainly included agricultural loans if they are granted for a commercial or industrial purpose. Similarly, it is clear that a loan purchased by a credit union, which was made for a commercial purpose, was also included within the proposed definition of a commercial loan, whether it is a loan to member or non-member. Thus no additional changes to the definition are necessary.

Accordingly, this final rule defines ''commercial loan'' as any loan, line of credit, or letter of credit (including any unfunded commitments) for commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes. The definition provides further that the term commercial loan excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans.

Commitment. The Second Proposal defined the term ''commitment'' as any legally binding arrangement that obligates the credit union to extend credit, to purchase or sell assets, or enter into a financial transaction.

The Board received no comments on the proposed definition, but has decided to clarify in this final rule that a ''commitment'' can also refer to funding transactions. Accordingly, this final rule would define ''commitment'' as any legally binding arrangement that obligates the credit union to extend credit, purchase or sell assets, enter into a borrowing agreement, or enter into a financial transaction.

Consumer loan. The Second Proposal defined the term ''consumer loan'' as a loan to one or more individuals for household, family, or other personal expenditures, including any loans secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan. The proposed definition would have provided further that the term consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of fleet vehicles.

Public Comments on the Second Proposal

The proposed definition of ''consumer loan'' referenced loans ''to one or more individuals . . . including any loans secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan.'' At least one commenter requested that the Board clarify whether the same loan would still be considered a consumer loan if made to an incorporated entity. If the definition is not dependent on the type of borrower, the commenter suggested that the words ''one or more individuals'' were not necessary. The commenter also requested that the Board clarify the definition of a loan ''for the purchase of fleet vehicles,'' and, to maximize ease of compliance, recommended the Board incorporate the definition of ''fleet'' contained in a 2012 NCUA legal opinion directly into the definition.[84]

Discussion

The Board agrees with the commenter who suggested that a consumer loan should be defined by the purpose of the loan and not depend on the type of entity receiving the loan, be it an individual, corporation, or some other business. The material risks associated with holding a prudently underwritten consumer loan are related to its purpose, not on the type of borrower. Accordingly, this final rule amends the proposed definition of consumer loan to remove the words ''to one or more individuals'' from the definition.

The Board also generally agrees with the commenter who suggested the final rule should further clarify the reference to ''fleet vehicles'' in the proposed definition of consumer loans. As pointed out by the commenter, NCUA's General Counsel issued a legal opinion letter in 2012 that interprets the term ''fleet'' for purposes of § 723.7(e) of NCUA's regulations.[85] The letter provides that a fleet means ''five or more vehicles that are centrally controlled and used for a business purpose, including for the purpose of transporting persons or property for commission or hire.'' The meaning of the term ''fleet,'' as used in the proposed definition of consumer loan, should be consistent with the use of the term in § 723.7(e). While the Second Proposal did not propose adopting the definition of ''fleet'' provided in the 2012 legal opinion letter, the term should have the same meaning. The term does not need to be defined in this final rule. Future changes in market realities surrounding the use of the term ''fleet'' make adopting a fixed definition of the term impractical. The Board agrees, however, that revising the proposed use of the term ''fleet'' in the definition of consumer loan to be more consistent with the use of the term fleet in § 723.7(e) will help avoid confusion regarding the term's meaning. Accordingly, the final rule revises the last clause in the second sentence of the definition of the term ''consumer loan'' to provide, ''and loans for the purchase of one for more vehicles to be part of a fleet of vehicles.''

NCUA will provide separate examiner guidance on the application of the definition of consumer loans to ensure consistent interpretation of the definition in the future. NCUA's Call Report instructions will also contain appropriate guidance for the proper reporting of consumer loans. For the reasons discussed above, this final rule defines the term ''consumer loan'' as a loan for household, family, or other personal expenditures, including any loans that, at origination, are wholly or substantially secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan. The definition provides further that the term consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of one or more vehicles to be part of a fleet of vehicles.

Contractual compensating balance. The Second Proposal defined the term ''contractual compensating balance'' as the funds a commercial loan borrower must maintain on deposit at the lender credit union as security for the loan in accordance with the loan agreement, subject to a proper account hold and on deposit as of the measurement date.

[84] NCUA, *Definition of Fleet,* Legal Opinion Letter 12–0764 (Sept. 13, 2012), *available at http://www.ncua.gov/Legal/Pages/OL2012-12-0764.aspx.*

[85] NCUA, *Definition of Fleet,* Legal Opinion Letter 12–0764 (Sept. 13, 2012), *available at http://www.ncua.gov/Legal/Pages/OL2012-12-0764.aspx.*

The Board received no comments on the definition and has decided to retain the proposed definition in this final rule without change.

Credit conversion factor (CCF). The Second Proposal defined the term ''credit conversion factor'' as the percentage used to assign a credit exposure equivalent amount for selected off-balance sheet accounts.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Credit union. The Second Proposal defined the term ''credit union'' as a federally insured, natural-person credit union, whether federally or state-chartered. The proposal would have amended the current definition of the term ''credit union'' to remove the words ''as defined by 12 U.S.C. 1752(6)'' from the end of the definition because they were unnecessary, and could mistakenly be read to limit the definition of ''credit unions'' to state-chartered credit unions.

The Board received no comments on the proposed revisions to the definition of ''credit union'' and has decided to retain the proposed definition in this final rule without change.

Current. The Second Proposal defined the term ''current,'' with respect to any loan, as less than 90 days past due, not placed on non-accrual status, and not restructured.

Public Comments on the Second Proposal

The Board received only a small number of comments on the proposed definition of the term ''current.'' Most commenters who mentioned it supported the proposed definition of ''current.'' One credit union commenter, however, suggested that the Board should define ''current'' as loans that are 60 days past due, which was the period provided in the Original Proposal, because expanding the delinquency loans to 90 days has more risk and greater exposer to potential loss. Another commenter recommended that the definition of ''current'' be revised so it does not automatically exclude all restructured loans. Another commenter argued that while it is understandable to require a higher risk-weighting for non-current loans, lumping restructured loans into this same category and treatment would be punitive. The commenter suggested that the definition of ''restructured loans'' be amended to specifically address loans that the commenter referred to as ''troubled debt relief assets,'' which are loans that have been modified because of financial hardship in the face of some type of credit impairment. According to the commenter, the Financial Accounting Standards Board already requires excess reserves be held for these assets based on the difference between the net present value of the loans under the original terms versus the modified terms. The commenter contended that credit unions currently hold reserves of over 10 percent against loans that are performing and have very low incidents of future default. Therefore, the commenter concluded, treating a ''troubled debt relief asset'' as a non-current loan would not reflect the fact that a modification has been made to a loan and it is performing. The commenter suggested that such restructurings aid the future performance of such loans.

Discussion

The Board believes that the proposed definition of ''current'' is consistent with § 741.3(b)(2), which specifies that a credit union's written lending policies must include ''loan workout arrangements and nonaccrual standards that include the discontinuance of interest accrual on loans past due by 90 days or more,'' and aligns well with the definition of ''current loan'' under the Other Banking Agencies' regulations.[86] In general, loans that are more than 90 days past due, or restructured, tend to have higher incidences of default resulting in losses. The proposed definition is consistent with the definition used under the Other Banking Agencies' risk-based capital rules and is not dependent upon, nor contradictory to, related accounting pronouncements. Additional guidance will be provided to credit unions in the future regarding reporting troubled debt restructuring (TDR) loans through supervisory guidance and in the instructions on the Call Report. Accordingly, the Board has decided to retain the proposed definition in this final rule without change.

CUSO. The Second Proposal defined the term ''CUSO'' as a credit union service organization as defined in parts 712 and 741.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Custodian. The Second Proposal defined the term ''custodian'' as a financial institution that has legal custody of collateral as part of a qualifying master netting agreement, clearing agreement or other financial agreement.

[86] *See, e.g.,* 12 CFR 324.32(k).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Depository institution. The Second Proposal defined the term ''depository institution'' as a financial institution that engages in the business of providing financial services; that is recognized as a bank or a credit union by the supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. The definition provided further that the term depository institution includes all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions and international banking facilities of domestic depository institutions, and all privately insured state-chartered credit unions.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Derivatives Clearing Organization (DCO). The Second Proposal defined the term ''Derivatives Clearing Organization (DCO)'' as having the same definition as provided by the Commodity Futures Trading Commission in 17 CFR 1.3(d).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Derivative contract. The Second Proposal defined the term ''derivative contract'' as a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. The definition provided further that the term derivative contract includes interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. The definition also provided that the term derivative contract also includes unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Equity investment. The Second Proposal defined the term ''equity investment'' as investments in equity securities, and any other ownership interests, including, for example, investments in partnerships and limited liability companies.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Equity investment in CUSOs. The Second Proposal defined the term ''equity investment in CUSOs'' as the unimpaired value of the credit union's equity investments in a CUSO as recorded on the statement of financial condition in accordance with GAAP.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Exchange. The Second Proposal defined the term ''exchange'' as a central financial clearing market where end users can trade derivatives.

The Board received no comments on this definition, but has decided to clarify in this final rule that derivatives are engaged in through agreements and not traded like securities. Accordingly, this final rule would define ''exchange'' as a central financial clearing market where end users can enter into derivative transactions.

Excluded goodwill, and excluded other intangible assets. The Second Proposal defined the term ''excluded goodwill'' as the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal Register**. The definition provided further that the term excluded goodwill and its accompanying definition would expire on January 1, 2025.

The Second Proposal would have also defined the term ''excluded other intangible assets'' as the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangibles, member relationship intangibles, or trade name intangible originating from a supervisory merger or combination that was completed no more than 29 days after publication of this rule in final form in the **Federal Register**. The definition provided further that the term excluded other intangible assets and its accompanying definition would expire on January 1, 2025.

Public Comments on the Second Proposal

The Board received many comments regarding the proposed treatment of goodwill and other intangible assets under NCUA's risk-based capital requirement. A significant number of commenters requested that the terms ''excluded goodwill'' and ''excluded intangible assets'' and their proposed treatment be retained permanently (or, if not retained permanently, commenters requested that the time period during which they are allowed be extended). The specific comments received and a more detailed description of the Board's response are provided below in the part of the preamble associated with § 702.104(b)(2).

Discussion

The Board generally agrees with commenters who suggested the time periods allowed for these proposed exclusions be extended. The Board added these two definitions to take into account the impact goodwill or other intangible assets recorded from transactions defined as supervisory mergers or combinations have on the calculation of the risk-based capital ratio upon implementation. The proposed exclusions would have applied to supervisory mergers or combinations that were completed prior to the date of publication of this final rule in the **Federal Register**. The proposed exclusion would have ended on January 1, 2025. For the reasons discussed below in the part of the preamble associated with § 702.104(b)(2), the Board has decided to revise the proposed definitions of ''excluded goodwill'' and ''excluded other intangible assets'' to extend the period during which credit unions can count these assets in the risk-based capital ratio numerator to January 1, 2029. In addition, the Board is extending the period, after the publication of this final rule in the **Federal Register**, during which credit unions can obtain ''excluded goodwill'' and ''excluded other intangible assets'' to 60 days to allow credit unions additional time to adjust to the changes made by this final rule.

Accordingly, this final rule defines ''excluded goodwill'' as the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before a date to be set upon publication, which will be 60 days after publication of this final rule in the **Federal Register**. The definition provides further that the term and definition expire on January 1, 2029.

Similarly, this final rule also defines ''excluded other intangible assets'' as the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before a date to be set upon publication, which will be 60 days after publication of this final rule in the **Federal Register**. The definition provides further that the term and definition expire on January 1, 2029.

Exposure amount. The Second Proposal defined the term ''exposure amount'' as:

- The amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities.
- The outstanding balance for Federal Reserve Bank stock, Central Liquidity Facility stock, Federal Home Loan Bank stock, nonperpetual capital and perpetual contributed capital at corporate credit unions, and equity investments in CUSOs.
- The carrying value for non-CUSO equity investments, and investment funds.
- The carrying value for the credit union's holdings of general account permanent insurance, and separate account insurance.
- The amount calculated under § 702.105 of this part for derivative contracts.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Fair value. The Second Proposal defined the term ''fair value'' as having the same meaning as provided in GAAP.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Financial collateral. The Second Proposal defined the term ''financial collateral'' as collateral approved by both the credit union and the counterparty as part of the collateral agreement in recognition of credit risk mitigation for derivative contracts.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

First-lien residential real estate loan. The Second Proposal defined the term ''first-lien residential real estate loan'' as a loan or line of credit primarily secured by a first-lien on a one-to-four family residential property where: (1) The credit union made a reasonable and good faith determination at or before consummation of the loan that the member will have a reasonable ability to repay the loan according to its terms; and (2) in transactions where the credit union holds the first-lien and junior-lien(s), and no other party holds an intervening lien, for purposes of this part the combined balance will be treated as a single first-lien residential real estate loan.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

GAAP. The Second Proposal defined the term ''GAAP'' as generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

General account permanent insurance. The Second Proposal defined the term ''general account permanent insurance'' as an account into which all premiums, except those designated for separate accounts are deposited, including premiums for life insurance and fixed annuities and the fixed portfolio of variable annuities, whereby the general assets of the insurance company support the policy. Under the proposed definition, general account permanent insurance would have included direct obligations to the insurance provider. This would have meant that the credit risk associated with general account permanent insurance was to the insurance company, which generally makes such insurance accounts have a lower credit risk than separate account insurance. A separate account insurance is a segregated accounting and reporting account held separately from the insurer's general assets.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

General obligation. The Second Proposal defined the term ''general obligation'' as a bond or similar obligation that is backed by the full faith and credit of a public sector entity.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Goodwill. The Second Proposal defined the term ''goodwill'' as an intangible asset, maintained in accordance with GAAP, representing the future economic benefits arising from other assets acquired in a business combination (*e.g.,* merger) that are not individually identified and separately recognized. The Proposed definition provided further that goodwill does not include excluded goodwill.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Government guarantee. The Second Proposal defined the term ''government guarantee'' as a guarantee provided by the U.S. Government, FDIC, NCUA or other U.S. Government agencies, or a public sector entity.

Public Comments on the Second Proposal

One state supervisory authority commenter requested clarification on the definition of ''government guarantee,'' and whether the definition includes any type of guarantee from a state government, state government agency, or municipality.

Discussion

The Board definition of ''government guarantee'' does include guarantees from a state government, state government agency, or municipality. The definition expressly includes a guarantee provided by a ''public sector entity,'' which the second proposal defines separately in § 702.2 as a state, local authority, or other governmental subdivision of the United States below the sovereign level. The proposed definition of ''public sector entity'' would include state governments, state government agencies, and municipalities. Accordingly, the Board has decided to retain the proposed definition of ''government guarantee'' in this final rule without change.

Government-sponsored enterprise (GSE). The Second Proposal defined the term ''government-sponsored enterprise'' as an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Guarantee. The Second proposal defined the term ''guarantee'' as a financial guarantee, letter of credit, insurance, or similar financial instrument that allows one party to transfer the credit risk of one or more specific exposures to another party.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Identified losses. The Second Proposal defined the term ''identified losses'' as those items that have been determined by an evaluation made by NCUA, or in the case of a state-chartered credit union, the appropriate state official, as measured on the date of examination in accordance with GAAP, to be chargeable against income, equity or valuation allowances such as the allowances for loan and lease losses. The definition provided further that examples of identified losses would be assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Public Comments on the Second Proposal

At least one commenter requested that the Board specify in the definition of ''identified losses'' that such losses are only chargeable against losses.

Discussion

The commenter's suggested revision to the proposed definition is not consistent with generally accepted accounting principles. The definition of ''identified losses'' specifies that it be recorded in accordance with GAAP to appropriately address this matter and any further limiting conditions could run afoul of GAAP reporting. Accordingly, the Board has decided to retain the proposed definition in this final rule without change.

Industrial development bond. The Second Proposal defined the term ''industrial development bond'' as a security issued under the auspices of a state or other political subdivision for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest on the obligation.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Intangible assets. The Second Proposal defined the term ''intangible assets'' as assets, maintained in accordance with GAAP, other than financial assets, that lack physical substance.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Investment fund. The Second Proposal defined the term ''investment fund'' as an investment with a pool of underlying investment assets. The proposed definition provided further that the term investment fund includes an investment company that is registered under section 8 of the Investment Company Act of 1940, as amended, and collective investment funds or common trust investments that are unregistered investment products that pool fiduciary client assets to invest in a diversified pool of investments.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Junior-lien residential real estate loan. The Second Proposal defined the term ''junior-lien residential real estate loan'' as a loan or line of credit secured by a subordinate lien on a one-to-four family residential property. The proposed definition generally included all residential real estate loans that did not meet the definition of a first-lien residential real estate loan because the credit union is secured by a second or subsequent lien on the residential property loan.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Limited Recourse. The Second Proposal did not define the term ''limited recourse.''

Public Comments on the Second Proposal

At least one commenter suggested that the Board define ''limited recourse'' as provided under GAAP and clarify that the definition excludes normal reps and warranties in a loan sale transaction.

Discussion

There is no need to define ''limited recourse'' because the Second Proposal and this final rule define the term ''loans transferred with limited recourse.'' That definition provides sufficient information regarding the rule's use of the term ''limited recourse,'' and adequately addresses the normal representations and warranties associated with limited recourse. Accordingly, the Board has decided not to separately define the term ''limited recourse'' in this final rule.

Loan to a CUSO. The Second Proposal defined the term ''loan to a CUSO'' as the outstanding balance of any loan from a credit union to a CUSO as recorded on the statement of financial condition in accordance with GAAP.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change. For an unconsolidated CUSO, a credit union must assign the risk weight to the outstanding balance of the loans to the CUSO as presented on the statement of financial condition. For a consolidated CUSO, the risk weight of a loan to a CUSO is normally zero since the consolidation entries eliminate the intercompany transaction.

Loan secured by real estate. The Second Proposal defined the term ''loan secured by real estate'' as a loan that, at origination, is secured wholly or substantially by a lien(s) on real property for which the lien(s) is central to the extension of the credit. The definition provided further that a lien is ''central'' to the extension of credit if the borrowers would not have been extended credit in the same amount or on terms as favorable without the lien(s) on real property. The definition also provided that, for a loan to be ''secured wholly or substantially by a lien(s) on real property,'' the estimated value of the real estate collateral at origination (after deducting any more senior liens held by others) must be greater than 50 percent of the principal amount of the loan at origination.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Loans transferred with limited recourse. The Second Proposal defined the term ''Loans transferred with limited recourse'' as the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (*i.e.,* insufficient recourse to preclude true sale accounting treatment). The definition provided further that the term loans transferred with limited recourse excludes transfers that qualify for true sale accounting treatment but contain only routine representation and warranty clauses that are standard for sales on the secondary market, provided the credit union is in compliance with all other related requirements, such as capital requirements.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Mortgage-backed security (MBS). The Second Proposal defined the term ''mortgage-backed security'' as a security backed by first- or junior-lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Mortgage partnership finance program. The Second Proposal defined the term ''mortgage partnership finance program'' as any Federal Home Loan Bank program through which loans are originated by a depository institution that are purchased or funded by the Federal Home Loan Banks, where the depository institutions receive fees for managing the credit risk of the loans and servicing them. The definition would provide further that the credit risk must be shared between the depository institutions and the Federal Home Loan Banks.

Public Comments on the Second Proposal

The Board received several comments on the proposed definition of ''mortgage partnership finance program.'' One commenter explained that the Federal Home Loan Banks have programs through which they acquire conventional and government-issued residential mortgage loans from certain of their members, called Participating Financial Institutions (PFIs). The commenter explained that the Mortgage Partnership Finance (MPF) Program is offered today by most Federal Home Loan Banks, but that the Federal Home Loan Banks of Cincinnati and Indianapolis each independently operate a similar member product called the Mortgage Purchase Program (MPP). According to the commenter, both the MPP and MPF Programs operate pursuant to Federal Housing Finance Agency regulation and the majority of PFIs that sell mortgage loans under these programs are small to mid-sized community banks, thrifts, and credit unions. Several commenters suggested that NCUA's proposed definition of ''Mortgage Partnership Finance Program,'' could be reasonably construed to only apply to MPF Program loans that a credit union services. If the intent of the rule is to treat all MPF program loans the same, regardless of whether the credit union retains or sells the servicing, then the commenters recommended the Board clarify the definition by deleting the words ''*and servicing them*'' from the definition of ''Mortgage Partnership Finance Program.''

Commenters also suggested that, although the MPP and the MPF Programs are similar in many respects, there is an important difference regarding recourse risk. According to the commenters, the MPF Program achieves credit enhancement by creating a contingent liability for PFIs while the MPP achieves credit enhancement by creating a contingent asset for the PFI. Because credit unions retain recourse risk on MPF loans but not on MPP loans, the commenters recommended that the Board amend the proposed definition of ''Mortgage Partnership Finance Program'' to clarify that the term expressly excludes MPP loans. In particular, the commenters recommended that the Board add the words ''in a manner other than by establishing a contingent asset for the benefit of or payable to the depository institution'' at the end of the definition of Member Partnership Finance Program.

Discussion

The Board generally agrees with the commenters who suggested removing the words ''and servicing them'' from the proposed definition of ''mortgage partnership finance program.'' The Board's intent is to treat all MPF program loans the same under the final rule regardless of whether the credit union retains or sells the servicing. Accordingly, this final rule revises the definition of mortgage partnership finance program to remove the words ''and servicing them.''

The Board also agrees with commenters who suggested there is an important difference between the MPP and the MPF Programs regarding recourse risk. MPF loans are not the same as MPP loans with regard to risk because credit unions retain recourse risk through a credit enhancement obligation to the Federal Home Loan Bank for credit losses on MPF loans. Loans sold under the MPP program are risk-weighted based on the contractual recourse obligation, if any. Thus the commenters' suggested change to the definition of MPF Programs is necessary.

Accordingly, this final rule defines ''mortgage partnership finance program'' as any Federal Home Loan Bank program through which loans are originated by a depository institution that are purchased or funded by the Federal Home Loan Banks, where the depository institution receives fees for managing the credit risk of the loans. The definition provides further that the credit risk must be shared between the depository institution and the Federal Home Loan Banks.

Mortgage servicing assets. The Second Proposal defined the term ''mortgage servicing asset'' as those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

NCUSIF. The Second Proposal defined the term ''NCUSIF'' as the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Net worth. Generally consistent with the current rule, the Second Proposal defined the term ''net worth'' as:

- The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to bullet 3 of this definition.
- For a low-income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the NCUSIF.
- For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under GAAP. A mutual combination, including a supervisory combination, is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.
- The term ''net worth'' also includes loans to and accounts in an insured credit union, established pursuant to section 208 of the FCUA, provided such loans and accounts:
  - Have a remaining maturity of more than five years;
  - Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;
  - Are not pledged as security on a loan to, or other obligation of, any party;
  - Are not insured by the NCUSIF;
  - Have non-cumulative dividends;
  - Are transferable; and
  - Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.''

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Net worth ratio. The Second Proposal defined the term ''net worth ratio'' as the ratio of the net worth of the credit union to the total assets of the credit union rounded to two decimal places.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

New credit union. The Second Proposal would have revised the definition of ''new credit union'' by removing the definition provided in current § 702.2 and providing that the term has the same meaning as in § 702.201.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Nonperpetual capital. The Second Proposal defined the term ''nonperpetual capital'' as having the same meaning as in 12 CFR 704.2.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Off-balance sheet items. The Second Proposal defined the term ''off-balance sheet items'' as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Off-balance sheet exposure. The Second Proposal defined the term ''off-balance sheet exposure'' as: (1) For loans sold under the Federal Home Loan Bank mortgage partnership finance (MPF) program, the outstanding loan balance as of the reporting date, net of any related valuation allowance. (2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance. (3) For unfunded commitments, the remaining unfunded portion of the contractual agreement.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

On-balance sheet. The Second Proposal defined the term ''on-balance sheet'' as a credit union's assets, liabilities, and equity, as disclosed on the statement of financial condition at a specific point in time.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Other intangible assets. The Second Proposal defined the term ''other intangible assets'' as intangible assets, other than servicing assets and goodwill, maintained in accordance with GAAP. The definition provided further that other intangible assets does not include excluded other intangible assets.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Over-the-counter (OTC) interest rate derivative contract. The Second Proposal defined the term ''over-the-counter (OTC) interest rate derivative contract'' as a derivative contract that is not cleared on an exchange.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Part 703 compliant investment fund. The Second proposal used the term ''part 703 compliant investment fund,'' but did not specifically define the term in § 702.2. The discussion in the preamble to the proposal, however, used the term to mean an investment fund that is restricted to holding only investments that are permissible under 12 CFR 703.14(c).

Public Comments on the Second Proposal

The Board received many comments on the risk weights assigned to ''part 703 compliant investment funds.'' Some of the comments received seemed to indicate that credit unions and other interested parties were unclear regarding the rule's use of the term. The specific comments received regarding investment funds and part 703 compliance are discussed in more detail below in the part of preamble associated with § 702.104(c).

Discussion

The Board has decided to define the term ''part 703 compliant investment funds'' in § 702.2 to clarify the meaning of the term and avoid possible confusion in the future. Accordingly, this final rule defines ''part 703 compliant investment fund'' as an investment fund that is restricted to holding only investments that are permissible under 12 CFR 703.14(c).

Perpetual contributed capital. The Second Proposal defined the term ''perpetual contributed capital'' as having the same meaning as in 12 CFR 704.2.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Public sector entity (PSE). The Second Proposal defined the term ''public sector entity'' as a state, local authority, or other governmental subdivision of the United States below the sovereign level.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Qualifying master netting agreement. The Second Proposal defined the term ''qualifying master netting agreement'' as a written, legally enforceable agreement, provided that:

- The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty;
- The agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or under any similar insolvency law applicable to GSEs;
- The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement); and
- In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:
  - The agreement meets the requirements of paragraph (2) of this definition; and
  - In the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Recourse. The second Proposal defined the term ''recourse'' as a credit union's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred that exceeds a pro-rata share of that credit union's claim on the asset and disclosed in accordance with GAAP. The definition provided further that if a credit union has no claim on an asset it has transferred, then the retention of any credit risk is recourse. The definition also provided that a recourse obligation typically arises when a credit union transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Finally, the definition provided that recourse may also exist implicitly if the credit union provides credit enhancement beyond any contractual obligation to support assets it has transferred.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Residential mortgage-backed security. The Second Proposal defined the term ''residential mortgage-backed security'' as a mortgage-backed security backed by loans secured by a first-lien on residential property.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Residential property. The Second Proposal defined the term ''residential property'' as a house, condominium unit, cooperative unit, manufactured home, or the construction thereof, and unimproved land zoned for one-to-four family residential use. The definition provided further that the term residential property excludes boats and motor homes, even if used as a primary residence, and timeshare property.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Restructured. The Second Proposal defined the term ''restructured,'' with respect to any loan, as a restructuring of the loan in which a credit union, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. The definition provided further that the term restructured excludes loans modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program.

Public Comments on the Second Proposal

At least one commenter argued that the definition of the term ''restructured,'' as it applied to loans, and the accompanying footnote in the preamble to the Second Proposal were troublesome.[87] The commenter believed that the footnote accompanying the preamble discussion on the definition of ''restructured'' suggested that a loan that was restructured was what FASB calls a TDR. The commenter was confused further by the following statement in the preamble: ''A loan extended or renewed at a stated interest rate equal to the current market interest rate for new debt with similar risk is not a restructured loan.'' [88] According to the commenter, however, such a loan would be treated as a restructured loan for accounting purposes by FASB and under the TDR guidance. To avoid confusion, the commenter recommended that the Board amend the definition of ''restructured'' to be consistent with the standards and guidance set by FASB.

Discussion

The proposed definition of ''restructured'' was based on the classification of restructured loans for the purpose of assigning appropriate risk weights. The proposed definition is consistent with the definition used under the Other Banking Agencies' risk-based capital rules and is not dependent upon nor contradictory to related accounting pronouncements. Additional guidance will be provided to credit unions in the future regarding risk-weighting restructured loans through supervisory guidance and in the instructions on the Call Report. Accordingly, the Board has decided to retain the proposed definition of ''restructured'' in this final rule without change.

Revenue obligation. The Second Proposal defined the term ''revenue obligation'' as a bond or similar obligation that is an obligation of a public sector entity, but which the public sector entity is committed to repay with revenues from the specific project financed rather than general tax funds. Generally, such bonds or debts are paid with revenues from the specific project financed rather than the general credit and taxing power of the issuing jurisdiction.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Risk-based capital ratio. The Second Proposal defined the term ''risk-based capital ratio'' as the percentage, rounded to two decimal places, of the risk-based capital ratio numerator to risk weighted assets, as calculated in accordance with § 702.104(a).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Risk-weighted assets. The Second Proposal defined the term ''risk-weighted assets'' as the total risk-weighted assets as calculated in accordance with § 702.104(c).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Secured consumer loan. The Second Proposal defined the term ''secured consumer loan'' as a consumer loan associated with collateral or other item of value to protect against loss where the creditor has a perfected security interest in the collateral or other item of value.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Senior executive officer. The Second Proposal defined the term ''senior executive officer'' as a senior executive officer as defined by 12 CFR 701.14(b)(2).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Separate account insurance. The Second Proposal defined the term ''separate account insurance'' as an account into which a policyholder's cash surrender value is supported by assets segregated from the general assets of the carrier.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Shares. The Second Proposal defined the term ''shares'' as deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Share-secured loan. The Second Proposal defined the term ''share-secured loan'' as a loan fully secured by shares on deposit at the credit union making the loan, and does not include the imposition of a statutory lien under 12 CFR 701.39.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule with the following conforming changes. This final rule amends the definition of share-secured loans to be consistent with the new zero percent risk weight assigned to share-secured loans, where the shares securing the loan are on hold with the credit union, which is discussed in more detail below. Accordingly, this final rule defines the term ''share-secured loan'' as a loan fully secured by shares, and does not include the imposition of a statutory lien under § 701.39 of this chapter.

STRIPS. The Second Proposal defined the term ''STRIPS'' as separate traded registered interest and principal security.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Structured product. The Second Proposal defined the term ''structured product'' as an investment that is linked, via return or loss allocation, to another investment or reference pool.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Subordinated. The Second Proposal defined the term ''subordinated'' to mean, with respect to an investment, that the investment has a junior claim on the underlying collateral or assets to other investments in the same issuance. The definition provided further that the term subordinated does not apply to securities that are junior only to money market fund eligible securities in the same issuance.

Public Comments on the Second Proposal

At least one commenter recommended the Board more clearly define the term ''subordinated'' with respect to a ''tranche.'' As discussed in the part of the preamble associated with § 702.104(c)(2), commenters also expressed some confusion regarding NCUA's use of the term ''non-subordinated'' in the Second Proposal. Additionally, commenters expressed their desire to have the risk-weight assigned to a non-subordinated tranche

[87] *See* 80 FR 4339, 4369 (Jan. 27, 2015) (Footnote 119, referred to by the commenter, relates to Financial Accounting Standards Board ASC 310–40, ''Troubled Debt Restructuring by Creditors.'').

[88] *Id.* at 4369.

be based on the underlying collateral in the tranche.

Discussion

The Second Proposal defined the terms ''subordinated'' and ''tranche.'' These definitions, when read together, make it clear that a subordinated tranche is an investment that has a junior claim to other securities within the same transaction.

The Board agrees, however, that clarifying the definition of ''subordinated'' to clarify the meaning of the term non-subordinated in § 702.2 will help clarify the meaning of the term for credit unions and other interested parties, and clarify that under this final rule all tranches of investments, regardless of standing, can be risk-weighted using the gross-up approach. As discussed in more detail below, commenters suggested that credit unions be given the option of using the gross-up approach to risk-weight non-subordinated tranches of investments. A non-subordinated instrument is the most senior tranche in a security with a senior/subordinated structure. The Board has decided to further clarify the definition of ''subordinated'' for credit unions using the gross-up approach for both subordinated and non-subordinated investment tranches. This change will benefit credit unions purchasing non-subordinated tranches of securities collateralized with lower credit risk assets.

Accordingly, this final rule defines the term ''subordinated'' as meaning, with respect to an investment, that the investment has a junior claim on the underlying collateral or assets to other investments in the same issuance. The definition also provides that an investment that does not have a junior claim to other investments in the same issuance on the underlying collateral or assets is non-subordinated. Finally, the definition provides that a security that is junior only to money-market-eligible securities in the same issuance is also non-subordinated.

Supervisory merger or combination. The Second Proposal defined the term ''supervisory merger or combination'' as a transaction that involved the following:

- An assisted merger or purchase and assumption where funds from the NCUSIF are provided to the continuing credit union;
- A merger or purchase and assumption classified by NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to part 701 of this chapter; or
- A merger or purchase and assumption that included NCUA's or the appropriate state official's identification and selection of the continuing credit union.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Swap dealer. The Second Proposal defined the term ''swap dealer'' as having the same meaning as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(ggg).

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Total assets. The Second Proposal retained the definition of ''total assets'' in current § 702.2, but would have restructured the definition and provided additional clarifying language. The proposal amended the definition to provide that ''total assets'' means a credit union's total assets as measured[89] by either:

- *Average quarterly balance.* The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;
- *Average monthly balance.* The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;
- *Average daily balance.* The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or
- *Quarter-end balance.* The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

Public Comments on the Second Proposal

One commenter suggested that the proposed definition of ''total assets'' would create inconsistency as to how risk-based capital results are reported and would hinder comparability among credit unions. The commenter recommended that the Board amend the definition to require that total assets be measured by the average of quarter-end balances of the current and three preceding calendar quarters.

Discussion

With the exception of a few non-substantive amendments, the proposed definition of ''total assets'' is the same as the definition in current § 702.2. In fact, the revision suggested by the commenter above would reduce the number of options available to a credit union in determining which total assets to apply in calculating its net worth ratio. Such a narrowing of the definition is not appropriate. Accordingly, the Board has decided to retain the proposed revisions to the definition in this final rule without change.

Tranche. The Second Proposal defined the term ''tranche'' as one of a number of related securities offered as part of the same transaction. The definition provided further that the term tranche includes a structured product if it has a loss allocation based off of an investment or reference pool.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

Unfunded commitment. Neither the current rule nor the Second Proposal define the term ''unfunded commitment.''

Public Comments on the Second Proposal

At least one commenter recommended that the Board define the term ''unfunded commitment'' in the final rule because the commenter believed the proposed definition was unclear as to whether a credit union real estate loan pipeline or outstanding auto loan convenience check would be classified as an unfunded commitment.

Discussion

The proposal provides in § 702.2 that ''off-balance sheet exposure'' means, for unfunded commitments, the remaining unfunded portion of the contractual agreement. The definition of off-balance-sheet exposure defines unfunded commitment, so adding an additional separate definition for unfunded commitment would be redundant. Additional guidance, however, will be included in future supervisory guidance and in the instructions on the Call Report. Accordingly, the Board has decided not to define the term ''unfunded commitment'' in this final rule.

Unsecured consumer loan. The Second Proposal defined the term ''unsecured consumer loan'' as a consumer loan not secured by collateral.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule without change.

U.S. Government agency. The Second Proposal defined the term ''U.S. Government agency'' as an

[89] For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (2) of this definition to apply for all purposes under this part except §§ 702.103 through 702.106 (risk-based capital requirement).

instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government.

The Board received no comments on this definition and has decided to retain the proposed definition in this final rule with only minor clarifying amendments. In particular, the Board clarified in the definition that NCUA is a U.S. Government agency, to confirm that NCUA's obligations receive a zero percent risk weight. Accordingly, the final rule defines ''U.S. Government agency'' as an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. The definition provides further that the term ''U.S. Government agency'' includes NCUA.

Weighted-average life of investments. Under the Second Proposal, the definition of ''weighted-average life of investments'' and the provisions in current § 702.105 of NCUA's regulation would have been removed completely.

Other than the comments supporting the removal of IRR from NCUA's risk-based capital requirement, the Board received no comments regarding the removal of this definition and has decided to retain the proposed amendment in this final rule without change.

A. Subpart A—Prompt Corrective Action

The Second Proposal would have established a new subpart A titled ''Prompt Corrective Action.'' New subpart A would have contained the sections of part 702 relating to capital measures, supervisory PCA actions, requirements for net worth restoration plans, and reserve requirements for all credit unions *not* defined as ''new'' pursuant to section 216(b)(2) of the FCUA.[90] The Board received no comments on these revisions and has decided to retain the proposed amendments in this final rule.

Section 702.101 Capital Measures, Capital Adequacy, Effective Date of Classification, and Notice to NCUA

The Second Proposal retained the requirements of § 702.101 leaving it largely unchanged from current § 702.101, with a few notable exceptions that are discussed in more detail below. The title of proposed § 702.101 would have been changed to ''Capital Measures, capital adequacy, effective date of classification, and notice to NCUA'' to better reflect the three major topics that would have been covered in the section. In addition, proposed § 702.101 would have amended current § 702.101 to include a new capital adequacy provision that was based on a similar provision in FDIC's capital regulations.[91] The new capital adequacy provision was added as proposed § 702.101(b). Paragraphs (b) and (c) of current § 702.101 would have been renumbered as paragraphs (d) and (e). The new capital adequacy provision would not have affected credit unions' PCA capital category, but could have supported the assessment of capital adequacy in the supervisory process (assigning CAMEL and risk ratings).

Public Comments on the Second Proposal

A substantial number of commenters objected to the proposed addition of capital adequacy provisions to § 702.101. Many commenters stated that they were concerned about the subjective nature of the capital adequacy provision. Commenters contended that if a credit union meets the net worth and risk-based capital requirements, NCUA should not have the ability to require the credit union to hold additional capital. Other commenters argued that the proposed capital adequacy provisions could be problematic because they would grant examiners considerable latitude to determine whether a credit union needs more capital even if it is well capitalized according to standard net worth and risk-based capital ratio requirements. Commenters argued that credit unions and the NCUSIF have functioned well without these provisions and NCUA has not provided sufficient justification to support their imposition now. Still other commenters noted that credit unions already provide for capital adequacy through budgeting, ALM planning, liquidity, interest rate risk, and risk management, and speculated that the proposed capital adequacy provision would subject credit unions' capital plans to be judged in an arbitrary and subjective manner by hundreds of different NCUA examiners. The commenters argued that such an approach would provide examiners with too much authority to change the ''playing field,'' especially when there is no independent entity to which a credit union can appeal. At least one commenter suggested that the Board already has this authority so adding to the existing authority would be unnecessary and redundant.

One commenter, however, acknowledged that codifying the additional capital adequacy requirements in § 702.101(b) was reasonable. But the commenter suggested that the standards surrounding the provision's use should be made clear because NCUA already examines credit unions to determine whether they have sufficient net worth relative to risk, and whether credit unions have adequate policies, practices, and procedures regarding net worth and capital accounts.[92] The commenter noted further, the proposed rule indicates that it ''may provide specific metrics for necessary reductions in risk levels, increases in capital levels beyond those otherwise required under part 702, and some combination of risk reduction and increased capital.''[93] The commenter recommended that the Board clarify how it envisions § 702.101(b) augmenting NCUA's current supervisory process and any enforcement authority the agency holds in conjunction with that process. Another commenter suggested that credit unions with lower risk profiles and/or higher capital levels should be subjected to less rigorous examinations of risk management. The commenter also suggested that credit unions with higher risk levels against a given set of reasonable thresholds, or those with lower capital levels, should have their examination of risk elevated to the risk management specialists within NCUA. The commenter suggested that removing field examiners with little specific knowledge from the examination findings and recommendation process would provide a more consistent exam, and recommended that NCUA produce a set of known, published and reasonable filters to define outlier credit unions, including a cross-risk look at risks due to concentration, low capital or earnings levels, interest rate exposure, credit quality, etc.

At least one commenter questioned the Board's legal authority to adopt a provision that would require individual credit unions to hold capital above that required under the other provisions of the regulation. The commenter acknowledged that the FCUA establishes a risk-based net worth requirement for complex credit unions, but suggested it does not grant NCUA the authority to impose individualized capital requirements on a credit union-by-credit union basis. Another

[90] 12 U.S.C. 1790d(b)(2).

[91] 12 CFR 324.10.

[92] *See* LTCU 00–CU–08 (Nov. 2000); *see also* NCUA Examiner's Guide, Ch. 16. *available at http://www.ncua.gov/Legal/GuidesEtc/ExaminerGuide/chapter16.pdf.*

[93] 80 FR 4340, 4359 (Jan. 27, 2015).

commenter suggested if Congress had intended the capital thresholds required under PCA to be minimum requirements, it would have described the classification as minimally capitalized. The commenter maintained that each credit union's long-term desired capital ratio will depend on the credit union's own assessment of the risks it faces, and its tolerance for risk. The commenter recommended the Board delete the capital adequacy provisions, because credit unions' capital plans should not be the subject of examination and supervision, and the goals a credit union establishes for its own capital sufficiency should not become targets or standards for review in an examination.

One commenter requested clarification on how NCUA would coordinate the requirements of this new provision with state regulators for capital planning purposes.

Discussion

The Board has carefully considered the comments above, and disagrees with commenters who suggested that the capital adequacy provisions are unnecessary. As stated in the preamble to the Second Proposal, capital helps to ensure that individual credit unions can continue to serve as credit intermediaries even during times of stress, thereby promoting the safety and soundness of the overall U.S. financial system. As a prudential matter, NCUA has a long-established policy that federally insured credit unions should hold capital commensurate with the level and nature of the risks to which they are exposed. In some cases, this may entail holding capital above the minimum requirements, depending on the nature of the credit union's activities and risk profile.

Proposed § 702.101(b) was based on a similar provision in the Other Banking Agencies' rules [94] and is within the Board's legal authority under the FCUA. The FCUA grants NCUA broad authority to take action to ensure the safety and soundness of credit unions and the NCUSIF and to carry out the powers granted to the Board.[95] Requiring credit unions to maintain capital adequacy is part of ensuring safety and soundness, and is not a new concept.[96] NCUA's long-standing practice has been to monitor and enforce capital adequacy through the supervisory process. Proposed § 702.101(b) would, with the exception of the written capital adequacy plan discussed in more detail below, merely codify the existing statutory requirement. The proposed new capital adequacy provision would not affect credit unions' PCA capital category, but would support the assessment of capital adequacy in the supervisory process (assigning CAMEL and risk ratings).

Section 206 of the FCUA provides the Board with broad authority to intervene and require credit unions to take actions to correct unsafe or unsound practices, including requiring individual credit unions to hold capital above that required under NCUA's PCA regulation.[97] And section 209 of the FCUA specifically authorizes the Board to prescribe such rules and regulations as it may deem necessary or appropriate to carry out the provisions of subchapter II of the FCUA, which includes section 206. Accordingly, NCUA clearly has the legal authority to include proposed § 702.101(b) in this final rule.

Accordingly, the Board has decided to retain the proposed capital adequacy provisions in this final rule without change.

101(b) Capital Adequacy

For the reasons discussed above, the new capital adequacy provisions are added as § 702.101(b) of this final rule, and paragraphs (b) and (c) of current § 702.101 are designated as paragraphs (d) and (e) of § 702.101 of this final rule.

101(b)(1)

The Second Proposal would have revised § 702.101(b)(1) to provide: Notwithstanding the minimum requirements in this part, a credit union defined as complex must maintain capital commensurate with the level and nature of all risks to which the institution is exposed.

For the reasons discussed above, the Board has decided to retain the proposed capital adequacy provision in proposed § 702.101(b)(1) in this final rule without change.

101(b)(2)

Proposed § 702.101(b)(2) provided: A credit union defined as ''complex'' must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.

Public Comments on the Second Proposal

A significant number of commenters specifically objected to the proposed new provision added as § 702.101(b)(2) that would require complex credit unions to have a comprehensive written strategy for maintaining an appropriate level of capital. One commenter pointed out that, while the Board has taken steps to closely align this proposal with banking agency requirements in other areas, it has chosen to deviate from that standard to add a written reporting requirement for credit unions under this provision.[98] The commenter suggested that given that the specific requirements of the proposed capital adequacy plan are not delineated in this proposed rule, but will be subsequently outlined in supervisory guidance, commenters are unable to determine the extent of the burden this requirement might entail. The commenter noted that all credit unions with assets of $50 million or more are already required to have a written policy on interest rate risk management and a program to implement it effectively,[99] as well as a written liquidity policy and contingency funding plan.[100] In addition, the commenter noted that the largest credit unions are already required by regulation to maintain a written capital policy and capital plan that is approved annually by NCUA.[101] The commenter recommended the Board explain why it felt compelled to add a written requirement to this provision for credit unions, and make every effort to streamline it and other similar requirements to minimize the associated regulatory burden.

One commenter recommended that if the Board adopts a written capital strategy requirement for all complex credit unions, it utilize that written strategy to ensure that credit unions are addressing any heightened risks from loan concentrations. The commenter suggested such an approach should obviate the need for elevated risk weights in connection with real estate and commercial loans by allowing NCUA to address concentration risk in a more targeted way. The commenter suggested further that such an approach would satisfy recommendations from NCUA's Office of Inspector General (OIG) and GAO that NCUA consider concentration risk as it pertains to capital adequacy, without creating a competitive disadvantage for all complex credit unions in relation to their banking counterparts. The commenter also recommended that the Board incorporate any written capital strategy required within the credit

[94] *See, e.g.,* 12 CFR 324.10(d)(1) & (2).

[95] 12 U.S.C. 1786; *and* 1789.

[96] *See, e.g.* 78 FR 55340, 55362 (Sept. 10, 2013).

[97] 12 U.S.C. 1786.

[98] There is no mandated written element to the corresponding FDIC provision. 12 CFR 324.1(d); 12 CFR 324.100(d).

[99] 12 CFR 741.3.

[100] 12 CFR 741.12.

[101] 12 CFR 702.501 through 702.506.

union's strategic plan, or another existing report in order to minimize duplication of effort across various reporting requirements. In addition, the commenter suggested that an exemption from the requirement be provided to institutions that are already subject to capital planning and stress testing requirements, as the analysis contemplated by this part would already be addressed by those existing requirements. Other commenters contended that the written capital plan requirement is not necessary for the vast majority of complex credit unions based on their management, risk profiles, and current levels of capital. And if NCUA examiners have concerns regarding the credit unions they supervise, those commenters argued, those situations should be addressed on an individual basis and not through rulemaking that would apply universal requirements to all complex credit unions, regardless of how well managed they may be.

At least one commenter stated that while NCUA should be able to access the adequacy of a credit union's capital adequacy plan, safeguards should be put in place to prevent over-zealous examiners from implementing individualized minimum capital requirements during the exam process. Another commenter suggested that the concept of a written strategy was not bad, but that the final rule should provide additional clarity about what exactly would be required under the provision. Yet another commenter asked: What are the components of the ''comprehensive written strategy'' contemplated under this provision? What are the possible consequences of an examiner determining that a credit union's comprehensive written strategy does not meet the requirements? The commenter requested that the Board provide more description in this area and elaborate on its expectations of credit unions.

Discussion

The Board disagrees with commenters who suggested the requirement that complex credit unions maintain a written capital strategy be removed from the final rule. The supervisory evaluation of a complex credit union's capital adequacy, including the requirement to maintain a written capital strategy, is focused on the credit union's own process and strategy for assessing and maintaining its overall capital adequacy in relation to its risk profile. The supervisory evaluation may include various factors—such as whether the credit union is engaged in merger activity, entering into new activities, introducing new products, operating in a challenging economic environment, engaged in nontraditional activities, or exposed to other risks like interest rate risk or operational risks. The assessment evaluates the comprehensiveness and effectiveness of the capital planning in light of its activities. An effective capital planning process involves an assessment of the risk to which a credit union is exposed and its process for managing and mitigating those risks, an evaluation of capital relative to those risks, and consideration of the potential impact on earnings and capital from current and prospective economic conditions. Under the proposal, the evaluation of an individual credit union's risk management strategy and process will be commensurate with the credit union's size, sophistication, and risk profile—which is similar to the current supervisory process for credit unions.

For credit unions subject to Capital Planning and Stress Testing under subpart E of part 702 of NCUA's regulations, compliance with § 702.504 will result in compliance with § 702.101(b). Thus, those credit unions subject to the stress testing regulation will not be expected to write redundant capital plans to fulfill the requirements of this final rule.

For other complex credit unions that will be expected to write capital plans, supervisory guidance will be issued to help those credit unions evaluate their compliance with § 702.101(b). The supervisory guidance will also be designed to provide consistency in the examination process.

Accordingly, the Board has decided to retain the proposed capital adequacy provision in proposed § 702.101(b)(1) in this final rule without change.

Section 702.102 Capital Classifications

Under the Second Proposal, the title of § 702.102 would have been changed from ''statutory net worth categories'' to ''capital classifications.'' The section would have continued to list the five statutory capital categories that are provided in § 216(c) of the FCUA.[102]

The Board received no comments on these revisions and has decided to retain the proposed amendments in this final rule without change.

102(a) Capital Categories

The Second Proposal would have revised current § 702.102(a) to include new minimum risk-based capital ratio levels for complex credit unions. Consistent with section 216(c)(1)(A) through (E) of the FCUA, the minimum net worth ratio levels listed in proposed §§ 702.102(a)(1) through (5) would have continued to match the ratio levels listed in the statute for each capital category, and would have included both the net worth ratio and the proposed risk-based capital ratio as elements of the capital categories for ''well capitalized,'' ''adequately capitalized,'' and ''undercapitalized'' credit unions. The new minimum risk-based capital ratio levels included components that required higher capital ratio levels to reflect increased risk due to concentration risk and credit risk.

The Original Proposal also introduced a new, scaled approach to assigning minimum risk-based capital ratio levels to the capital classifications for well capitalized, adequately capitalized, and undercapitalized credit unions. This scaled approach recognized the relationship between higher risk-based capital ratios and the creditworthiness of credit unions.

Public Comments on the Second Proposal

The Board received numerous general comments concerning the capital categories. Most of those commenters simply stated that they opposed the proposed two-tiered risk-based capital requirement, believed that the Board generally lacked the legal authority to impose the risk-based capital requirement as proposed, or both. Others specifically suggested that the language in section 216(d) of the FCUA prohibits NCUA from adopting different risk-based capital ratio threshold levels for well capitalized and adequately capitalized credit unions. At least one commenter suggested that section 216(d)(2) expressly ties NCUA's statutory authority to its assessment of whether the 6 percent net worth ratio threshold provides ''adequate protection'' because the term ''adequately capitalized'' used in the section refers to the ''adequately capitalized'' net worth category defined in section 216(c)(1)(B)(i) of the FCUA. The commenter suggested further that the FCUA limits NCUA, in developing the risk-based net worth requirement, to considering only ''whether the 6 percent requirement provides adequate protection'' against the risks faced by credit unions because section 216(d)(2) speaks only to whether an institution is ''adequately capitalized,'' not ''well capitalized.'' Accordingly, the commenter concludes that NCUA lacks the authority to implement a separate risk-based net worth threshold level for the ''well capitalized'' net worth category. The commenter argued further that the legislative history of the FCUA suggests that section 216(d) bars NCUA

[102] 12 U.S.C. 1790d(c).

from implementing a separate RBC ratio for ''well capitalized'' credit unions because an earlier version of CUMAA passed by the House of Representatives provided in relevant part:

> [NCUA is authorized to] establish reasonable net worth requirements, *including risk-based net worth requirements* in the case of complex credit unions, *for various categories of credit unions* and prescribe the manner in which net worth is calculated (for purposes of such requirements) with regard to various types of investments, including investments in corporate credit unions, taking into account the unique nature and role of credit unions.[103]

The language quoted above was never included in the Senate version of the CUMAA legislation, which was ultimately enacted, nor was it ever included in the FCUA. The commenter suggested that this legislative change demonstrates Congress' express consideration and rejection of NCUA's proposed approach of adopting separate RBC thresholds for ''well capitalized'' and ''adequately capitalized'' credit unions.

Another commenter suggested that any credit union, with a 7 percent or higher net worth ratio, that fails to exceed its required risk-based capital ratio level be given consideration in any prompt corrective action required under the risk-based capital regulation. In such a case, the commenter recommended the Board limit the remedy to a capital restoration plan that allows the credit union a reasonable and appropriate period of time to improve its risk-based capital ratio—even as they maintain their statutory net worth ratio above 7 percent.

Discussion

NCUA has the authority to impose the proposed risk-based capital requirement on complex credit unions. For the reasons discussed in both the Second Proposal and above in the legal authority part of this preamble, requiring credit unions to meet different minimum risk-based capital ratio levels to be adequately and well capitalized is consistent with the plain language of section 216 of the FCUA, is ''comparable'' to the Other Banking Agencies' PCA regulations, and takes into account the cooperative character of credit unions. Moreover, the Agency is not persuaded by the language quoted above from a prior House bill,[104] which Congress ultimately choose not to include in CUMAA. Contrary to the commenter's suggestion, Congress' choice of language in section 216(d) instead of the language in a prior House version of CUMAA does not demonstrate that Congress expressly considered and rejected NCUA's proposed approach of adopting separate RBC thresholds for well capitalized and adequately capitalized credit unions.

Furthermore, requiring complex credit unions to meet a higher risk-based capital ratio threshold to be classified as well capitalized allows for a graduated scale, which can measure either a decline or improvement in a credit union's risk-based capital level in relation to the minimum capital requirements. Such a system provides for earlier identification and resolution of credit unions experiencing gradual declines in the level of capital held on a risk-based measure. Under the current rule, a credit union failing the risk-based net worth requirement is immediately subject to the mandatory supervision action for undercapitalized credit unions and may not have been fully aware of their declining capital buffer. The use of a two-tiered risk-based capital measure also allows stakeholders and creditors, such as uninured shareholders, to reasonably compare financial institution capital measures to the minimum regulatory requirements on a risk-based level.

The Agency also questions the legality of the suggestion to amend the final rule to require only a capital restoration plan in cases where a credit union fails to meet or exceed the minimum risk-based capital requirement, but meets or exceeds the 7 percent net worth ratio requirement. Such an approach was not proposed and appears to conflict with the mandatory restrictions on undercapitalized credit unions under section 216(g) of the FCUA.

Accordingly, the Board has decided to retain the proposed capital categories in this final rule without change.

102(a)(1) Well Capitalized

Proposed § 702.102(a)(1) required a credit union to maintain a net worth ratio of 7 percent or greater and, if it were a complex credit union, a risk-based capital ratio of 10 percent or greater to be classified as well capitalized. The higher proposed risk-based capital requirement for the well capitalized classification was designed to boost the resiliency of complex credit unions throughout financial cycles and align them with the standards used by the Other Banking Agencies.[105]

Public Comments on the Second Proposal

A substantial number of commenters speculated that the proposed risk-based capital ratio level for well capitalized credit unions would place credit unions at a competitive disadvantage to banks unless all credit unions are given the ability to meet the 10 percent requirement with supplemental (Tier 2) capital, as banks are allowed to do under their rules. The commenters recommended the Board either delay the final release of the risk-based capital rule until it has developed a supplemental capital rule or eliminate the 10 percent risk-based capital ratio requirement and establish a single-tier requirement of 8 percent that aligns with the banking industry's Tier 1 capital requirement.

A few commenters suggested that, in removing the effect of the capital conservation buffer from the Original Proposal, the Board should have lowered the risk-based capital ratio requirement to 8 percent, not the 10 percent in the Second Proposal. After examining the makeup of capital at credit unions and banks, the commenter suggested that Tier 1 capital is most similar because both credit union and bank Tier 1 capital is comprised of either equity or retained earnings, and both bank and credit union Tier 1 capital represent the strongest form of capital on a financial institution's balance sheet. Under NCUA's Second Proposal, credit unions could count their ALLL towards their risk-based capital requirement, which is similar to banks; however, banks have the added benefit of counting supplemental capital as Tier 2 capital. Since NCUA has not yet authorized all credit unions to use secondary capital as part of their capital base for risk-based capital purposes, the commenter claimed the most logical point of comparability between banks and credit unions is Tier 1 capital. The commenter recommended that the Board set the risk-based capital ratio level at 8 percent, which aligns with the banking industry's Tier 1 risk-based capital ratio level for well capitalized banks, to ensure that credit unions' and banks' risk-based capital requirements are comparable. The commenter recommended further that such an approach would eliminate the capital benefit from the ALLL to ensure comparability to the banks' Tier 1 risk-based capital ratio requirement.

One bank trade association commenter, however, suggested that the Board adopt the same Basel III model that was adopted by prudential banking regulators. The commenter argued the

[103] H.R. Rep. 105–472, 1998 WL 141880, at *9 (1998).

[104] H.R. Rep. 105–472, 1998 WL 141880, at *9 (1998).

[105] *See, e.g.,* 12 CFR 324.10; 324.11; *and* 324.403.

NCUA's proposed model would not be the same because under the Second Proposal, credit unions were not subjected to a capital conservation buffer, which banks are. The commenter suggested that, because of this difference, the proposed risk-based capital ratio level required for a credit union to be classified as well capitalized was 50 basis points lower than the analogous requirement applicable to banks under the Other Banking Agencies' regulations. The commenter suggested further that credit unions, with their ability to avoid the payment of U.S. income taxes and retain all their earnings, should not be subject to lower capital requirements than banks while managing the same risk profile as community banks that are subject to taxation.

Other commenters simply stated they believed the proposal did not sufficiently justify assigning a risk-based capital ratio requirement for well capitalized credit unions that is 3 percent higher than the statutory 7 percent net worth ratio level required for a credit union to be classified as well capitalized.

One commenter speculated that the proposed risk-based capital ratio of 10 percent would limit the ability of credit unions to allocate resources as they see fit, directly impacting what credit unions can do for their members because credit unions need flexibility to be successful. The commenter pointed out that credit union management is held accountable by fiduciary responsibility of the Board of Directors, while some are overseen by both Certified Public Accountants' opinion audits and ongoing NCUA examination, and are therefore in the best position to determine the appropriate balance to best serve the needs of their members.

Discussion

There are sound policy reasons for setting a higher risk-based capital ratio threshold for the well capitalized category than the one for the adequately capitalized category. Under the current rule, a credit union's capital classification could rapidly decline directly from well capitalized to undercapitalized if it fails to meet the required risk-based net worth ratio level.[106] Moreover, credit unions classified as well capitalized are generally considered financially sound, afforded greater latitude under some other regulatory provisions,[107] and, with the exception of a small earnings retention requirement, are not subject to mandatory or discretionary supervisory actions. In contrast, credit unions that fall to the undercapitalized category are financially weak and are subject to various mandatory and discretionary supervisory actions intended to resolve the capital deficiency and limit risk taking until capital levels are restored to prudent levels. The lack of graduated thresholds in the current rule's construct for the risk-based net worth requirement does not effectively provide for early reflection through a credit union's net worth category, as suggested in the GAO and OIG reports. Under the current rule, a change in the credit union's risk profile, capital levels, or both, that results in a decline in the credit union's risk-based net worth ratio, does not affect its net worth category until it results in the credit union falling to the point where the situation mandates that harsh supervisory actions be taken.

The Board reasons that the more effective approach and better policy option is to adopt a higher threshold for the well capitalized category than for the adequately capitalized category to provide a more graduated framework where a credit union does not necessarily drop directly from well capitalized to undercapitalized. In fact, this policy objective is reflected in how Congress, in section 216(c) of the FCUA, and the Other Banking Agencies, in their risk-based capital regulations, designed the graduated PCA capital categories.

For a given risk asset, the amount of capital required to be held for that risk asset is calculated by multiplying the dollar amount of the risk asset times the risk weight times the desired capital level. To illustrate, where the threshold for well capitalized is 10 percent, a credit union that has one dollar in a risk asset assigned a 50 percent risk weight would need to hold capital of five cents ($1 multiplied by 50 percent multiplied by 10 percent). The point of this illustration is that the risk weights are interdependent with the thresholds set for the regulatory capital categories. The risk weights included in the Second Proposal were based predominantly on those used by the Other Banking Agencies, as suggested by credit unions and other interested parties who submitted comment letters in response to the Original Proposal. For the total capital-to-risk assets ratio, the Other Banking Agencies establish a threshold of 10 percent to be well capitalized.[108]

For NCUA's risk-based capital requirement to be comparable, it should also be equivalent in rigor to the Other Banking Agencies' risk-based capital requirement.[109] The rigor of a regulatory capital standard is primarily a function of how much capital an institution is required to hold for a given type of asset. Thus, if NCUA chose any threshold below 10 percent for the minimum required level of regulatory capital, it would either result in systematically lower incentives for credit unions to accumulate capital or the risk weights would need to be adjusted commensurately to offset the effect of the lower threshold. For example, if a uniform threshold for both well and adequately capitalized were maintained and set at only 8 percent, as some commenters suggested, there would be a decline in the overall rigor of the risk-based capital ratio. While NCUA's proposed risk weights for various assets could be increased by 20 percent to offset this effect, adjusting the risk weights in this manner would create more difficulty in comparing asset types and risk weights across financial institutions, and lead to misunderstanding.

Conversely, the uniform threshold level for the well capitalized and adequately capitalized categories could be maintained, but raised to maintain the rigor of the risk-based capital standard and avoid adjusting the risk weights. This approach would set a higher point at which credit unions would fall to undercapitalized (such as any risk-based capital ratio under 10 percent), and therefore be subject to mandatory and discretionary supervisory actions. The Board concluded this approach would not be optimal, as the supervisory consequences for credit unions with risk-based capital ratios between eight percent and 10 percent would be worse than for institutions operating under the Other Banking Agencies' rules.

Maintaining the rigor of the risk-based net worth requirement is also important for another key policy objective of the Board: Ensuring the risk-based net worth requirement is relevant and meaningful. A relevant and meaningful risk-based net worth requirement will result in capital levels better correlated

[106] Per the FCUA, ''undercapitalized'' is the lowest PCA category in which a failure to meet the risk-based net worth requirement can result.

[107] *See* 12 CFR 745.9–2; *and* 12 CFR 723.7.

[108] The Other Banking Agencies' Total Risk-Based Capital ratio is the most analogous standard for credit unions given the proposed broadening of the definition of capital to include accounts that would not be included in the definition of Tier 1 capital, such as the allowance for loan and lease losses and secondary capital for low-income designated credit unions.

[109] *See* S. Rep. No. 193, 105th Cong., 2d Sess. § 301 (1998) ('' 'Comparable' here means parallel in substance though not necessarily identical in detail) and equivalent in rigor.'').

to risk, and better inform credit union decision making.[110] To be relevant and meaningful, the risk-based net worth requirement must result in minimum regulatory capital levels on par with the net worth ratio for credit unions with elevated risk, and be the governing ratio (require more capital than the net worth ratio) for credit unions with extraordinarily high risk profiles. If the highest threshold for the risk-based capital ratio were set as low as 8 percent for well capitalized credit unions, as some commenters suggested, the risk-based net worth requirement would govern very few, if any, credit unions. If the highest risk-based capital ratio threshold were set at 8 percent, NCUA estimates at most seven credit unions would have the proposed risk-based capital ratio be the governing requirement, with only one credit union currently holding insufficient capital to meet the requirement.

Further, capital is a lagging indicator because it is founded primarily on accounting standards, which by their nature are largely based on past performance. The net worth ratio is even more so a lagging indicator because it applies capital—a lagging measure in itself—to total assets. Thus, the net worth ratio does not distinguish among risky assets or changes in a balance sheet's composition. A risk-based capital ratio is more prospective by accounting for asset allocation choices and driving capital requirements before losses occur and capital levels decline. The more relevant the risk-based net worth requirement is, the more likely that credit unions will build capital sufficient to prevent precipitous declines in their PCA capital classifications that could result in greater regulatory oversight and even failure.

To be relevant and meaningful, the risk-based net worth requirement also needs to encourage credit unions to build and maintain capital as they increase risk to be able to absorb any corresponding unexpected losses. A graduated, or tiered, system of capital category thresholds that distinguishes between the well capitalized and adequately capitalized categories will incentivize credit unions to hold sound levels of capital without invoking supervisory action before necessary. While there is no requirement for a credit union to be well capitalized, and there are no supervisory interventions required for a credit union with an adequately capitalized classification, there are some regulatory privileges and other benefits for a credit union that is well capitalized. Chief among those benefits is the accumulation of sufficient capital to weather financial and economic stress. During the 2007–2009 financial crisis, some credit unions experienced large losses in a compressed timeframe, resulting in a rapid deterioration of net worth. Some credit unions that historically had been classified as well capitalized were quickly downgraded to undercapitalized. As noted in the Second Proposal, credit unions that failed at a loss to the NCUSIF on average were very well capitalized, based on their net worth ratios, 24 months prior to failure (average net worth ratio of 12.1 percent). Over the last 10 years, more than 80 percent of all credit union failures involved institutions that were well capitalized in the 24 months immediately preceding their failure. Unlike the net worth ratio, which is indifferent to the composition of assets, a well-designed risk-based net worth requirement should reflect material shifts in the risk profile of assets.

A risk-based capital framework that encourages and promotes capital accumulation benefits not only those credit unions that achieve the well-capitalized classification, but the entire credit union system. Thus, the Board remains committed to implementing the risk-based requirement under a graduated (multi-tiered) capital category framework.

The Board agrees with the commenters who suggested that a 10 percent risk-based capital ratio threshold would simplify the comparison with the Other Banking Agencies' rules by removing the effect of the capital conservation buffer. The 10 percent threshold for well capitalized credit unions, along with the 8 percent threshold for adequately capitalized credit unions, would also be consistent with the total risk-based capital ratio requirements contained in the Other Banking Agencies' capital rules.

Capital ratio thresholds are largely a function of risk weights. As discussed in other parts of this final rule, the Board is now more closely aligning NCUA's risk weights with those assigned by the Other Banking Agencies. Therefore, for consistency, the Board reasons that NCUA's risk-based capital ratio threshold levels should likewise align with those of the Other Banking Agencies as closely as possible.

The Board plans to address additional forms of supplemental capital in a separate proposed rule, with the intent to finalize a new supplemental capital rule before the effective date of this risk-based capital final rule. Therefore there is no need to delay release of this final rule. The Board notes the second risk-based capital proposal invited general comment on supplemental capital much in the way an advanced notice of proposed rulemaking would do. A notice of proposed rulemaking on supplemental capital with specific criteria and requirements is necessary under the Administrative Procedure Act before the Board could issue a final rule. Issuing a new, more specific and detailed proposed rule on supplemental capital will give interested parties full opportunity to comment on it.

Accordingly, the Board has decided to retain proposed § 702.102(a)(1) in this final rule without change.

102(a)(2) Adequately Capitalized

Under the Second Proposal, § 702.102(a)(2) required a credit union to maintain a net worth ratio of 6 percent or greater and, if it were a complex credit union, a risk-based capital ratio of 8 percent or greater to be classified as adequately capitalized. This risk-based capital ratio level is comparable to the 8 percent total risk-based capital ratio level required by the Other Banking Agencies for a bank to be adequately capitalized.

Other than the comments discussed above and in other parts of this preamble, the Board received no comments on the proposed adequately capitalized risk-based capital ratio level. Therefore, the Board has decided to retain proposed § 702.102(a)(2) in this final rule without change.

102(a)(3) Undercapitalized

Under the Second Proposal, § 702.102(a)(3) would have classified a credit union as undercapitalized if: (1) The credit union has a net worth ratio of 4 percent or more but less than 6 percent; or (2) the credit union, if complex, has a risk-based capital ratio of less than 8 percent.

Other than the comments discussed above and other parts of this preamble, the Board received no comments on the proposed undercapitalized risk-based capital ratio requirement. Therefore, the Board has decided to retain proposed § 702.102(a)(3) without change.

102(a)(4) Significantly Undercapitalized

Under the Original Proposal, proposed § 702.102(a)(4) would have classified a credit union as significantly undercapitalized if:

- The credit union has a net worth ratio of 2 percent or more but less than 4 percent; or

[110] The benefits of a capital system better correlated to risk are discussed in the Summary of the Final Rule part of this preamble.

• The credit union has a net worth ratio of 4 percent or more but less than 5 percent, and either—

o Fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.111;

o Materially fails to implement a net worth restoration plan approved by the Board; or

o Receives notice that a submitted net worth restoration plan has not been approved.

The Board received no comments on the revisions to this paragraph and has decided to retain the proposed amendments in this final rule without change.

102(a)(5) Critically Undercapitalized

Under the Second Proposal, § 702.102(a)(5) classified a credit union as critically undercapitalized if it had a net worth ratio of less than 2 percent. The Second Proposal would have also made some minor technical amendments to the language in current § 702.102(a)(5), but would not have changed the criteria for being classified as critically undercapitalized under part 702.

The Board received no comments on the revisions to this paragraph and has decided to retain the proposed amendments in this final rule without change.

102(b) Reclassification Based on Supervisory Criteria Other Than Net Worth

The Second Proposal would have retained current § 702.102(b), with only a few amendments to update terminology and make minor edits for clarity. No substantive changes were intended.

The Board received no comments on the revisions to this paragraph and has decided to retain the proposed amendments in this final rule without change.

102(c) Non-Delegation

Proposed § 702.102(c) would have been unchanged from current § 702.102(c).

The Board received no comments on this paragraph and has decided to retain the paragraph in this final rule without change.

102(d) Consultation With State Officials

Proposed § 702.102(d) would have retained current § 702.102(d) with only non-substantive amendments for consistency with other sections of NCUA's regulations. No substantive changes were intended.

The Board received no comments on this paragraph and has decided to retain the proposed amendments in this final rule without change.

Section 702.103 Applicability of the Risk-Based Capital Ratio Measure

The Second Proposal would have changed the title of current § 702.103 from ''Applicability of risk-based net worth requirement'' to ''Applicability of risk-based capital ratio measure.'' Proposed § 702.103 would have provided that, for purposes of § 702.102, a credit union is defined as ''complex'' and the risk-based capital ratio measure is applicable only if the credit union's quarter-end total assets exceed $100 million, as reflected in its most recent Call Report.

Public Comments on the Second Proposal

The Board received a large number of comments on proposed § 702.103. Several commenters argued that the FCUA requires the Board to define ''complex'' credit unions based on the ''portfolios of assets and liabilities of credit unions,'' and that the proposed use of an asset size threshold to define ''complex'' credit unions would not comply with the statutory requirement.

A substantial number of commenters also stated that they opposed the proposed definition of ''complex'' credit union because they believed asset size should not be a primary qualifier of a credit union's complexity.

At least one trade association commenter, however, acknowledged that an asset threshold proxy, while less precise than individual balance sheet analysis, would allow for a streamlined application of the rule and would minimize opportunities for arbitrage. The commenter suggested that if the definition of ''complex'' were tied to specific activities, credit unions could be incentivized, on the margin, to simply avoid those activities in order to avoid the risk-based capital requirements. And such conduct could have unintended consequences and create new unanticipated risks to capital adequacy. Similarly, at least one credit union commenter stated that using an asset size threshold to define complex credit unions would give credit unions a bright line test and eliminate the difficulty of having to anticipate what products and services should be classified as complex. Another credit union commenter suggested that a rule that identified specific types of lending activity that made an institution complex might mask undue concentration risk.

A substantial number of commenters suggested that asset size, if used in the final rule, should be raised to some amount above $100 million. Specific threshold amounts suggested by commenters ranged from $250 million to $10 billion. Several commenters speculated that refining the complexity analysis and raising the asset size threshold would not considerably increase the risk to the Share Insurance Fund because by the time the final rule is implemented in 2019, an even greater percentage of system assets would be covered. Other commenters maintained that the final rule should only apply to credit unions that meet the same asset size threshold used by the Other Banking Agencies to define small banks. One commenter suggested that the Board should align the definitions of ''complex'' credit union across all of NCUA's regulations so they are the same, and, at a minimum, the Board should increase the threshold to $250 million to be consistent with the definition in the derivatives regulation.

Some commenters contended that the proposed list of assets and liabilities identified as complex were much too broad. One commenter suggested that Congress limited the application of risk-based capital to complex credit unions [111] and directed NCUA to design the risk-based capital standard to protect against material risks that may not be adequately captured by the net worth ratio requirement [112] because Congress intended that credit unions be designated as ''complex'' based on only their involvement in high-risk activities that the net worth ratio requirement may not account for. The commenter noted further that the list of complex assets and liabilities used by the Board to set the asset size threshold at $100 million included several standard activities that are already contemplated by the statutory net worth ratio requirement. The commenter believed, for example, that real estate loans, investments with maturities greater than five years, and internet banking are staple activities of financial services institutions in today's marketplace and should not be considered complex; and that other activities only become complex when undertaken in significant volumes—for example, a credit union that lends a member $60,000 to purchase new equipment for his bakery is engaged in member business lending, but that credit union should not be designated as complex by virtue of that single loan. The commenter contended that the size of the portfolio and its significance to the credit union's overall business strategy drives complexity; so the commenter concluded that member

[111] 12 U.S.C. 1790d(d)(1).

[112] 12 U.S.C. 1790d(d)(2).

business, indirect, interest-only, and participation loans should only indicate complexity where the activity exceeds a certain percentage of total assets, and borrowings should only denote complexity where they constitute a significant element of the credit union's funding strategy. Other commenters suggested that a credit union be defined as ''complex'' only if it engages in three or more of the following assets or liabilities: Member business loans, participation loans, interest-only loans, indirect loans, non-federally guaranteed student loans, borrowings, and derivatives. Still other commenters suggested that the definition of ''complex'' be based on the following activities: Participation loans, interest-only loans, indirect loans, real estate loans, non-agency mortgage backed securities, non-mortgage related securities with embedded options, collateralized mortgage obligations/real estate mortgage investment conduits, commercial mortgage-related securities, and derivatives.

In addition, commenters argued that because they do not adequately represent complexity, the Board should not use the following assets or liabilities: Real estate loans, obligations fully guaranteed by the U.S. Government, investments with maturities of greater than five years, non-agency mortgage-backed securities, non-mortgage-related securities with embedded options, collateralized mortgage obligations/real estate mortgage investment conduits, commercial mortgage-related securities, and internet banking. In addition, one commenter argued that internet banking, a service that credit unions provide, is neither an asset nor a liability so the FCUA bars NCUA from considering internet banking when considering complexity.

One commenter recommended that the asset size threshold should be set where all or most credit unions are engaged in four or more of the activities the Board identifies as complex. The commenter claimed that the FCUA, which requires NCUA to specify which credit unions are ''complex'' based on the portfolios of assets and liabilities of credit unions,[113] prohibits a credit union from being classified based on a single complex activity.

Another commenter suggested that using an asset size threshold alone to define complexity was appropriate and that the presence of more complex lending products should not necessarily define a complex credit union because financial institutions in general become more complex with size and by moving into more complex/sophisticated financial transactions such as mortgage-backed securities, derivatives, loan sales or purchases, mortgage pipelines and servicing assets. The commenter suggested that these types of financial transactions are not ordinary in smaller asset size institutions because they generally require more scale and overhead of a larger institution to manage and understand.

Other commenters recommended that the Board define complexity using a credit union's product offerings, in a manner similar to that used in the current rule. The commenters suggested that the most analogous approach would be a ratio of risk-weighted assets to total assets greater than 67 percent as measure by the proposal's risk weights. At least one of those commenters, however, acknowledged that the 67 percent threshold might not be a meaningful measure of risk, but that using different thresholds yielded similar results.

At least one commenter suggested that all federally insured credit unions with assets of $500 million or less should be excluded from the definition of ''complex,'' and that only those credit unions with $500 million or more in assets and that have an NCUA Complexity Index (discussed in the Supplementary Information to the Original Proposal) value of 17 or higher should be required to meet NCUA's risk-based capital requirement. Similarly, another commenter suggested that all federally insured credit unions with assets of $500 million or less should be excluded from the definition of ''complex,'' and that only those credit unions with $500 million or more in assets and that have an NCUA Complexity Index value of 20 or higher should be required to meet NCUA's risk-based capital requirement. Yet another commenter suggested that all federally insured credit unions with assets of $1 billion or less should be excluded from the definition of ''complex,'' and that only those credit unions with assets above $1 billion and that have an NCUA Complexity Index value of 20 or higher should be required to meet NCUA's risk-based capital requirement.

Additional suggestions provided by commenters for defining credit unions as ''complex'' included:

- Defining ''complex'' with attributes such as deposit account features, member services, loan and investment products, and portfolio makeup.
- Defining ''complex'' based on whether a credit union engages in a combination of activities including, participation loans, non-agency mortgage-backed securities, repurchase transactions, and derivatives.
- Defining ''complex'' as credit unions with over $100 million or more in assets and that provide member business loans and invest in derivatives.
- Defining ''complex'' as credit unions with $500 million or more in assets and/or that are engaged in over 50 percent of all of the categories, especially the investment section, noted in the preamble to the Second Proposal.
- Defining ''complex'' as credit unions with $500 million or more in assets, and that invest in non-agency mortgage-backed securities and non-mortgage related securities with embedded options.

As an alternative, one trade organization commenter suggested that with credit unions exiting an extreme financial crisis where many of these institutions failed due to lack of high-quality capital and elevated risk profiles, the Board should be focusing its attention on raising the minimum regulatory capital levels for all credit unions.

Other credit union commenters argued that the risk-based capital requirements should apply to all credit unions because recent data on credit union failures contradict claims that there is less risk in credit unions with less than $100 million in assets. Granted, the commenters suggested, in rural areas and in a few other special circumstances, small credit unions play a crucial role, and in such cases NCUA should offer waivers. A small credit union commenter suggested that many credit unions with $100 million or less in assets have the same, and often times more, risk on their balance sheets and in their operations than credit unions with over $100 million in assets. The commenter believed that smaller credit unions engage in complex activities for the following reasons: (1) If they do not offer products and services that the bigger credit unions do, their members will leave and the credit unions will (eventually) be forced to merge (not an outcome they wanted); (2) they need products that increase their income and capital (*e.g.,* business loans, participation loans, and indirect lending); (3) they recognize they do not have the expertise they should have but it is expensive and hard to attract expertise based on their compensation structure. Another credit union commenter claimed that smaller credit unions have failed at a higher rate and have had a higher incidence of catastrophic failure due to a lack of comprehensive internal management and process controls that can lead to fraud. The commenter maintained that a

[113] 12 U.S.C. 1790(d)(1).

credit union charter is a privilege and not a right and that all credit unions should be subject to the same risk-based capital requirements and examination standards.

One commenter suggested that it is very likely that a small credit union could pose a much larger risk to the NCUSIF than a larger credit union, and that using asset size as a threshold for complexity suggests that capital is not as critical for smaller institutions. The commenter suggested further that ''complexity'' should be defined based on the quality of the management of the risks undertaken by the institution, which is ideally measured by the ''M'' in the CAMEL rating. The commenter recommended that identifying the credit unions to which the risk-based capital requirement applies is best done through the supervision process so that those credit unions posing a higher risk to the NCUSIF have higher standards and expectations by which to abide. The commenter suggested that this solution would reduce the ''broad-brush'' effect of the current proposal, applying more stringent standards to those institutions that may benefit from regulatory risk management and thus provide greater protection to the NCUSIF.

A significant number of commenters requested that the asset size threshold, if used, be indexed so that it does not apply to smaller and smaller credit unions through time due to inflation. And at least one commenter suggested that any credit union that is identified as ''complex'' by NCUA should be able to present evidence to the agency as to why it is not complex and thus, should not be subject to risk-based capital requirements. The commenter suggested further that the process for contesting an agency designation of ''complex'' should be detailed in the final rule.

Discussion

The proposed use of an asset size threshold to define ''complex'' does comply with section 216 of the FCUA. As discussed in the Legal Authority part of this preamble, section 216(d)(1) directs NCUA, in determining which credit unions will be subject to the risk-based net worth requirement, to base its definition of complex ''on the portfolios of assets and liabilities of credit unions.'' [114] The statute does not require, as some commenters have argued, that the Board adopt a definition of ''complex'' that takes into account the portfolio of assets and liabilities of each credit union on an individualized basis. Rather, section 216(d)(1) authorizes the Board to develop a single definition of ''complex'' that takes into account the portfolios of assets and liabilities of all credit unions. Consistent with section 216(d)(1), the proposed definition of a ''complex'' credit union included an asset size threshold that, as explained in more detail below, was designed by taking into account the portfolios of assets and liabilities of all credit unions.

Under the current rule, credit unions are ''complex'' and subject to the risk-based net worth requirement only if they have quarter-end total assets over $50 million and they have a risk-based net worth ratio over 6 percent. In effect, this means that all credit unions with over $50 million in assets compute the risk-based net worth requirement to determine if they meet the complex definition.

For reasons described more fully below, the Board maintains that defining the term ''complex'' credit union using a single asset size threshold of $100 million as a proxy for a credit union's complexity is accurate, reduces the complexity of the rule, provides regulatory relief for smaller institutions, and eliminates the potential unintended consequences of having a checklist of activities that would determine whether or not a credit union is subject to the risk-based capital requirement.

Under the Second Proposal, the term ''complex'' was defined only for purposes of the risk-based capital ratio measure. For the purpose of defining a complex credit union, assets include tangible and intangible items that are economic resources (products and services) that are expected to produce economic benefit (income), and liabilities are obligations (expenses) the credit union has to outside parties. The Board recognizes there are products and services—which under GAAP are reflected as the credit unions' portfolio of assets and liabilities [115]—in which credit unions are engaged that are inherently complex based on the nature of their risk and the expertise and operational demands necessary to manage and administer such activities effectively. Thus, credit unions offering such products and services have complex portfolios of assets and liabilities for purposes of NCUA's risk-based net worth requirement.

Consistent with the Second Proposal, the following products and services, if engaged in by a credit union, are accurate indicators of complexity:

- Member Business Loans
- Participation Loans
- Interest-Only Loans
- Indirect Loans
- Real Estate Loans
- Non-Federally Guaranteed Student Loans
- Investments with Maturities of Greater than Five Years (where the investments are greater than one percent of total assets)
- Non-Agency Mortgage-Backed Securities
- Non-Mortgage-Related Securities With Embedded Options
- Collateralized Mortgage Obligations/ Real Estate Mortgage Investment Conduits
- Commercial Mortgage-Related Securities
- Borrowings
- Repurchase Transactions
- Derivatives
- Internet Banking

NCUA's review of Call Report data as of June 30, 2014 and March 31, 2015, showed that all credit unions with more than $100 million in assets were engaged in offering at least one of the products and services listed above; 99 percent engaged in two or more complex activities, and 87 percent engaged in four or more. On the other hand, less than two-thirds of credit unions below $100 million in assets were involved in even a single complex activity, and only 15 percent had four or more. Moreover, credit unions with total assets of less than $100 million are only a small share (approximately 10 percent) of the overall assets in the credit union system—which limits the exposure of the Share Insurance Fund to these institutions. Accordingly, a $100 million asset size threshold is a clear demarcation above which complex activities are always present, and where credit unions are almost always engaged in multiple complex activities. Additionally, the percentage of credit unions engaged in multiple activities using asset size thresholds above $100 million does not produce a significant demarcation between credit unions when compared to the differences observed at the $100 million threshold.

Conversely, using a credit union's percentage of risk assets to total assets as the factor for determining whether the credit union is complex would require all credit unions to understand, monitor, and apply a complex measure their risk asset to asset ratio each quarter. This would be an additional and unnecessary burden for credit unions below the $100 million asset size threshold.

[114] 12 U.S.C. 1790d(d).

[115] Products and services comprise a portfolio of assets and liabilities through the accounts and fixed assets that must be maintained to operate, the resources of staff and funds necessary to operate the credit union, and the liabilities that may arise from contractual obligations, among other things. Altogether, these products and services are accounted for on the balance sheet through the assets and liabilities according to GAAP.

As discussed earlier, $100 million in assets is an accurate proxy for complexity based on credit unions' portfolios of assets and liabilities. It is logical, clear, and easy to administer. Based on December 31, 2014 Call Report data, this approach exempts approximately 76 percent of credit unions from the regulatory burden associated with complying with the risk-based net worth requirement and capital adequacy plan, while still covering 90 percent of the assets in the credit union system. It is also consistent with the fact that the majority of losses (68 percent as measured as a proportion of the total dollar cost) [116] to the NCUSIF spanning the last 12 years have come from credit unions with assets greater than $100 million.[117]

Accordingly, consistent with requirements of § 216(d)(1) of the FCUA, the final rule eliminates current § 702.103(b) and defines all credit unions with over $100 million in assets as ''complex.''

Section 702.104 Risk-Based Capital Ratio

Under the Second Proposal, the Board proposed changing the title of current § 702.104 from ''Risk portfolio defined'' to ''Risk-based capital ratio.'' In addition, the Board proposed entirely replacing the requirements for calculating the risk-based net worth requirement for ''complex'' credit unions under current § 702.104 with a new risk-based capital ratio measure.[118] The proposed section would have required all ''complex'' credit unions to calculate their risk-based capital ratio as directed under the section. The proposed risk-based capital ratio was designed to enhance sound capital management and help ensure that credit unions maintain adequate levels of loss-absorbing capital going forward, strengthening the stability of the credit union system and ensuring credit unions serve as a source of credit in times of stress.

Public Comments on the Second Proposal

NCUA received many general comments on the proposed § 702.104. Many commenters simply stated that they opposed the new risk-based capital ratio measure altogether, and preferred maintaining the current risk-based net worth measure. Others objected to specific aspects of the calculation, which are discussed in more detail below.

Discussion

As discussed above and in more detail below, the proposed changes are necessary to provide a more comparable measure of capital across all financial institutions and to better account for related elements of the financial statement that are available to cover losses and protect the NCUSIF. The proposed risk-based capital ratio employed the method for computing the risk-based capital measures used by the Other Federal Banking Agencies: A higher ratio reflects the existence of a higher level of funds available to cover losses in relation to risk-weighted assets. Because the risk weights in the final rule are generally comparable to those used by banks, the risk-based capital ratio will allow an interested party to compare risk-based capital measures across institutions to obtain a relative measure of their financial strength. Additionally, the current risk-based net worth requirement assigns high risk weights to low-credit-risk assets to account for interest rate risk—such as investments in Treasury securities with maturities in excess of five years—which results in a higher risk-based capital requirement for credit unions holding these types of low-credit-risk investments. Thus, the Board concluded it is no longer appropriate to retain NCUA's current risk-based net worth measure.

Consistent with the Second Proposal, this final rule changes the title of current § 702.104 from ''Risk portfolio defined'' to ''Risk-based capital ratio.'' In addition, this final rule entirely replaces the requirements for calculating the risk-based net worth ratio for ''complex'' credit unions under current § 702.104 with a new risk-based capital ratio measure.[119]

104(a) Calculation of Capital for the Risk-Based Capital Ratio

Under the Second Proposal, § 702.104(a) provided that to determine its risk-based capital ratio, a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital ratio numerator as described in § 702.104(b) to its total risk-weighted assets as described in § 702.104(c). The proposed method of calculating risk-based capital was generally consistent with the methods used in other sectors of the financial services industry.

Other than the comments discussed elsewhere in the preamble, the Board received no comments on the proposed revisions to this paragraph and has decided to retain the amendments in this final rule without change.

104(b) Risk-Based Capital Ratio Numerator

Under the Second Proposal, § 702.104(b) provided that the risk-based capital ratio numerator is the sum of certain specific capital elements listed in § 702.104(b)(1), minus regulatory adjustments listed in § 702.104(b)(2).

Other than the comments discussed elsewhere in the preamble, the Board received no comments on the proposed revisions to this paragraph and has decided to retain the amendments in this final rule without change.

104(b)(1) Capital Elements of the Risk-Based Capital Ratio Numerator

Under the Second Proposal, § 702.104(b)(1) listed the capital elements of the risk-based capital ratio numerator as follows: Undivided earnings (including any regular reserve); appropriation for non-conforming investments; other reserves; equity acquired in merger; net income; ALLL; secondary capital accounts included in net worth (as defined in § 702.2); and section 208 assistance included in net worth (as defined in § 702.2). Consistent with the Second Proposal, § 702.104(b)(1) listed the elements of the risk-based capital ratio numerator.

Public Comments on the Second Proposal

The Board received a significant number of comments suggesting various amendments or additions to the capital elements included in the Second Proposal, which are discussed in more detail below.

Discussion

The Board generally disagrees with the comments concerning capital elements and has, for the reasons discussed in more detail below, decided to retain the language in proposed § 702.104(b)(1) in this final rule. The Board proposed § 702.104(b)(1) to provide for a more comparable measure of capital across all financial institutions and better account for

[116] Based on an analysis of loss and failure data collected by NCUA.

[117] NCUA performed backtesting analysis of Call Report and failure data to determine whether this final regulation would have resulted in earlier identification of emerging risks and possibly reduced losses to the NCUSIF. The impact of the final rule on more recent failures of credit unions with total assets over $100 million was also evaluated. The testing revealed that maintaining a risk-based capital ratio in excess of 10 percent would have triggered eight out of nine such failing credit unions to hold additional capital, which could have prevented failure or reduced losses to the NCUSIF.

[118] 12 U.S.C. 1790d(d).

[119] 12 U.S.C. 1790d(d).

related elements of the financial statement that are available (or not) to cover losses and protect the NCUSIF. As explained above, the FCUA gives NCUA broad discretion in designing the risk-based net worth requirement. Accordingly, this final rule incorporates the proposed broadened definition of capital for purposes of calculating the new risk-based capital ratio.

Undivided Earnings

The Second Proposal included undivided earnings in the risk-based capital ratio numerator. The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Appropriation for Nonconforming Investments

The Second Proposal included the appropriation for nonconforming investments in the risk-based capital ratio numerator. The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Other Reserves

The Original Proposal included other reserves in the risk-based capital ratio numerator. The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Equity Acquired in Merger

Under the Second Proposal, the risk-based capital ratio numerator included the equity acquired in merger component of the balance sheet. This equity item was used in place of the total adjusted retained earnings acquired through business combinations amount that credit unions currently report on the PCA net worth calculation worksheet in the Call Report. Equity acquired in merger is the GAAP equity recorded in a business combination and can vary from the amount of total adjusted retained earnings acquired through business combinations, which is not a GAAP accounting item. The use of equity acquired in a merger, as measured using GAAP, more accurately reflects the overall value of the business combination transaction.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Net Income

The Second Proposal included net income in the risk-based capital ratio numerator. The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

ALLL

The Second Proposal included the total amount of the ALLL, maintained in accordance with GAAP, in the risk-based capital ratio numerator. Credit unions already expense through the income statement the expected credit losses on the loan portfolio. In times of financial stress, while risk may be increasing (such as rising non-current loans), an uncapped inclusion of the ALLL in the risk-based capital ratio numerator would allow a properly funded ALLL to somewhat offset the impact of the financial stressors on the risk-based capital ratio.

Public Comments on the Second Proposal

The vast majority of commenters who mentioned the treatment of ALLL stated that they agreed with its proposed treatment in the Second Proposal. A few commenters, however, did argue that the ALLL should be limited to 1.25 percent of risk assets in determining the risk-based capital ratio numerator. These commenters suggested that if the loan loss reserves are established for identified losses, then they do not possess the essential characteristic of capital—the ability to absorb unidentified losses—and should not be included in the capital base. The commenters suggested further that because it is not always possible to clearly distinguish between identified and unidentified losses, the Other Banking Agencies capped the amount of ALLL being counted as capital at 1.25 percent of risk assets. These commenters argued further that limiting ALLL to 1.25 percent of risk assets would not create a disincentive for complex credit unions to fully fund the ALLL above the 1.25 percent ceiling because complex credit unions are bound by generally accepted accounting principles to fully fund their ALLL, so not doing so would constitute an unsafe and unsound practice. Finally, these commenters argued that removing the 1.25 percent cap on ALLL would overstate the amount of capital that complex credit unions have available to absorb unexpected losses, and would make the comparison between bank and credit union risk-based capital ratios more difficult.

Discussion

The Board disagrees with the commenters who suggested that the ALL should be limited to 1.25 percent of risk assets. All of the ALLL, maintained in accordance with GAAP, should be included in the risk-based capital ratio numerator because credit unions will have already expensed, through the income statement, the expected credit losses on the loan portfolio. In times of financial stress, while risk may be increasing (such as rising non-current loans), an uncapped inclusion of the ALLL in the risk-based capital ratio numerator will allow a properly funded ALLL to somewhat offset the impact of the financial stressors on the risk-based capital ratio. Further, NCUA's supervision process can address any concerns with inclusion of the ALLL, such as ensuring proper funding. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Secondary Capital Accounts

The Second Proposal included secondary capital accounts included in net worth (as defined in § 702.2) in the risk-based capital ratio numerator.

While there was overwhelming support for allowing credit unions to count secondary capital accounts in the risk-based capital ratio numerator (including support for access for additional forms of supplemental capital), the Board received no comments opposing its inclusion. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

The Board plans to address comments supporting additional forms of supplemental capital in a separate proposed rule, with the intent to finalize a new supplemental capital rule before the effective date of this risk-based capital final rule.

Section 208 Assistance

The Second Proposal included section 208 assistance that is included in net worth (as defined in § 702.2) in the risk-based capital ratio numerator.

The Board received no comments on the inclusion of this capital element in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Call Report Equity Items Not Included in the Risk-Based Capital Ratio Numerator

Under the Second Proposal, the risk-based capital ratio numerator did not include the following Call Report equity items: Accumulated unrealized gains (losses) on available for sale securities; accumulated unrealized losses for other than temporary impairment (OTTI) on debt securities; accumulated unrealized net gains (losses) on cash flow hedges; and other comprehensive income. In designing the proposed rule, the Board recognized that the items listed above reflected a credit union's actual loss absorption capacity at a specific point in time, but included gains or losses that may or may not be realized. The Board also recognized that including these items in the risk-based ratio numerator could lead to volatility in the risk-based capital ratio measure, difficulty in capital planning and asset-management, and other unintended consequences.[120]

The Board received no comments on the exclusion of these elements in the risk-based capital ratio numerator. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Other Supplemental Forms of Capital

Under the Second Proposal, supplemental forms of capital, other than those discussed above, were not included in the risk-based capital ratio numerator. The Board, however, did specifically request comment on specific detailed questions regarding whether revisions should be made to NCUA's regulations through a separate rulemaking to allow additional supplemental forms of capital to be included in the risk-based capital ratio.

Public Comments on the Second Proposal

A majority of the commenters who mentioned supplemental capital stated that it was imperative the Board consider allowing credit unions ready access to additional supplemental forms of capital. Commenters suggested it was particularly important as risk-based capital goes into effect, as credit unions are at a disadvantage in the financial market because of lack of access to additional capital outside of retained earnings. Commenters suggested that if supplemental capital were to count toward regulatory capital, it would benefit the credit union by allowing it to expand products and services without diluting its regulatory capital, and it would protect the NCUSIF by incentivizing credit unions to attract private capital that could absorb losses before causing a loss to the Insurance Fund.

Some commenters suggested further that the Board include (as a placeholder in this final rule) supplemental forms of capital, as defined by the Board and approved by NCUA or the appropriate state supervisory authority, in the risk-based capital numerator. Those commenters suggested the specific criteria could then be developed between finalizing the rule and its effective date in 2019.

Other commenters acknowledged that because Congress did not speak directly to the calculation of risk-based capital, the Board need not be limited by section 216(0)(2) of the FCUA in defining what elements, including supplemental capital, constitute the ratio. Several commenters, however, suggested that not allowing all credit unions to use additional supplemental forms of capital to meet their risk-based capital requirements would create a more stringent capital requirement for credit unions, which would place credit unions at a competitive disadvantage to banks. One commenter argued the Board failed to meet the requirement to establish a capital framework that is comparable to the Other Banking Agencies because credit unions will be disadvantaged to banks.

Other commenters recommended that the Board delay the publication of the final risk-based capital rule so that it can coincide with the publication of a final supplemental capital rule.

Discussion

Consistent with the Second Proposal, this final rule would not include additional supplemental forms of capital in the risk-based capital ratio numerator at this time.

The authorization of additional supplemental forms of capital for federal credit unions, and the inclusion of such forms of capital and the various forms of capital authorized for federally insured state-chartered credit unions in the risk-based capital ratio numerator, is beyond the scope of this rulemaking. Delaying the issuance of this final rule until a separate supplemental capital proposal could be issued and then finalized, as several commenters suggested, would only reduce the amount of time credit unions have to prepare to comply with this final rule.

The Board, however, appreciates the comments requesting access to additional supplemental forms of capital for credit unions. Board Chairman Debbie Matz has formed a working group at NCUA to consult with stakeholders and develop a separate proposed rule regarding supplemental forms of capital that could be included in the numerator of the risk-based capital ratio. The working group has reviewed the comments received on this issue, studied the alternative forms of capital used internationally and within the cooperative system, and obtained additional insight from industry practitioners who were highly interested or experienced with alternative forms of capital.

In the near future, the working group plans to present its recommendations to the Board for revisions that could be made to NCUA's regulations through a separate rulemaking to allow additional supplemental forms of capital to be included in the risk-based capital ratio. The Board's intent is to finalize a new supplemental capital rule before the effective date of this risk-based capital final rule.

The Board also continues to support amending the FCUA to provide all credit unions access to additional supplemental forms of capital that, subject to certain reasonable restrictions and consumer protections, could be counted toward a credit union's net worth ratio requirement and its risk-based capital requirement.

104(b)(2) Risk-Based Capital Ratio Numerator Deductions

Under the Second Proposal, § 702.104(b)(2) would have provided that the elements deducted from the sum of the capital elements of the risk-based capital ratio numerator are: (1) The NCUSIF Capitalization Deposit; (2) goodwill; (3) other intangible assets; and (4) identified losses not reflected in the risk-based capital ratio numerator.

The Board received a significant number of comments, which are outlined in detail below, regarding the capital elements that would have been deducted from the risk-based capital ratio numerator. However, for the reasons explained in more detail below, the Board has decided to retain most of these aspects of the Second Proposal in this final rule without change.

NCUSIF capitalization deposit. Under the Second Proposal, the NCUSIF capitalization deposit was subtracted from both the numerator and denominator of the risk-based capital ratio.[121] This treatment of the risk-based capital ratio would not have altered the

[120] The Other Banking Agencies' regulatory capital rules allow institutions to make an opt-out election for similar accounts. *See, e.g.,* 12 CFR 324.22; *and* 78 FR 55339 (Sept. 10, 2013).

[121] *See* U.S. Govt. Accountability Office, *Available Information Indicates No Compelling Need for Secondary Capital,* GAO–04–849 (2004), *available at http://www.gao.gov/assets/250/243642.pdf.*

NCUSIF capitalization deposit's accounting treatment for credit unions.

Public Comments on the Second Proposal

The Board received many comments expressing concerns about the Second Proposal's treatment of the NCUSIF capitalization deposit. A minority of commenters suggested that they agreed with the proposed treatment of the NCUSIF deposit. A majority of commenters who mentioned the NCUSIF deposit, however, noted that credit unions treat their NCUSIF capitalization deposit as an asset on their books. Those commenters suggested that while banks expense their deposit insurance and can never reclaim it, a credit union's deposit will be returned if it decides to liquidate, convert to another charter, or convert to private insurance. The commenters recommended that the Board acknowledge the difference in treatment of insurance deposits between the two systems and assign a capital value to the NCUSIF capitalization deposit for credit unions. Another commenter suggested that, compared to banks, credit unions on average have 1 percent less capital than the net worth ratio suggests because credit unions carry the NCUSIF capitalization deposit as an asset: Pre-paid NCUSIF premiums, which the commenter argued should be amortized. The commenter speculated that if credit unions amortized their NCUSIF premium at eight basis points per year, it would have about the same effect as stabilization premiums and credit unions would, over 12 years, write off the deposit. The commenter suggested further that the deposit adds to the risk in economic downturns because it poses the danger of increased pressure on earnings and capital during a financial crisis. Another commenter argued that GAAP recognizes the NCUSIF capitalization deposit as an asset so it does not make sense to treat the deposit as an intangible asset given that it is easily measured and can be returned or refunded. Finally, some commenters recommended that the NCUSIF capitalization deposit be treated as a credit union asset with a risk weighting of 100 percent or lower.

Discussion

As stated in the Second Proposal, the 1997 U.S. Treasury Report on Credit Unions supports NCUA's position of excluding the NCUSIF capitalization deposit from the risk-based capital ratio calculation. The Treasury report concluded that the NCUSIF capitalization deposit is double counted because it is an asset on credit union balance sheets and equity in the NCUSIF.[122] The Treasury noted that, in lieu of expensing the NCUSIF capitalization deposit, holding additional capital is necessary to offset the risk of loss from required credit union replenishment. According to comments within the 1997 Treasury report, Congress established a higher statutory leverage ratio for credit unions in part to offset the risk of loss from required credit union replenishment.[123]

The NCUSIF capitalization deposit deduction needs to be addressed in the risk-based capital ratio, not just the leverage ratio, to correct for the double-counting concern in those credit unions where the risk-based capital ratio is the governing requirement.

The NCUSIF capitalization deposit is not available for a credit union to cover losses from risk exposures on its own individual balance sheet in the event of insolvency.[124] The purpose of the NCUSIF capitalization deposit is to cover losses in the credit union system. The Board is required to assess premiums necessary to restore and maintain the NCUSIF equity ratio at 1.2 percent. Premiums were necessary from 2009 through 2011 as a result of losses. A series of NCUA Letters to Credit Unions issued during 2009 discuss the necessary write-down of the 1 percent NCUSIF capitalization deposit and required NCUSIF premium expenses needed to restore the NCUSIF equity ratio.[125]

The NCUSIF capitalization deposit is refundable in the event of voluntary credit union charter cancellation or conversion. However, this aspect does not change the unavailability of the NCUSIF capitalization deposit to cover individual losses while the credit union is an active going concern, or its at-risk stature in the event of major losses to the NCUSIF. NCUA refunds the NCUSIF capitalization deposit only in the event a solvent credit union voluntarily liquidates, or converts to a bank charter or private insurance.

[122] U.S. Dep't of Treasury, *Credit Unions* 58 (1997) (''The one percent deposit does present a double-counting problem. And it would be feasible for credit unions to expense the deposit now, when they are healthy and have strong earnings. However, expensing the deposit would add nothing to the Share Insurance Fund's reserves, and [. . .] better ways of protecting the Fund are available. Accordingly, we do not recommend changing the accounting treatment of the 1 percent deposit.'').

[123] *Id.* at 4–5 & 55–59.

[124] 12 U.S.C. 1782(c)(1)(B)(iii).

[125] NCUA, *Premium Assessments,* Letter to Credit Unions 09–CU–20 (Oct. 2009); NCUA, *Corporate Stabilization Fund Implementation,* Letter to Credit Unions 09–CU–14 (June 2009); NCUA, *Corporate Credit Union System Strategy,* Letter to Credit Unions 09–CU–02 (Jan. 2009).

Consistent with its exclusion from the risk-based capital ratio numerator, the NCUSIF capitalization deposit was also deducted from the denominator under proposed § 702.104(c)(1), which properly adjusted the risk-based capital ratio calculation and reduced the impact of the adjustment.

Neither the Second Proposal nor this final rule adjusts for the NCUSIF capitalization deposit twice or puts credit unions at a disadvantage in relation to banks because banks have expensed premiums to build the Deposit Insurance Fund.

The Board does not agree with commenters who suggested that the NCUSIF capitalization deposit should be treated as an investment similar to Federal Home Loan Bank (FHLB) stock. The NCUSIF capitalization deposit and FHLB stock have several fundamental differences. The deposit in the NCUSIF results in double counting of capital within the credit union system. Investments in FHLB stock do not. A financial institution does not need to change its charter for a FHLB stock redemption as a credit union must do for a NCUSIF capitalization deposit refund. Further, unlike FHLB stock, the NCUSIF capitalization deposit is not an income-producing asset. The deposit has not paid a dividend since 2006. And it cannot pay another dividend while the Corporate Stabilization Fund loan from the Treasury is still outstanding.

The Board is not requiring credit unions to expense the NCUSIF capitalization deposit, and does not believe the risk-based capital treatment will lead to a change in how this asset is accounted under GAAP. The Board agrees with the U.S. Treasury position as stated in its 1997 Report on Credit Unions. Treasury stated that expensing the NCUSIF capitalization deposit would not strengthen the NCUSIF. The financial structure of the NCUSIF is reasonable and works well for credit unions.

The assignment of an appropriate risk weight for the NCUSIF capitalization deposit, based on its credit risk, has the potential to create additional criticisms, as a low risk weight may not capture the true nature of the account and a high risk weight could produce unnecessary concern about risk of the deposit. The NCUSIF capitalization deposit is treated similarly to other intangible assets, (*e.g.* goodwill and core deposits intangible assets), as they are not available assets upon liquidation.

Accordingly, for all the reasons discussed above, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Goodwill and Other Intangible Assets

Under the Second Proposal, goodwill and other intangible assets were deducted from both the risk-based capital ratio numerator and denominator in order to achieve a risk-based capital ratio numerator reflecting equity available to cover losses in the event of liquidation. Goodwill and other intangible assets contain a high level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions.

The Board, however, recognized that requiring the exclusion of goodwill and other intangibles associated with supervisory mergers and combinations of credit unions that occurred prior to this proposal could directly reduce a credit union's risk-based capital ratio. Accordingly, the Board also proposed allowing credit unions to include certain goodwill and other intangibles in the risk-based capital ratio numerator. In particular, the Second Proposal would have excluded from the definition of goodwill, which must be deducted from the risk-based capital ratio numerator, any goodwill or other intangible assets acquired by a credit union in a supervisory merger or consolidation that occurred before the publication of this rule in final form.

The Second Proposal would not have changed the financial reporting requirements for credit unions, which requires they use GAAP to determine how certain intangibles are valued over time. Under the proposal, credit unions would have still been required to account for goodwill in accordance with GAAP, and the amount of excluded goodwill and other intangible assets would have been based on the outstanding balance of the goodwill directly related to supervisory mergers.

The Board proposed allowing the excluded goodwill and other intangible assets to be counted until December 31, 2024, to allow affected credit unions to adjust to this change as they continue to value goodwill and other intangibles in accordance with GAAP. The proposed exclusions would have applied only to goodwill and other intangible assets acquired through supervisory mergers or consolidations and would not have been available for goodwill and other intangible assets acquired from mergers or consolidations that did not meet this definition. This change would have provided affected credit unions time to revise their business practices to ensure goodwill and other intangible assets directly related to supervisory mergers would not adversely impact their risk-based capital ratio.

Public Comments on the Second Proposal

At least one commenter stated that they agreed with the proposed treatment of goodwill and other intangible assets. A significant number of commenters, however, suggested that the Board include all goodwill and other intangible assets in the risk-based capital ratio numerator so long as these intangible assets meet GAAP requirements (subjected to annual goodwill impairment testing). Commenters reasoned that the exclusion of non-supervisory goodwill from the numerator would discourage some well managed and well capitalized credit unions from participating in mergers, and many mergers serve to benefit the members of both the surviving and non-surviving credit union. Similarly, commenters reasoned that mergers can also have a favorable influence on safety and soundness—producing institutions that in combination have stronger financials and are able to weather more extreme economic swings.

At least one commenter suggested that, as an alternative to including all goodwill and intangible assets in the risk-based capital ratio numerator, the Board might limit the retention of non-supervisory goodwill and other intangible assets in the numerator of the risk-based capital ratio for those credit unions that are well capitalized on the basis of the net worth ratio. The commenter suggested further that, at a minimum, non-supervisory goodwill that meets annual impairment testing should be retained in the numerator over a 10-year phase-out period, and all previous supervisory goodwill should be grandfathered without time limit, subject to regular impairment testing. The commenter suggested three reasons for taking such an approach: First, those credit unions that engaged in such transactions almost certainly reduced insurance losses to the Share Insurance Fund, and should not be penalized after the fact. Second, they did so with an understanding of current rules at that time. Many of these transactions would likely not have occurred had the proposed treatment of goodwill been known; so no longer counting this goodwill at some point in the future would be changing the rules midstream. Third, the amount of previous supervisory goodwill is a known, fixed, and relatively small quantity. Only 20 credit unions with more than $100 million in assets have goodwill amounting to more than 5 percent of net worth, and the average goodwill to net worth ratio at these credit unions is 12.8 percent. Supervisory goodwill likely represents no more than three quarters of that goodwill (approximately 10 percent of net worth). Considering future growth, the commenter suggested that supervisory goodwill will decline in proportion to net worth and assets going forward, and grandfathering it would protect those credit unions that in the past reduced NCUSIF resolution costs from a cliff reduction in their RBC ratios in the future.

Other commenters suggested that excluding goodwill from the risk-based capital ratio numerator would harm credit unions by: (1) Penalizing credit unions who have recently gone through a merger, and (2) dis-incentivizing merger activity, which could prevent healthy industry consolidation and the combining of unhealthy credit unions with stronger ones in the future. Some commenters suggested that if a well-situated credit union relies on goodwill as a component of a merger, and is no longer able to justify such as a business decision because of a lack of allowance for goodwill, NCUA is then forced to step in, which would negatively impact the NCUSIF and could require the payment of additional premiums by all credit unions. Use of goodwill allows a well-situated credit union to absorb a struggling credit union without negatively impacting the NCUSIF, which the commenter suggested should be incentivized. Thus, the commenter recommended that goodwill arising from both previous and future mergers should continue to be counted without a time limitation, so long as it meets GAAP requirements.

Several commenters suggested that the rule grandfather credit unions that have included goodwill on their books, and not impose the 10-year limit, since it has been used by the credit union in the past and was sanctioned by NCUA. Another commenter suggested that if mergers were part of a strategic plan accomplished before the risk-based capital rule is finalized, then any goodwill acquired through those mergers should be grandfathered.

Some commenters contended that goodwill acquired through a supervisory merger should not be treated differently than goodwill acquired through a strategic merger. Goodwill acquired through both types of mergers have value according to GAAP. One commenter argued that separating goodwill and other intangibles derived through a merger of healthy credit unions versus those assisted by a regulator does not make sense for the following reasons: (1) Some mergers that involve troubled credit unions may have had informal assistance from state or federal regulators, but may not meet the definition outlined in the proposal as supervisory-assisted. This will create inconsistency in the application of the rule. (2) The treatment is inconsistent and provides potentially more risk to the NCUSIF as the risk-based capital ratio may not reflect the actual risk of future impairment of those assets. (3) The proposal favors troubled credit union mergers while discouraging healthy credit union consolidation due to the negative impact on the risk-based capital ratio. (4) Using a 10-year life for supervisory-assisted transactions provides only temporary relief for those credit unions impacted and it overstates the risk-based capital ratios until the phase-out period is over.

One commenter argued that the proposed treatment of goodwill would place credit unions that acquired failing or insolvent credit unions (under supervisory/emergency merger conditions)—including those where NCUA, the NCUSIF, and the credit union industry realized benefits from the acquisition activities—at a competitive disadvantage. The commenter suggested that the proposed 10-year deferral of goodwill is an equitable solution for those credit unions that acquired failed credit unions and received some level of funded assistance from the NCUSIF, as the amount of goodwill carried on their books would typically be less than goodwill carried by those credit unions that did not receive assistance. The commenter explained that this is due to the fact that the funded amount of assistance from the NCUSIF upon receipt by the continuing credit union is recorded as a reduction to the goodwill determined at the time the failed credit union was acquired. The commenter argued that other credit unions, however, that acquired failed credit unions relying on the current risk-based net worth regulations, but did not receive funded assistance from the NCUSIF would be penalized under the proposed 10-year deferral of goodwill. The commenter speculated that these credit unions would be forced to forgo many opportunities in lieu of having to meet changed regulator risk-based capital targets, while their competitors (for the next 10 years) would have the opportunity to focus on survival, service, product innovation, community reinvestment and growth. Accordingly, the commenter recommended the Board grant a one-time permanent exemption of goodwill to credit unions that made significant, capital-impacting decisions under the current risk-based net worth regulations.

Discussion

There is a high level of uncertainty regarding the ability of credit unions to realize the value of goodwill and other intangibles, particularly in times of adverse conditions. Thus, the proposed approach to other intangibles generally mirrors the treatment by the Other Banking Agencies.[126]

However, as discussed in the definitions part of this rule above, the longer implementation period included in this final rule will serve to mitigate some of the commenters' concerns regarding existing goodwill and other intangibles because it provides affected credit unions more than 13 years to write down the goodwill or otherwise adjust their balance sheet.

While the final rule includes a provision to address goodwill and other intangibles acquired through supervisory mergers and consolidations that were completed 60 days following this rule's publication, the final rule retains the requirement that all other goodwill and other intangibles be excluded from the risk-based capital ratio numerator as they are not available to cover losses.

Consistent with the comments, the Board recognizes that only 15 credit unions report total goodwill and intangible assets of more than 1 percent of assets, and notes that the valuation under GAAP of these existing assets will be immaterial by the end of the extended sunset date.

In future combinations, a credit union will need to consider the impacts a combination will have on both its net worth ratio and its risk-based capital ratio. For mergers involving financial assistance from the NCUSIF, this means a credit union with higher capital may be able to outbid a competing credit union. A credit union will need to consider the impact on its capital when determining the components of a merger proposal, which may result in higher costs to the NCUSIF. However, stronger capital and a risk-based capital measure that is less lagging should reduce the number and cost of failures, resulting in a net positive benefit to the NCUSIF and the industry.

Accordingly, for all the reasons discussed above, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

Identified Losses Not Reflected in the Risk-Based Capital Ratio Numerator

The Second Proposal allowed for identified losses, not reflected as adjustments in the risk-based capital ratio numerator, to be deducted. The inclusion of identified losses allowed for the calculation of an accurate risk-based capital ratio.

The Board received no comments on this aspect of the proposal. Accordingly, the Board has decided to retain this aspect of the Second Proposal in this final rule without change.

104(c) Risk-Weighted Assets

In developing the proposed risk weights included in the Second Proposal, the Board reviewed the Basel accords and the U.S. and various international banking systems' existing risk weights.[127] The Board considered the comments contained in Material Loss Reviews (MLRs) prepared by NCUA's OIG and comments by GAO in their respective reviews of the financial services industry's implementation of PCA.[128] The Second Proposal was designed to address credit risk and concentration risk in a manner comparable to the Other Banking Agencies' capital regulations.[129] As a result, the Second Proposal would have substantially changed how the risk weights for nearly all credit union assets are assigned. For example, instead of assigning an investment a risk weight based on its weighted average life, the Second Proposal assigned risk weights to investments based primarily on the credit quality of the underlying collateral or repayment ability of the issuer. These and other adjustments were intended to address, where possible depending on the particular requirements of section 216 of the FCUA, inconsistencies between the risk weights assigned to assets under the Other Banking Agencies' capital regulations and NCUA's current PCA regulations.

Public Comments on the Second Proposal

The Board received many general comments regarding the proposed risk

[126] *See, e.g.,* 12 CFR 324.22.

[127] The Basel Committee on Banking Supervision (BCBS) published Basel III in December 2010 and revised it in June 2011, *available at http://www.bis.org/publ/bcbs189.htm.*

[128] Section 988 of the Dodd-Frank Wall Street Reform and Consumer Protection Act obligates NCUA's OIG to conduct MLRs of credit unions that incurred a loss of $25 million or more to the NCUSIF. In addition, section 988 requires NCUA's OIG to review all losses under the $25 million threshold to assess whether an in-depth review is warranted due to unusual circumstances. The MLRs are *available at http://www.ncua.gov/about/Leadership/CO/OIG/Pages/MaterialLossReviews.aspx*; *see also* GAO/GGD–98–153 (July 1998); GAO–07–253 (Feb. 2007), GAO–11–612 (June 2011), GAO–12–247 (Jan. 2012), *and* GAO–13–71 (Jan. 2013).

[129] *See, e.g.,* 12 CFR 324.32.

weights. At least one commenter suggested the proposal significantly improved the various risk weightings and that most of the proposed risk weightings seemed appropriate. Most commenters who mentioned the risk weights also acknowledged that the Board had made significant improvements to the risk-weight categories from the original risk-based capital proposal, and many of the adjustments and more detailed asset categories included in the Second Proposal were significant improvements.

A substantial number of the commenters, however, argued that the proposed risk weights remained too high in key areas, given credit unions' level of risk, and suggested they should be lower than what the federal bank regulators require for assets such as mortgage loans, member business loans, servicing and certain investments. These commenters suggested that lower risk weightings for credit union assets are appropriate given their different incentives to manage risk as compared to banks, and lower loss history based on their comparison to the banking industry.

A significant number of commenters complained that the proposed risk-weighting scheme was overly complex. At least one commenter suggested that credit unions have assets on their books at fair value; the change to fair value is accounted for in either the profit and loss statement or in other comprehensive income. The commenter recommended that the Board clarify the application of the risk weight for these assets when a component of their book value has already impacted capital through earnings or other comprehensive income. Other commenters recommended that the risk weights and concentration percentages take into account the standard credit risk factors such as loan-to-value ratio, credit score, origination channel, etc. One commenter suggested that credit risk is a function of underwriting, the economy, loan portfolio diversity, institutional structure, business strategy, profitability demands, time horizons, performance-monitoring capacity, funding stability and other factors. But, the commenter argued, the proposal ignores these local, individual factors in favor of a one-size-fits-all risk weighting.

Interest rate risk. The Board also received many comments regarding the proposed removal of IRR from the risk-weight calculation. A majority of the commenters who mentioned IRR stated that they agreed with the proposed removal of interest rate risk from the rule. Moreover, they suggested a separate IRR standard was not needed to reasonably account for IRR at credit unions because NCUA's current framework of policies and regulations sufficiently address the risk. One credit union commenter did recommend, however, that NCUA expand the data it gathers in the 5300 Call Reports and use that information to facilitate both RBC compliance and interest rate risk management. The commenter suggested Call Reports also be used to monitor investment losses for credit unions that invest in complex securities, which would show the direction a credit union is trending and provide regulators with an objective basis for determining which credit unions need capital buffers that exceed regulatory minimums.

Concentration risk. The Board received a substantial number of comments regarding the Second Proposal's retention of concentration risk measures in the risk weightings of certain categories of assets. A majority of the commenters who mentioned it suggested that concentration risk is best addressed through the examination process as it is for banks, and thus, should be dropped from the risk weights in the final rule. At least one commenter argued that the proposed concentration threshold requirements violate the FCUA, which requires the Board to ''prescribe a system of prompt corrective action'' that is ''comparable to section 1831o'' of the Federal Deposit Insurance Act.

One commenter noted that while NCUA did cite to specific credit union failures that involved high concentrations of certain assets, the Material Loss Reviews associated with those failures revealed that fraud or board mismanagement played a pivotal, if not a determining, role in the failure of the credit unions. Other commenters claimed that, based on 2007 and 2014 data, there was no meaningful difference in the performance of credit unions with higher or lower levels of concentration in mortgages or home equity loans. The proposal would require credit unions to hold more capital than banks at certain levels of asset concentration, which commenters argued would not create a ''comparable'' capital framework and would put credit unions at a competitive disadvantage. The commenters contended this is particularly true for mortgages and home equity loans where the capital requirements materially increase even at relatively lower levels of concentration (35 percent and 20 percent of assets, respectively).

One commenter claimed the Board did not provided any evidence the proposed concentration risk thresholds aligned with increased capital at risk, and insisted that the historical loss data provided by NCUA did not support establishing a higher capital standard for credit unions than banks. The commenter argued that the data in the Second Proposal showing the differences in asset concentrations between those credit unions that failed and those that survived was insufficient. And for real estate loans, the commenter claimed the data was inconclusive because credit unions that failed had 58 percent of their assets in real estate whereas those credit unions that survived had 49 percent. While there was a higher concentration of real estate assets for those that failed, the commenter suggested the difference of 9 percent was not a firm basis on which to assert higher concentrations of real estate loans were a significant contributing factor to the credit union's failure such that it warrants higher capital levels for all complex credit unions. Similarly, the commenter argued that the data for commercial loans would not support a concentration risk threshold of 50 percent, and alleged that the Board examined the current level of real estate exposure across the industry and set the capital requirements such that roughly the top 10 percent of the industry would see their capital requirements increase. Further, the commenter argued that the methodology was unsupported by the evidence, that there was no empirical evidence to support that either (a) two standard deviations is the right basis for determining this threshold, or (b) the resultant risk thresholds correlated directly to higher degrees of risk such that additional capital should be held by these institutions. The commenter insisted that, based on the comparability requirement in the FCUA, the Board should eliminate the concentration risk thresholds for these asset classes and set the risk weights equal to those applied to the banking industry (50 percent for mortgages and 100 percent for both home equity loans and commercial loans).

Another commenter noted that the examples given by the Board in support of adopting concentration risk elements did not acknowledge the fact that mortgage and home equity line of credit (HELOC) underwriting standards have tightened, and claimed that credit unions have generally divested away from residential real estate, and that the proposal fails to anticipate where the credit union asset mix will likely migrate in the future. Based on this claim, the commenter speculated that the proposed concentration limits may not prudently attain the desired goal of portfolio invariance and may, in fact, threaten the long-term viability of many credit unions. The commenter recommended that the Board adopt one of the following alternative approaches: (1) Do away with the concentration risk element altogether; (2) use current demarcation points as a trigger for expanded reporting in the Call Report, thereby allowing NCUA to assess if there is in fact additional risk; or (3) increase the current threshold levels that call for increased weighting—for example, by moving the mortgage threshold to 50 percent to match the commercial loan threshold, and increasing the residential junior lien threshold from 20 percent to 25 percent.

One commenter argued that the proposed approach of including concentration risk thresholds in the risk weights was fundamentally flawed because it considered the relative size of the portfolio and not the benefit of diversification. Another commenter speculated that without more specific information to capture diversification within a lending portfolio,[130] the proposal would have limited value in providing early warning of truly unsafe concentrations. Instead, the commenter recommended NCUA address outlier credit unions through the timely application of supervisory tools or, if necessary, by applying the capital adequacy planning requirements of section 702.101(b) to credit unions flagged as outliers. The commenter suggested that using capital adequacy plans to address concentration risk would control for asset concentrations that pose safety and soundness risk without placing the wider credit union system at a competitive disadvantage to banks. The commenter speculated further that, given the shifting landscape of the financial services market and the credit union industry, building risk parameters around the current shape of the market may not align with future risks.

Yet another commenter suggested that if concentration risk is maintained in the final rule, the concentration threshold level for all secured loan categories should be 50 percent, and only unsecured loans should have a concentration threshold level below 50 percent.

Finally, one commenter argued that there is no need for the rule to address concentration risk, claiming that concentration risk would address itself since the dollar amount applied against the risk weight increases as concentration increases.

Discussion

After carefully considering the comments received, the Board generally agrees with commenters who suggested that IRR concerns can be addressed through NCUA guidance, supervision, and other regulations. NCUA's guidance, supervision, and other regulations are designed to address how IRR is managed and reported in a manner that is appropriate to the size, complexity, risk profile, and scope of each credit union's operations. The Board has determined not to include IRR in the risk-based net worth requirement[131] given the other mechanisms available to NCUA to address such risk. NCUA will continue to monitor credit unions' exposure to IRR through the supervision process and plans to provide additional supervisory guidance in the future.

The Board, however, disagrees with commenters who suggested further reductions in the scope of the use of risk weights to address concentration risk. Under the Second Proposal, the Board substantially reduced the risk-based capital requirements related to concentration risk by using one concentration threshold, set at a higher level, for assets that NCUA determined are vulnerable to concentration risk. As stated in the preamble to the Second Proposal, the concept of addressing concentration risk with the assignment of risk weights is consistent with the risk-based net worth requirement under current part 702. Higher risk weights are assigned to real estate loans and MBLs held in higher concentrations under the current rule. Elimination or additional reductions in the concentration risk dimension of the risk-based net worth requirement would be inconsistent with concerns regarding concentration risk raised by GAO and in MLRs conducted by NCUA's OIG.[132] The preamble also noted that the Basel Committee on Banking Supervision has stated that ''risk concentrations are arguably the single most important cause of major problems in banks.''[133]

It is not appropriate to rely solely on the supervisory process to address concentration risk because the holding of additional capital for concentration risk should occur prior to the development of the concentration risk, and is difficult to achieve after a concern with concentration risk is identified during the supervisory process.

The concentration risk thresholds were adjusted in the Second Proposal to focus on material levels of concentration risk and for more consistency with the current effective impact of the concentration risk on capital requirements for commercial loans. As a result of the risk-weight adjustments, very few credit unions would be subject to the marginally higher risk weights due to concentration risk. Credit unions subject to the concentration risk weights will not be placed at a competitive disadvantage, because all banks are required to maintain capital commensurate with the level and nature of all risks, including concentration risk, to which they are exposed.[134]

Regarding support for the risk weights themselves, given the statutory requirement to maintain comparability with the Other Banking Agencies' PCA requirements,[135] NCUA relied primarily on the risk weights assigned to various asset classes within the Basel Accords and established by the Other Banking Agencies' risk-based capital regulations to develop this proposal. The Board, however, did tailor the proposed risk weights for assets unique to credit unions, where contemporary and sustained performance differences existed (as shown in Call Report data) to differentiate for certain asset classes between banks and credit unions, or where a provision of the FCUA necessitated doing so.

The Board generally agrees with commenters who suggested that credit risk factors such as loan-to-value ratio (LTV), credit score, origination and other individual factors are meaningful

[130] For example, diversification based on geography, industry, credit profile, or product type.

[131] *See* 12 U.S.C. 1790d(d)(2) (''The Board shall design the risk-based net worth requirement to take account of any material risks against with the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.'').

[132] *See* U.S. Govt. Accountability Office, GAO–12–247, Earlier Actions are Needed to Better Address Troubled Credit Unions (2012), *available at http://www.gao.gov/products/GAO-12-247*; Office of Inspector General, National Credit Union Administration, OIG–10–03, Material Loss Review of Cal State 9 Credit Union (April 14, 2010), *available at http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201003MLRCalState9.pdf*; Office of Inspector General, National Credit Union Administration,OIG–11–07, Material Loss Review of Beehive Credit Union (July 7, 2011), *available at http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201107MLRBeehiveCU.pdf;* Office of Inspector General, National Credit Union Administration, OIG–10–15, Material Loss Review of Ensign Federal Credit Union, (September 23, 2010), *available at http://www.ncua.gov/about/Leadership/CO/OIG/Documents/OIG201015MLREnsign.pdf.*

[133] Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards: A Revised Framework, Comprehensive Version* 214 (June 2006) *available at http://www.bis.org/publ/bcbs128.pdf.*

[134] *See* 12 CFR 324.10(d).

[135] *See* 12 U.S.C. 1790d(b)(1)(A)(ii).

and should be evaluated. However, reporting loan data on LTVs and credit scores to NCUA would be administratively burdensome. For example, establishing regulations on how the LTV would be measured would be complex when considering such items as how to take into account private mortgage insurance as the financial strength of mortgage insurers varies, or the LTV of a restructured loan. NCUA also lacks credit union industry data on loan performance based on LTV ratios that could be used to establish a framework for LTV-based risk weights. And risk weights based on LTVs for real estate loans would not be comparable to the risk weight framework used by the other banking agencies.

Accordingly, the Board has decided to maintain the proposed approach to risk-weighting assets in this final rule.

104(c)(1) General

Under the Second Proposal, § 702.104(c)(1) provided that risk-weighted assets include risk-weighted on-balance sheet assets as described in §§ 702.104(c)(2) and (c)(3), plus the risk-weighted off-balance sheet assets in § 702.104(c)(4), plus the risk-weighted derivatives in § 702.104(c)(5), less the risk-based capital ratio numerator deductions in § 702.104(b)(2). The section provided further that, if a particular asset, derivative contract, or off balance sheet item has features or characteristics that suggest it could potentially fit into more than one risk weight category, then a credit union shall assign the asset, derivative contract, or off-balance sheet item to the risk weight category that most accurately and appropriately reflects its associated credit risk. The Board proposed adding this language to account for the evolution of financial products that could lead to such products meeting the definition of more than one risk asset category.

The Board received no comments on the language in this paragraph of the proposal. Accordingly, the Board has decided to retain the language in this proposed paragraph in this final rule without change.

104(c)(2) Risk Weights for On-Balance Sheet Assets

Under the Second Proposal, § 702.104(c)(2) defined the risk categories and risk weights to be assigned to each defined on-balance sheet asset. All on-balance sheet assets were assigned to one of 10 risk-weight categories.

The Board received a significant number of comments, which are discussed in more detail below, on the proposed risk-weight categories and the risk weights assigned to particular assets.

Cash and Investment Risk Weights

Under the Second Proposal, the Board proposed eliminating the process of assigning risk weights for investments based on the weighted average life of investments in favor of a credit-risk centered approach for investments. The credit risk approach to assigning risk weights under the Second Proposal was based on applying lower risk weights to safer investment types and higher risk weights to riskier investment types.[136] The proposed investment risk weights are similar to the risk weights assigned to investments under the Other Banking Agencies' regulations,[137] which are based on the credit-risk elements of the issuer, the underlying collateral, and the payout position of the particular type of investment. The proposed changes to the risk weights assigned to investments are outlined in the following table:

SECOND PROPOSAL: RISK WEIGHTS FOR CASH AND INVESTMENTS

Item	Proposed (percent) risk weight
• The balance of cash, currency and coin, including vault, automatic teller machine, and teller cash	0
• The exposure amount of: ○ An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and principal and interest only mortgage-backed STRIPS. ○ Federal Reserve Bank stock and Central Liquidity Facility stock.	
• Insured balances due from FDIC-insured depositories or federally insured credit unions. • The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately-insured credit unions	20
• The exposure amount of: ○ A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal and interest only mortgage-backed STRIPS. ○ A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding principal and interest only GSE obligation STRIPS. ○ Securities issued by PSEs in the United States that represent general obligation securities. ○ Investment funds whose portfolios are permitted to hold only part 703 permissible investments that qualify for the zero or 20 percent risk categories. ○ Federal Home Loan stock.	
• Balances due from Federal Home Loan Banks.	
• The exposure amount of: ○ Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities. ○ Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed securities, excluding principal and interest only STRIPS.	50
• The exposure amount of: ○ Industrial development bonds. ○ All stripped mortgage-backed securities (interest only and principal only STRIPS). ○ Part 703 compliant investment funds, with the option to use the look-through approaches. ○ Corporate debentures and commercial paper. ○ Nonperpetual capital at corporate credit unions. ○ General account permanent insurance. ○ GSE equity exposure and preferred stock.	100

[136] When the Board evaluates the risk of an investment type, it is based on criteria such as volatility, historical performance of the investments, and standard market conventions.

[137] *See, e.g.,* 12 CFR 324.32.

SECOND PROPOSAL: RISK WEIGHTS FOR CASH AND INVESTMENTS—Continued

Item	Proposed (percent) risk weight
• All other assets listed on the statement of financial condition not specifically assigned a different risk weight. • The exposure amount of perpetual contributed capital at corporate credit unions	150
• The exposure amount of equity investments in CUSOs. • The exposure amount of: ○ Publicly traded equity investment, other than a CUSO investment. ○ Investment funds that are not in compliance with part 703 of this Chapter, with the option to use the look-through approaches. ○ Separate account insurance, with the option to use the look-through approaches.	300
• The exposure amount of non-publicly traded equity investments, other than equity investments in CUSOs	400
• The exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach	[138] 1,250

Public Comments on the Second Proposal

The Board received many general comments regarding the proposed investment risk weights. At least one commenter maintained that the proposal would unfairly penalize credit unions by using investment risk weights to compensate for interest rate risk, which the commenter argued would create a bias towards lending and against investments. Other commenters, however, suggested that, in general, the revised risk weights for investments were reasonable, including the zero risk weighting for investments issued by the U.S. Government, including NCUA and FDIC. Some commenters suggested the 20 percent weight for government-sponsored enterprises (GSEs) seemed reasonable given that they are quasi-government entities.

The Board also received other comments regarding the risk weights assigned to the following particular investments:

Deposits in banks or credit unions. One commenter contended that the proposed risk weightings for investments were mute on weights for deposits in banks or credit unions. The commenter believed such deposits should have some level of risk weighting, at least for any uninsured amounts on deposit at banks and credit unions, because they can be a part of a smaller credit union's investment portfolio.

Part 703 compliant investment funds. At least one commenter objected to a default risk weight of 100 percent for part 703 compliant investment funds, and 300 percent for non-part 703 compliant funds. The commenter believed the 200 percent increase in a default risk weight would be punitive and would create a disadvantage for state-chartered credit unions. The commenter suggested there are several non-conforming, state-authorized investments that are not based in equities or other "volatile and risky investments" and that do not warrant a 300 percent risk weight. The commenter argued further that, by using part 703 as a threshold, the Board was assigning a significantly lower baseline assumption of risk on the basis of the regulator that approved the investment, which would single out state-chartered institutions and force them to undertake look-through calculations on their investments when federal charters may be able to rely on the default risk weight. The commenter recommended that the default thresholds be tied to the underlying holdings and investment strategy of the fund.

At least one commenter recommended that investment funds that hold only investments that qualify for a zero or 20 percent risk weight should receive a 20 percent risk weight regardless of whether the underlying investments are part 703 compliant.

One commenter complained that the proposed risk-weight categories for non-loan investments were too general, lumping together assets with widely varying risks, especially when considering risks beyond those tied to interest rate fluctuations. The commenter suggested that additional risk-weighting tools within categories were needed to properly take account of issuer- and security-specific issues for both debt and equity securities and non-part 703 compliant funds. The commenter speculated further that the proposed approach would discourage responsible employee benefit pre-funding by penalizing those investments, and provide incentives for excessively aggressive equity investing in pursuit of higher returns to offset the especially high reserve requirements. The commenter recommended that the baseline risk weights should be presumptive only, so that if a credit union can present good reasons why a lower risk weight should be assigned to its investments within a certain category, those lower weights should be applied going forward. Another commenter suggested that, while the proposed 100 percent risk weight assigned to all private issuer corporate debt is not a punitive level, there ought to be some ability for a credit union to demonstrate that the corporate debt it holds qualifies for a lower weighting, closer to the 20 percent for state and local debt, or the 50 percent for revenue bonds, which are limited for repayment to the revenue generated by a specific facility and thus often are in reality private issuer obligations. The commenter believed that a flat 100 percent weighting for all corporate debt takes no account of actual issuer-specific repayment risk, and could serve to distort reasonable investment decisions by credit unions looking to include such issues in their employee benefit pre-funding portfolios. The commenter recommended some issue/issuer-specific risk assessment be allowed to more rationally, precisely equal risk and risk weights.

Non-significant equity exposures. Several commenters suggested that banks are permitted to apply a 100 percent risk weight to certain equity exposures deemed non-significant. The commenters suggested further that non-significant exposures mean an equity exposure that does not exceed 10 percent of the bank's total capital. The commenters recommended that NCUA adopt a similar treatment if the publicly traded equities and equity allocation within an investment fund are less than 10 percent of a credit union's total capital; then a risk weight of 100 percent shall be applied to the equity exposure. The commenters suggested this would reduce the complexity of the look-through approach and simplify the overall risk-weighting process for non-significant equity exposure.

[138] The 1,250 percent risk-weight amount is based on holding capital dollar-for-dollar at the 8 percent adequately capitalized level for the risk-based capital ratio (8 percent adequately capitalized level *1,250 percent = 100 percent).

Community development investments. Several commenters suggested that OCC's risk-based capital regulation recognizes the importance of community development investments and assigns a risk weight of 100 percent rather than the standard 300 percent factor. The commenters suggested further that the public policy embraced by OCC with this allowance is to encourage investments to support charitable goals and purposes. Commenters recommended that NCUA embrace a similar policy and assign a risk weight of 100 percent for any equity or corporate bond exposure in a community development investment. The commenters suggested that such treatment would support broader participation by credit unions with community development investments and enhance the goodwill and reputation of the credit union industry as it builds an investment resource to support charitable contributions.

Employee benefit plan investments. Some commenters argued that the 300 percent risk weighting assigned to publicly traded equity investments should be much lower so that credit unions are not unduly limited in their investments for employee benefit funding. One commenter recommended that the Board continue to apply standard risk weights to benefit plan investments. The commenter contended that a 457(b) executive plan is unfunded and does not vest until the employee retires or terminates employment, and the assets underlying such plans generally must remain the property of the credit union until vested and are subject to the claims of general creditors. The commenter speculated further that, if the credit union is put into conservatorship, the investments never transfer to the employee. So, the commenter maintained, it is appropriate for the Board to risk weight such investments as part of the overall balance. The commenter expressed concern that it could be very difficult for NCUA to determine with certainty whether, and to what extent, the credit union held a risk of loss in connection with the investments because employee benefit plans can be tailored to fit the needs of each individual credit union and executive.

One commenter claimed risk weighting all publicly traded equities at 300 percent would be punitive and unjustified by real-world experience with a long list of blue-chip, dividend-paying, financially secure stocks regularly included in credit union client § 701.19 portfolios. The commenter suggested that, as with corporate debt, some tools must be offered to allow a credit union to obtain relief from the extremely high risk assessment for specific equity issues which are more secure than consumer loans in default, to which the proposal assigns a 150 percent risk weight. The commenter suggested further that relevant factors which could support a lowering of the risk weighting for specific equity investments include the issuer's debt rating, market capitalization and financial condition, history of dividend payments, and absence of financial defaults. The commenter speculated that imposing a blanket 300 percent risk weight on all public equity would create two negative, counterproductive incentives: First, it would discourage any public equity investments, driving down expected overall portfolio return and requiring investment of a larger amount of credit union funds to achieve a needed annual return tied to projected future benefit costs. Second, for those credit unions which do nevertheless include an equity component in their § 701.19 portfolios, there would be pressure to overcome the high reserve ratio by investing in higher-return, higher-risk equities, instead of more stable dividend-paying stocks. The commenter also maintained that the 300 percent risk weight assigned to pre-funded, non-part 703 compliant mutual funds, while subject to reduction under various look-through methods, was unjustifiably high in comparison to the other weights assigned to performing and even non-performing loans.

Publicly traded equity investments. One commenter recommended that all publicly traded equity investments be treated as either available for sale or trading. The commenter suggested that these two methods of accounting require the investment to be recorded at market value, which should be easily determined since they are publicly traded. Thus, the commenter argued, the 300 percent risk weight assigned under the Second Proposal would be excessive, especially given the amount of class B Visa shares held by a significant number of credit unions, and with the employee benefit funding allowed by § 701.19 of NCUA's regulations.

Non-agency ABS structured securities. One commenter suggested that collateral utilized to secure investments included in the non-agency ABS structured securities category could include automobile loans. Because the Second Proposal requires a risk weighting of 75 percent for all current secured consumer loans—and since the risk profile of the underlying collateral does not differ between secured automobile loans and non-agency ABS structured securities backed by secured auto loans—the commenter recommended the risk weightings for both instruments be set at 75 percent.

Subordinate tranche of any investment. At least one commenter complained that the Second Proposal would assign a risk weighting of 1,250 percent, or require the use of the gross-up approach to determine the overall weighting of this category of investment. The commenter argued that the 1,250 percent risk weighting was punitive in nature and could not be justified from a safety and soundness standpoint because it may appear to represent more than 100 percent of the monies at risk in any one investment.

At least one commenter also objected that, by not including the "simplified supervisory formula approach" [139] in the Second Proposal, the Board deprived credit unions of a measurement tool that is allowed by the Other Banking Agencies and the Basel Committee on Banking Supervision. The commenter argued that this could represent a competitive disadvantage to credit unions who are evaluating certain investments for inclusion in their strategies. Given the significance of the weighting and the exclusion of the evaluation method, the commenter recommended the 1,250 percent weighting should be eliminated and the Simplified Supervisory Formula Approach be utilized to determine the weighting of investment categories.

One commenter suggested that the Board assign the subordinate tranche of any investments the same risk weight that applies to commercial loans.

Corporate debt. Several commenters maintained that applying high risk weights to investments in the corporate system would penalize credit unions that invest within the industry. Commenters also suggested that the risk weights assigned to corporate paid-in capital should recognize how the stricter regulatory standards for corporate credit unions adopted in 2010 not only mitigate risks to natural-person credit unions, but also protect the NCUSIF from potential losses. Accordingly, some commenters recommended that a lower risk weight of 125 percent be assigned to corporate paid-in capital under the final rule.

One commenter suggested that it would be more reasonable to generally structure risk weights for corporate debt into tiers similar to that of municipal bonds because the proposed structure would make it costly to diversify and gain yield because the risk weights assigned would negate the added yield

[139] *See, e.g.,* 12 CFR 324.43.

of these bonds. The commenter insisted that, in order to preserve a credit union's ability to diversify and avoid concentration risk in agency or government bonds, more reasonable risk weights should be assigned to different forms of corporate debt. The commenter suggested one alternative option for structuring risk weights for corporate debt would be to create a four-tiered risk classification that would include investment grade and non-investment grade bonds. The commenter noted that the current definition is silent on whether bonds can be non-investment grade. The commenter suggested further that the investment grades could be broken down into high, medium and low investment grade plus non-investment grade for four tiers. According to the commenter, the high grade would be equivalent to an AAA rating, the medium grade would be equivalent to an A rating, the low grade would be equivalent to a BBB rating, and the non-investment grade would be non-investment grade. The commenter recommended these ratings be part of the credit union's internal ratings system for bonds, which would allow for lower risk weights for high-grade bonds at 50 percent, medium-grade bonds at 75 percent, and low-grade bonds at 100 percent.

Discussion

The Board disagrees with commenters who suggested that the proposal would unfairly penalize credit unions by using investment risk weights to compensate for IRR. The Board intentionally removed the weighted average life calculation from the assignment of risk weights to remove the IRR components from the Second Proposal. As stated above, the risk weights assigned to investments were based on credit risk, consistent with the risk weights assigned to investments by the Other Banking Agencies.

The Board disagrees with the commenters who claimed the proposed risk weights assigned to investments were mute on the weights for deposits in banks and credit unions. The Second Proposal assigned a risk weight of zero percent to insured balances from FDIC-insured depositories or federally insured credit unions. Uninsured balances, and all balances due from privately insured credit unions, were risk-weighted at 20 percent. Deposits in a bank that are guaranteed by a state received the same 20 percent risk weight as an investment in a PSE.

The Board disagrees with the commenters who suggested that a 300 percent risk weight for non-part 703 compliant investment funds would be punitive compared to the 100 percent risk weight for part 703 compliant investment funds. The Board chose to create standard risk weights for investment funds to allow credit unions a simple alternative to calculating the risk weights for such assets using the look-through approaches. Part 703 compliant investment funds were assigned a 100 percent risk weight under the Second Proposal unless they qualified for a lower risk weight because they were limited to holding lower risk-weighted assets. The Board determined that part 703 compliant investment funds should qualify for a maximum 100 percent risk weight under § 702.104(c)(2) because the underlying investments permitted under part 703 of NCUA's regulations were almost exclusively assigned a risk weight of 100 percent or less under the proposal. Non-part 703 investment funds, on the other hand, are potentially more risky, so assigning them a risk weight equivalent to the risk weight assigned to publicly traded equity investments is appropriate. Under the Second Proposal, credit unions were also given the option to calculate the risk weight for any investment fund using one of the look-through approaches, which allow a credit union to risk weight such a fund based on its underlying assets.

The Board disagrees with commenters who claimed the proposed risk weights were too general because they lumped together assets with widely varying risk, and those who suggested including additional risk-weight measures, such as taking into account the specific loan-to-value ratio or FICO scores of the underlying assets. As with loans, the risk weights assigned to investments were generally determined based on the underlying collateral or type of loan, and the relative credit risk. The Board chose not to apply separate risk weights to investments based on additional risk-weighting tools due to the complexity involved and the backward-looking nature of an analysis based on past performance. Adding risk-weighting factors within investment type categories would have been inconsistent with the approach taken by the Other Banking Agencies.

The Board also disagrees with commenters who suggested that credit unions should be able use lower risk weights if they are able to demonstrate that an investment should qualify for a lower-risk weight. Alternative and individualized risk weight mechanisms would be difficult and costly to implement consistently, and would be inconsistent with the Other Banking Agencies' regulations.

Several commenters recommended that the Board apply a 100 percent risk weight to non-significant equity exposures, which would be similar to the approach taken by the Other Banking Agencies. As discussed in more detail below in the part of the preamble associated with § 702.104(c)(3)(i), the Board generally agrees with commenters on this point and has amended this final rule to assign a 100 percent risk weight to non-significant equity exposures. This change is consistent with the Board's objective of assigning risk weights to assets that are similar to the Other Banking Agencies' regulations where the level of risk exposure does not create safety and soundness concerns.

The Board disagrees with commenters who suggested that lower risk weights should be applied to certain types of investments, such as corporate bonds and publicly traded equities, which are generally not available to federal credit unions, simply because they were purchased for employee benefit plans. In particular, several commenters argued that the 300 percent risk weight assigned to publicly traded equity investments should be much lower so that credit unions are not limited in their investments for employee benefits. The proposed risk weights were intended to be applied based on risk, not on use. And, consistent with commenters' suggestions on the Original Proposal, the Board assigned risk weights in a manner similar to the Other Banking Agencies' regulations unless the FCUA or a unique circumstance warranted a different risk weight be adopted. The 300 percent risk weight for non-part 703 compliant investment funds is appropriate when they are used to fund employee benefits because there are few limits on the investments in these types of funds. A credit union may, however, use one of the look-through approaches if the underlying assets have a risk weight of less than 300 percent. Accordingly, for these types of assets, the proposed risk weight reasonably reflects the risks associated with the types of assets available to fund employee benefit plans.

The Board disagrees with the commenter who suggested that a 300 percent risk-weight was excessive for publicly traded equity investments because they are treated as available for sale or trading and recorded at market value. The value at which an equity is recorded does not reflect the risk of loss and does not preclude an equity from losing a substantial amount of its value in the future. The lack of a maturity date, loss position, and unknown dividends make an equity riskier than many other types of assets.

The Board generally agrees with the commenter who suggested that a senior asset-backed security should have the same risk weight as a similar loan. Such an approach is consistent with the Other Banking Agencies' regulations and focuses on the risk of the underlying collateral. By applying the gross-up approach to a non-subordinated tranche of an investment, a credit union can risk weight a non-subordinated tranche of an investment with the same risk weight as if they had owned the loans directly. Accordingly, this final rule adds non-subordinated tranches of any investments to the 100 risk-weight category and gives credit unions the option to use the gross-up approach.

The Board disagrees with commenters who suggested that the proposed 1,250 percent risk weight was punitive for subordinated tranches of investments. Under the proposal, credit unions were given the option to use the gross-up approach to lower the risk weight of a subordinated tranche of an investment if it did not contain an excessively large amount of leverage. The 1,250 percent risk weight is a reasonable risk weight for subordinated tranches if the credit union is unable, or unwilling to use the gross-up approach. The risk weight is appropriate given the leveraged risk in subordinated tranches, and is consistent with the Other Banking Agencies' regulations.[140] As noted in the Second Proposal, the simplified supervisory formula approach for subordinated tranches permitted under the Other Banking Agencies' capital regulations was not included in the Second Proposal because of its complexity and limited applicability.

The Board also disagrees with commenters who suggested that subordinated tranches of investments should receive the same risk weight as commercial loans. Applying subordinated tranches of investments the same risk weights as commercial loans would likely fail to account for highly leveraged transactions, and would be inconsistent with the Other Banking Agencies' regulations. The Board also notes that, using the gross-up approach, low-risk subordinated tranches of certain investments could receive risk weights equal to or less than the risk weights assigned to commercial loans.

The Board disagrees with commenters who suggested that assigning high risk weights to investments in the corporate credit union system would penalize credit unions that invest within the industry. The proposed risk weights assigned to nonperpetual capital and perpetual contributed capital at corporate credit unions are 100 percent and 150 percent, respectively. The proposed risk weights were not intended to be a penalty or disincentive for holding any particular assets. Rather, the intent was to assign appropriate risk weights that adequately account for the risk associated with each particular asset. The risk weights for corporate capital investments did take into consideration the stricter regulations commenters cited when seeking lower risk weights. And as a result, this final rule assigns reasonable risk weights to corporate-capital investments given the stricter regulatory requirements applicable to corporate credit unions as compared to the higher risk weights associated with non-publicly traded equity investments under the Other Banking Agencies' regulations.

The Board disagrees with the commenter who suggested that the final rule should assign different risk-weight tiers in corporate debt, similar to municipal bonds. Under the Second Proposal, the risk weight assigned to a corporate debt was consistent with the risk weight assigned to an industrial development bond, which is a type of municipal bond. An industrial development bond is a security issued under the auspices of a state or other political subdivision for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest on the obligation. Typically the ultimate obligation of repayment of the industrial development bond is on a corporation. The 100 percent risk weight for corporate bonds is consistent with the risk weights assigned to industrial development bonds, a tier within municipal bonds, where the ultimate obligation of repayment is a corporate entity. The proposed risk weight for corporate debt is generally consistent with the Other Banking Agencies' regulations. The Board decided not to apply tiers within investment types due to the complexity and the inability to apply a standard and objective approach.

Consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which required agencies to remove all references to credit ratings, this final rule does not use credit ratings to determine risk weights for part 702.[141]

Commercial Loans

The Second Proposal assigned risk weights to commercial loans in a manner generally consistent with the Other Banking Agencies' capital regulations and the objectives of the Basel Committee on Banking Supervision.[142] The proposal set a single concentration threshold at 50 percent of total assets. Commercial loans that were less than the 50 percent threshold were assigned a 100 percent risk weight, and commercial loans over the threshold were assigned a 150 percent risk weight. Commercial loans that were not current were assigned a 150 percent risk weight.

	Commercial loan concentration (percent of total assets)				
	15%	20%	50%	75%	100%
Effective Capital Rate: [143]					
Current Rule	6.0	6.5	10.4	11.6	12.2
This Proposal	10.0	10.0	10.0	11.7	12.5

[140] NCUA estimates a *de minimis* number of investments would be subject to the 1,250 risk weight.

[141] Public Law 111–203, Title IX, Subtitle C, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

[142] This is comparable with the other Federal Banking Regulatory Agencies' capital rules. *See e.g.,* 12 CFR 324.32 (Assigns a 100 percent risk-weight for commercial real estate (CRE) and includes a 150 percent risk-weight for loans defined as high volatility commercial real estate (HVCRE)); 78 FR 55339 (Sept. 10, 2013); *and* Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards* (June 2006) (''In view of the experience in numerous countries that commercial property lending has been a recurring cause of troubled assets in the banking industry over the past few decades, Committee holds to the view that mortgages on commercial real estate do not, in principle, justify other than a 100 percent risk weight of the loans secured.'') *available at http://www.bis.org/publ/bcbs128.htm.*

[143] The effective capital rate represents the blended percentage of capital necessary for a given level of commercial loan concentration. The calculation uses 10 percent as the level of risk-based capital to be well capitalized.

Public Comments on the Second Proposal

A substantial number of commenters recommended that the risk weights for commercial loans be adjusted downward to levels no more than those in place for banks. Those commenters claimed credit unions do not have higher levels of risk associated with holding commercial loans than banks do. Commenters acknowledged that lower risk weights for higher concentrations of commercial loans would imply lower risk weights for lower concentrations of these loans compared to bank risk weights, but they insisted this disparity would be appropriate given lower loss rates at credit unions. One commenter recommended assigning a lower risk weight, of perhaps 50–75 percent, to secured commercial loans. The commenter explained that in locations where there is a market for certain types of commercial vehicles, a lower risk weight makes more sense. Another commenter recommended the following risk weights for commercial loans be assigned as an alternative: Credit card and other unsecured loans that are less than 50 percent of assets should be assigned a 100 percent risk weight, and such loans that are over 50 percent of assets should be assigned a 150 percent risk weight; new vehicle loans that are less than 50 percent of assets should be assigned a 50 percent risk weight, and such loans that are greater than 50 percent of assets should be assigned a 75 percent risk weight; used vehicle loans that are less than 50 percent of assets should be assigned a 75 percent risk weight, and such loans that are greater than 50 percent of assets should be assigned a 112 percent risk weight; first-lien residential real estate loans and lines of credit that are less than 50 percent of assets should be assigned a 75 percent risk weight, and such loans that are greater than 50 percent of assets should be assigned a 112 percent risk weight; all other real estate loans and lines of credit that are less than 50 percent of assets should be assigned a 100 percent risk weight, and such loans that are greater than 50 percent of assets should be assigned a 150 percent risk weight.

At least one commenter speculated that the vast majority of credit union member business loans have real estate as collateral, while commercial bank loans are typically collateralized with receivables, etc. The commenter noted that under the banking agencies' rules, commercial loans made by banks are assigned a 100 percent risk weight. The commenter argued, however, that NCUA's risk weight for member business loans should be lowered from 100 percent to 75 percent to account for the fact that credit union member business loans are safer than commercial loans made by banks.

Some commenters complained that the proposal did not account for the different types of commercial loans made by credit unions. Commenters also speculated that credit unions chartered for the purpose of making MBLs would be unfairly penalized under the proposal.

Discussion

The Board disagrees that concentration thresholds for commercial loans should vary based on the business purpose or underlying collateral. The Agency did not pursue the alternative commercial risk weights suggested by commenters because such alternatives would be extremely difficult to implement consistently across all credit unions. Utilizing specific commercial loan type or collateral loss history is not a reliable or consistent method for assigning risk weights in a regulatory model. Nor is it consistent with the Basel framework or the Other Banking Agencies' capital regulations. All commercial asset classes experience performance fluctuations with variations in business cycles. Some sectors that had historically experienced minimal losses are now pre-disposed to heightened credit risk. Both NCUA and FDIC have recently addressed these types of exposures in respective Letters to Credit Unions and Financial Institution Letters.[144]

Contemporary variances between bank and credit union losses on commercial loans are not substantial enough to warrant assigning lower risk weights to commercial loans held by credit unions. As stated in the Second Proposal, and as further clarified below using data to match the asset breakouts within the FDIC Quarterly Banking Profile, credit unions' commercial loan loss experience is comparable to community banks after adjusting for asset size. The recent loss experience for credit unions and banks is very similar.

3 YEAR AVERAGE LOSS HISTORY

[2012, 2013, 2014]

	Credit unions >$100M in assets	Banks $100M to $10B in assets	Banks $1B to $10B in assets
Commercial & Industrial[145]	....	0.61	0.42
Member Business Loans[146]	0.52		

Further, credit unions' long-term historical MBL losses are somewhat understated because NCUA's Call Report did not collect separate MBL data until 1992. Thus, significant MBL losses experienced in the late 1980s and early 1990s are not included in the long-term historical credit union MBL loss data.[147]

Residential Real Estate Loans

The Second Proposal assigned risk weights to residential real estate loans that are generally consistent with those assigned by the Other Banking Agencies.[148] The proposal set the first- and junior-lien residential real estate loan concentration thresholds at 35 percent and 20 percent of total assets respectively. Current first-lien residential real estate loans that were less than 35 percent of assets were assigned a 50 percent risk weight, and

[144] NCUA, *Taxi Medallion Lending,* Letter to Credit Unions 14–CU–06 (April 2014); FDIC, *Prudent Management of Agricultural Credits Through Economic Cycles,* Financial Institution Letter FIL–39–2014 (July 16, 2014).

[145] *See* Yearend FDIC Quarterly Banking Profiles 11 (2012, 2013, & 2014).

[146] *See* NCUA Financial Performance Report using year end data for credit unions with assets greater than $100 million.

[147] NCUSIF losses from MBLs are a recurring historical trend. The U.S. Treasury Report on Credit Union Member Business Lending discusses 16 credit union failures from 1987 to 1991 that cost the NCUSIF over $100 million. *See* Department of the Treasury, *Credit Union Member Business Lending* (Washington, DC January 2001).

[148] *See, e.g.,* 12 CFR 324.32(g).

those equal to or greater than 35 percent of assets were assigned a 75 percent risk weight. Current junior-lien residential real estate loans that were less than 20 percent of assets were assigned a 100 percent risk weight, and those equal to or greater than 20 percent of assets were assigned a 150 percent risk weight.

PROPOSED RESIDENTIAL REAL ESTATE LOAN CONCENTRATION THRESHOLDS AND RISK WEIGHTS

	50%	75%	100%	150%
First-Lien	Current <35% of Assets	Current ≥35% of Assets.		
Junior-Lien			Current <20% of Assets	Current ≥20% of Assets.

In addition, under the Second Proposal, first- and junior-lien residential real estate loans that are not current were assigned 100 percent and 150 percent risk weights, respectively.

Public Comments on the Second Proposal

A majority of the commenters who mentioned these loans recommended that the concentration risk component be removed entirely from the risk weights for first- and junior-lien residential real estate loans. One commenter expressed concern that the high risk weights assigned to certain first-lien residential real estate loans and certain junior-lien residential real estate loans could negatively impact mortgage lending in the communities served by credit unions. The commenter argued that the proposal did not appear to address the underlying attributes of the mortgages nor the degree in which they may be match funded, which could thereby restrict lending and curtail profitability and capital growth at well managed, risk-averse credit unions. Accordingly, the commenter recommended that the Board reconsider and revise the risk weights for mortgage loans held on balance sheet to be more consistent with the requirements of the Other Federal Banking Agencies. Similarly, a substantial number of credit union commenters suggested that the risk weights for mortgage loans be adjusted downward to levels no more than those in place for banks because they claimed credit unions do not have higher levels of risk associated with holding these assets. Another commenter argued that the risk weights assigned to real estate loans were arbitrary because: (1) The vast majority of MBLs are collateralized with real estate at a loan-to-value ratio of 75 percent or less; (2) the vast majority of home equity loans are first mortgages with a loan-to-value ratio of 80 percent or less; and (3) some increased risk is associated with junior lien mortgages, but it is not extensive or widespread. Yet another commenter suggested that the final rule assign risk weights to these assets by including a study of loss history and the market where a credit union operates.

Several commenters recommended further that consideration be given to incorporating loan-to-value ratios, credit scores, salability of the loan to secondary mortgage market participants, and the size of loans in the proposed risk weighting. One commenter suggested that both junior- and first-lien residential real estate loans amortize over time, lessening their credit risk profile, and in the case of junior liens, over time they can become first liens, at which point the risk weightings become too conservative. The commenter maintained that this reduction in risk was not accounted for under the Second Proposal.

One commenter suggested that the Board consider lower risk weightings for loans with private mortgage insurance or government guarantees.

One commenter suggested that one-to-four-family non-owner occupied real-estate-backed loans should be treated as a separate category and not count toward the premium of 75 percent risk weight when real estate loans comprise over 35 percent of assets. From a concentration risk standpoint, commercial loans are already limited by a statutory cap under the FCUA at 12.25 percent for the majority of credit unions.

Some commenters argued that the proposal would exacerbate the burden and costs credit unions are already facing under the Dodd-Frank Act regulations by requiring higher levels of capital for those credit unions that hold first-lien residential real estate loans in excess of 35 percent of total assets. Those commenters speculated that the increased capital cost based upon concentration risk will put credit unions at a competitive disadvantage to other financial institutions that do not have higher risk weightings for holding higher concentrations of loans.

Similarly, some commenters argued that the proposal would exacerbate the burden and costs credit unions are already facing under the Dodd-Frank Act regulations by requiring higher levels of capital for those credit unions that hold junior-lien residential real estate loans in excess of 20 percent of total assets. Those commenters maintained that the increased capital cost based upon concentration risk puts credit unions at a competitive disadvantage to other financial institutions that do not have higher risk weightings for holding higher concentrations of loans.

Discussion

The Board has considered the comments received, but, as stated in the proposal, the contemporary variances between bank and credit union losses on real estate loans are not substantial enough to warrant assigning lower risk weights. As stated in the Second Proposal and as further clarified below using data to match the asset breakouts within the FDIC Quarterly Banking Profile, credit unions' real estate loss experience is comparable to community banks after adjusting for asset size.

3 YEAR AVERAGE LOSS HISTORY [149]

[2012, 2013, 2014]

	Credit unions >$100M in assets	Banks $100M to $10B in assets	Banks $1B to $10B in assets
All real estate loans	0.33	0.36	0.38

[149] *See* yearend FDIC Quarterly Banking Profiles for 2012, 2013, and 2014, page 11 and NCUA Financial Performance Report (FPR) using year end data for credit unions with assets greater than $100 million.

3 YEAR AVERAGE LOSS HISTORY [149]—Continued

[2012, 2013, 2014]

	Credit unions >$100M in assets	Banks $100M to $10B in assets	Banks $1B to $10B in assets
Other 1–4 family residential loans	....	0.30	0.37
First mortgage loans	0.24		
Home equity loans	....	0.52	0.51
Other real estate loans	0.63		

Higher capital requirements for concentrations of real estate loans exist in the current rule, and completely eliminating them would be a step backwards in matching risks with minimum risk-based capital requirements. Credit unions with high real estate loan concentrations are particularly susceptible to changes in the economy and housing market.

NCUA currently reviews credit concentrations during examinations as commenters recommended. As discussed in the summary section, however, the FCUA requires that NCUA's risk-based capital requirement account for material risks that the 6 percent net worth ratio may not provide adequate protection, including credit and concentration risks.[150]

Credit concentration risk can be a material risk under certain circumstances. The Board generally agrees that CFPB's new ability-to-repay regulations should improve credit quality. However, the extent to which this will alter loss experience rates remains to be seen.

NCUA has also been advised by its OIG and GAO to address credit concentration risk. NCUA's OIG completed several MLRs where failed credit unions had large real estate loan concentrations. The NCUSIF incurred losses of at least $25 million in each of these cases. The credit unions reviewed held substantial residential real estate loan concentrations in either first-lien mortgages, home equity lines of credit, or both.[151] In addition, in 2012, GAO recommended that NCUA address the credit concentration risk concerns raised by the NCUA OIG.[152] The 2012 GAO report notes credit concentration risk contributed to 27 of 85 credit union failures that occurred between January 1, 2008, and June 30, 2011. The report also indicated that the Board should revise NCUA's PCA regulation so that the minimum net worth levels required under the rule emphasize credit concentration risk. So eliminating the concentration dimension for risk weights entirely would be inconsistent with the concerns raised by GAO and the MLRs conducted by NCUA's OIG.

The proposed risk weights would not slow residential real estate loan origination, stifle homeownership, or limit credit unions' ability to assist low-income members because the revised risk weights provide credit unions with continued flexibility to assist members in a sustainable manner while maintaining sufficient minimum capital.

The Board agrees with commenters that credit scores, loan underwriting, portfolio seasoning, and portfolio performance are appropriate measures to evaluate a specific credit union's residential real estate lending program. However, broadly applicable regulatory capital models are portfolio invariant. This means the capital charge for a particular loan category is consistent among all credit union portfolios based on the loan characteristics, rather than an individual credit union's portfolio performance or characteristics. Taking into account each credit union's individual characteristics would be too complicated for many credit unions and unwieldy for NCUA to enforce minimum capital requirements.[153] Further, such an approach would not be comparable to the risk weight framework used by the Other Banking Agencies.

NCUA will continue to take into account loan underwriting practices, portfolio performance and loan seasoning as part of the examination and supervision process. This method of review is consistent with the Basel three-pillar framework: Minimum capital requirements, supervisory review, and market discipline.[154] Credit unions should use criteria from their own internal risk models and loan underwriting in developing their internal risk management systems.

The Board likewise agrees LTV ratios are an informative measure to assess risk. However, it is not a practical measure to assess minimum capital requirements because of volatility in values and the corresponding reporting burden for credit unions. There is no historical data across institutions upon which to base varying risk weights according to LTVs and other underwriting criteria (such as credit scores). Examiners take LTVs into consideration during the examination process. Supervisory experience has demonstrated LTV verification requires on-site review and application of credit analytics to validate the most current information. On-site review also minimizes reporting requirements on credit unions.

Junior-lien residential real estate loans continue to warrant a higher risk weight based on loss history. Call Report data indicate credit unions over $100 million in asset size reported nearly three times the rate of loan losses (0.63 percent) on other real estate loans [155] when compared to first mortgage real estate loans (0.24 percent) during the past three years. The final base risk weight for junior-lien residential real estate loans is comparable to the risk weight assigned by the Other Banking Agencies.[156]

[150] *See* 12 U.S.C. 1790d(d)(2).

[151] *See* NCUA, *Material Loss Review of Cal State 9 Credit Union,* OIG–10–03 (April 14, 2010); NCUA, *Material Loss Review OF Beehive Credit Union,* OIG–11–07 (July 7, 2011); *and* NCUA, *Material Loss Review OF Ensign Federal Credit Union,* OIG–10–15 (September 23, 2010), *available at http://www.ncua.gov/about/Leadership/CO/OIG/Pages/MaterialLossReviews.aspx.*

[152] *See* U.S. Govt. Accountability Office, *Earlier Actions are Needed to Better Address Troubled Credit Unions,* GAO–12–247 (2012), *available at http://www.gao.gov/products/GAO-12-247.*

[153] Basel Committee on Banking and Supervision, *An Explanatory Note on the Basel II IRB Risk Weight Functions* (July 2005), *available at http://www.bis.org/bcbs/irbriskweight.htm* (''The model should be portfolio invariant, *i.e.* the capital required for any given loan should only depend on the risk of that loan and must not depend on the portfolio it is added to. This characteristic has been deemed vital in order to make the new IRB framework applicable to a wider range of countries and institutions.'').

[154] Basel Committee on Banking Supervision, *International Convergence of Capital Measurement and Capital Standards* (June 2006), *available at http://www.bis.org/publ/bcbs128.htm* (''The Committee notes that, in their comments on the proposals, banks and other interested parties have welcomed the concept and rationale of the three pillars (minimum capital requirements, supervisory review, and market discipline) approach on which the revised Framework is based.'').

[155] Junior-lien real estate loans are currently reported on the Call Report as part of ''other real estate loans.''

[156] *See, e.g.,* 12 CFR 324.32(g)(2).

Current Consumer Loans

Consumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services.[157] Under the Second Proposal, a current secured consumer loan received a risk weight of 75 percent, and a current unsecured consumer loan was assigned a 100 percent risk weight.

Public Comments on the Second Proposal

One commenter claimed the risk weightings assigned to secured and unsecured consumer loans at credit unions would be more restrictive than the comparable risk weightings applicable to community banks. To remain competitive, the commenter recommended that the proposed risk weights should be changed to be more in line with Basel III instead of being more restrictive. Other commenters argued that based on the historical performance of credit unions in managing consumer loan risk, the Board should assign a 50 percent risk weight to secured consumer loans and a 75 percent risk weight to unsecured consumer loans. These commenters speculated that if the risk weights proposed for consumer loans were adopted, some credit unions would have to reduce the services they are currently able to provide to members.

Discussion

The Board disagrees with the commenter who claimed the proposed risk weight assigned to consumer loans that are current is more restrictive than the corresponding risk weight assigned to such loans for community banks. The risk weight for secured consumer loans in the Second Proposal and in this final rule is 75 percent, which is less than the 100 percent risk weight assigned to such loans held at community banks under the Other Banking Agencies' regulations. The risk weight for unsecured consumer loans that are current is identical to the corresponding risk weight for such loans held at community banks.

Comparisons of historical losses on consumer loans between credit unions and banks is difficult due to differences in Call Report data, but generally the difference in historical performance measured by loss history is not significant. Accordingly, the Board has decided to maintain the consumer loan risk weights contained in the Second Proposal.

Non-Current Consumer Loans

The risk-based net worth measure in NCUA's current PCA regulation does not assign a higher risk weight to non-current consumer loans. Increasing levels of non-current loans, however, are an indicator of increased risk. To reflect the impaired credit quality of past-due loans, the Second Proposal required credit unions to assign a 150 percent risk weight to loans (other than real estate loans) that are 90 days or more past due, in nonaccrual status, or restructured.

Public Comments on the Second Proposal

One commenter suggested that consumer loans that are not current (90 days past due), could be assigned a 100 percent risk weight, instead of a 150 percent risk weight, given the historically low default rate of these loan types, strong underwriting and possible further protection by underlying collateral. At least one commenter maintained that with ALLL calculations already in place to account for higher charge offs, the proposed risk weight for non-current loans would be unnecessarily high and would ultimately hurt credit union members. Other commenters speculated that the proposed risk weights would force credit unions to pull back lending to low-income communities for fear of carrying delinquent (non-current) loans at elevated risk weightings.

Discussion

The proposed risk weight of 150 percent is warranted because non-current consumer loans have a higher probability of default when compared to current consumer loans. Non-current consumer loans are more likely to default because repayment is already impaired, making them one step closer to default compared to current consumer loans. As stated in the Second Proposal, the Board assigned a higher risk weight on past-due exposures to ensure sufficient regulatory capital for the increased probability of unexpected losses on these exposures, which results in a risk-based capital measure that is more responsive to changes in the credit performance of the loan portfolio. The higher risk weight will capture the risk associated with the impaired credit quality of these exposures. Moreover, the 150 percent risk weight is consistent with the risk weights used under Basel III and the Other Banking Agencies.[158]

The Board disagrees with commenters who speculated that the proposed risk weights would limit credit unions' ability to assist low-income members. The removal of the ALLL cap will reduce the impact of non-current loans to the risk-based capital ratio.

Accordingly, this final rule retains the 150 percent risk weight for consumer loans that are not current.

Loans to CUSOs, and CUSO Investments

Under the Second Proposal, investments in CUSOs were assigned a risk weight of 150 percent and loans to CUSOs were assigned a risk weight of 100 percent.

Public Comments on the Second Proposal

Commenters generally maintained that the proposed risk weight for investments in CUSOs was too high. A majority of the commenters who mentioned it suggested that the risk weight for CUSO investments was too high and should be the same as for CUSO loans, or less. A substantial number of commenters argued that given the unique position of CUSOs as cooperative cost-saving structures in the credit union system, the Board should use its statutorily granted discretion to draw distinctions between CUSOs and private equity investments held by banks. Commenters maintained that not only must CUSOs provide NCUA with open access to their books and records, but CUSOs will be required to register directly with NCUA and, if complex, report audited financial statements and customer information.[159] Commenters reasoned that this heightened supervisory oversight compared to general investment exposures, combined with the limits on credit union investment powers, makes a 100 percent risk weight more appropriate. The commenters suggested further that, given the limits on credit union investment powers, the vast majority of credit unions with unconsolidated equity investments in CUSOs would fall within the ''non-significant'' exception under the banking regulations for investments aggregating less than 10 percent of total assets, and would receive a 100 percent risk weight. Therefore, the commenters reasoned, adjusting the CUSO investment weighting to 100 percent would better reflect the role of CUSOs in the credit union industry while still aligning in practice with treatment of similar exposures in banks.

Other commenters stated that they supported the proposed treatment of

[157] Per Call Report data for years ending December 31, 2012, 2013, and 2014, consumer loans were greater than 40 percent of loans in credit unions with total assets greater than $100 million.

[158] *See, e.g.,* 12 CFR 324.32(k).

[159] 12 CFR part 712; *and* 12 CFR 741.222.

consolidated CUSO investments and loans in which no separate risk weighting would apply. One commenter suggested that, if GAAP is followed for the valuation of CUSOs, the proper valuation of the asset should allow for the lowering of the risk weight from the proposed 150 percent risk weight. Several commenters contended that the 150 percent risk weight assigned to unconsolidated CUSO investments, which applies to the accumulated and undistributed earnings of these CUSOs under GAAP, is inappropriate because it would require credit unions to set aside additional capital, beyond what they initially invested, to cover retained earnings to support future growth of these CUSOs. These commenters recommended that the Board reduce the risk weight to 100 percent, or, if not lowered, to risk weight only the initial investment by the credit union and not the appreciation of that investment over time.

One commenter argued that the risk weight assigned to unconsolidated investments in CUSOs would be counter-productive. The commenter claimed that the Board presented only anecdotal and unsubstantiated references to what it considers ''substantial CUSO losses'' over the last decade as justification for CUSO regulations and assigning a 150 percent risk weight to CUSO investments. The commenter contended that no detailed statistics have been provided to justify these losses as substantial, and the commenter would challenge any such claim because they were not able to substantiate any losses of a significant nature through credit union investment in CUSOs over the past 10 years. The commenter recommended the Board investigate the industry benefits of CUSOs and the relatively immaterial level of CUSO investment impact on the NCUSIF before finalizing the current proposed risk weights for CUSO investments.

Other commenters suggested that assigning a 150 percent risk weight to multi-credit union owned CUSOs, which are important collaborative tools for credit unions, is not reflective of the actual systemic risk CUSOs pose. The commenters explained that, overall, based on 2014 data, federally insured credit unions in total have less than 22 basis points of their assets invested in CUSOs, including fully consolidated CUSO investments. Therefore, the commenters asserted, CUSO investments are not a systemic risk to the NCUSIF.

One commenter pointed out that the proposal stated that the risks associated with CUSOs are similar to the risks associated with third-party vendors. However, the commenter could not find any references in the proposal that would account for the risks posed by non-CUSO third-party vendors. The commenter claimed that only CUSOs were singled out for their supposed risk, and argued that was not adequate justification for the risk weight assigned to CUSO investments.

Some commenters argued that the proposal cited FDIC's capital regulation in saying that risk weights should be set based on the risk of loss and not the size of exposure. Those commenters suggested, however, that FDIC agrees that non-significant investment exposures in unconsolidated equity of a privately held company should be risk weighted at 100 percent. The commenters recommended the Board look deeper into the FDIC definition of ''non-significant'' and how it translates to unconsolidated CUSO investments. In the commenters' opinion, the statutory and regulatory structure of CUSO investments make such investments non-significant using the FDIC definition, and thereby should be assigned only a 100 percent risk weight.

One commenter suggested that investments in CUSOs should carry a 100 percent risk weighting based on the following risk-mitigating factors: (1) GAAP requires credit unions to evaluate the asset for potential impairment; (2) the majority of CUSOs are limited liability corporations (LLCs) and the credit union would be protected under the LLC structure; and (3) the stated purpose of NCUA's CUSO rule is to reduce risk exposure to credit unions. Another commenter suggested that investments in and loans to CUSOs should be equally risk weighted. The commenter recommended assigning a 75 percent risk weight due to the expertise that is brought to the business strategy within the relevant business model that they are operating within and to encourage the use of the cooperative business model. Other commenters suggested that CUSOs should be risk weighted based on type: Operational CUSOs should receive a 50 percent risk weight, fee-generating CUSOs should receive a zero percent risk weight, and start-up CUSOs should receive a 100 percent risk weight.

Several commenters suggested that instead of assuming that all CUSOs are inherently risky, the proposal should be primarily concerned with the riskiness of the services provided by a CUSO and how dependent a credit union is on CUSO investments. One commenter suggested that in order to minimize the impacts of the proposal, CUSOs would be required to give excess earnings back to the credit unions to reduce their CUSO exposure. This would result in reduced services for the credit union.

Discussion

The Board has carefully considered the comments received. As discussed in more detail below in the part of this preamble associated with § 702.104(c)(3)(i), under this final rule a credit union's investments in CUSOs will receive a 100 percent risk weight if the credit union has non-significant equity exposures.[160]

The Board relied on GAAP accounting standards to determine the reporting basis upon which any CUSO equity investments and loans are assigned risk weights. For CUSOs subject to consolidation under GAAP, the amount of CUSO equity investments and loans are eliminated from the consolidated financial statements because the loans and investments are intercompany transactions. The related CUSO assets that are not eliminated are added to the consolidated financial statement and receive risk-based capital treatment as part of the credit union's statement of financial condition. For CUSOs not subject to consolidation, the recorded value of the credit union's equity investment would be assigned a 100 percent risk weight if its equity exposures are non-significant or a 150 percent risk weight if its equity exposures are significant, and the balance of any outstanding loan would be assigned a 100 percent risk weight.

NCUA recognizes the uniqueness of CUSOs and the support they provide to many credit unions. However, an equity investment in a CUSO is an unsecured, at-risk equity investment in a first loss position, which is analogous to an investment in a non-publicly traded entity. There is no price transparency and extremely limited marketability associated with CUSO equity exposures. In addition, unlike the Other Banking Agencies, NCUA has no enforcement authority over third-party vendors, including CUSOs.

The Board recognizes there are statutory limits on how much a federal credit union can loan to and invest in CUSOs. However, the limitations are not as stringent for some state charters, and only binding for federal credit unions at the time the loan or investment is made. The position can grow in proportion to assets over time. In setting capital standards (such as Basel and FDIC), the risk of loss—not the size of the

[160] A credit union has ''non-significant equity exposures'' if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator.

exposure—is central to determining the risk weight. In addition, while a CUSO must predominantly serve credit unions or their members (more than 50 percent) to be a CUSO, it can be owned and controlled primarily by persons and organizations other than credit unions. Therefore, it may not only serve non-credit unions, it can be majority-controlled by a party or parties with interests not necessarily aligned with the credit union's interests.[161]

The Second Proposal noted that the risk weight should be higher than 100 percent given that an equity investment in a CUSO is in a first loss position, is an unsecured equity investment in a non-publicly traded entity, the significant history of losses to the NCUSIF related to CUSOs, and the fact NCUA lacks vendor authority. Loans to CUSOs, on the other hand, have a higher payout priority in the event of bankruptcy of a CUSO and therefore warrant a lower risk weight of 100 percent, which corresponds to the base risk weight for commercial loans. It may be possible, however, to make more meaningful risk distinctions in the future between the risk various types of CUSOs pose once NCUA's CUSO registry is in place and sufficient trend information has been collected.

Under the Second Proposal, the risk weights were derived from a review of FDIC's capital treatment of bank service organizations. FDIC's rule looks across all equity exposures.[162] If the total is ''non-significant'' (less than 10 percent of the institution's total capital), the entire amount receives a risk weight of 100 percent. Otherwise, all the exposures are matched against a complicated risk weight framework that runs from a minimum of 250 percent to 600 percent risk weight, with some subsidiary equity having to be deducted from capital. Under the Other Banking Agencies' regulations, an equity investment in a CUSO would be treated the same as an equity investment in a non-publicly traded entity (with limited marketability and valuation transparency), which would receive a 400 percent risk weight unless the cumulative level of all equity exposures held by the institution were non-significant.

The Board recognizes the complexity of FDIC's approach and believes that a simplified lower-risk-weight approach is appropriate when the entire amount of equity exposures within the credit union are not significant.

Accordingly, this final rule retains the proposed 100 percent risk weight assigned to loans to CUSOs, and retains the 150 percent risk weight assigned to investments in CUSOs if the equity exposure is significant. As discussed in more detail below, however, this final rule reduces the risk weight assigned to investments in CUSOs to 100 percent for complex credit unions with non-significant equity exposures.

Mortgage Servicing Assets (MSAs)

The Second Proposal would have assigned a 250 percent risk weight to MSAs to address the complexity and volatility of these assets.

Public Comments on the Second Proposal

A significant number of commenters maintained that the 250 percent risk-weight assigned to MSAs would reduce the ability of credit unions to grant mortgage loans, engage in loan participations, and retain servicing of their member loans, and that it would likely also prevent credit unions from using mortgage servicing rights as a hedge against future rate changes. Accordingly, they argued the proposed risk weighting for MSAs, which would be the same as for banks, would be too high and should be significantly lower. One commenter suggested that, because much of the risk associated with holding MSAs relates to the volatility of their market value with changes in interest rates, credit unions that book MSAs at, or close to, their current market value are at a greater risk of loss in a falling interest rate scenario. One commenter suggested further that those institutions that book MSAs more conservatively have a built-in book-to-market value cushion to absorb normal downward fluctuations in market value and are in a better position to recapture their investment over a shorter period of time. The commenter stated that in a rising-rate environment, the value of MSAs and the corresponding cushion grow and the risk declines. Consequently, the commenter contended, a flat 250 percent in all circumstances would be punitive for those credit unions that conservatively book MSAs, particularly in a low-interest-rate or low-refinance environment. The commenter maintained that it is important to note that the operational risks associated with MSAs are not avoided by holding originated mortgage loans in portfolio, yet the risk weights of portfolio mortgage loans varies from 50 percent to 75 percent, despite the fact that such assets are burdened with a multitude of other risks not inherent in MSAs.

One commenter observed that for sound asset, liability, and liquidity management purposes, some credit unions sell nearly all of their mortgage loan production into the secondary market and retain a sizable portion of the servicing rights for member service and risk mitigation purposes, the latter in terms of the stability of earnings from the aggregate of mortgage-related activities over time. The commenter maintained that these credit unions' MSA-portfolio market values are evaluated independently each quarter, with the market value consistently representing more than the stated book values, representing sizable off-balance sheet assets. The commenter recommended that the risk weight for MSAs be based on a reasonable formula related to the ratio of book value to market value and in any case not exceed a 75 percent risk weight.

Several commenters argued that MSAs are salable and, consistent with GAAP, they are evaluated for potential impairment. Accordingly, they argued MSAs should be assigned a risk weight of 100 percent. One commenter suggested that the risk weight for MSAs should be no more than 150 percent. Another commenter suggested that MSAs should be assigned the same risk weight that is assigned to mortgage loans held in portfolio and that are under 35 percent of assets. At least one commenter recommended that, if a 250 percent risk weight is adopted for MSAs, a lower risk weight of 100 percent should be assigned to MSAs on loans sold without recourse, but that are serviced by the credit union.

Other commenters suggested that if a credit union is following GAAP, it must record mortgage servicing as an asset that then requires a valuation be done every year, and if as an asset it does not meet the actual valuation reflected it must be written down to the audited value.

One commenter argued that weighting MSAs at 250 percent would penalize those credit unions who lowered their interest rate risk on their balance sheet by selling their longer-term, fixed-rate real estate loans. Another commenter suggested that the 250 percent risk weight would pressure credit unions to sell the servicing rights on mortgages they originate, effectively forcing credit unions to end a significant member relationship many credit unions have with their members, in order to manage interest rate risk.

[161] Further, not all CUSOs are closely held. They can have wider ownership distributed among many credit unions, none of which may have significant control. If a particular credit union has significant control, it will likely have to consolidate under GAAP and then there will be no risk weight associated with the loan or investment for the controlling credit union since it will be netted out on a consolidated basis.

[162] *See, e.g.,* 12 CFR 324.52.

One commenter claimed that MSAs only have two significant risks associated with them: (1) Prepayment penalties, and (2) operational/reputational risk. Both risks, the commenter suggested, are relatively easily mitigated because prepayment risk can be mitigated by maintaining a viable origination pipeline, and operational/reputational risk can be mitigated by maintaining a good system of internal controls. Moreover, the commenter argued MSAs provide a significant, reliable source of fee revenue for many credit unions, which is generated from fees that are paid by investors, not by members.

Discussion

The 250 percent risk weight factors in the relatively greater risks inherent in MSAs, and maintains comparability with the risk weight assigned to these assets by the Other Banking Agencies.[163] As noted in the preamble to the Second Proposal, MSAs typically lose value when interest rates fall and borrowers refinance or prepay their mortgage loans, leading to earnings volatility and erosion of capital. MSA valuations are highly sensitive to unexpected shifts in interest rates and prepayment speeds. MSAs are also sensitive to the costs associated with servicing. These risks contribute to the high level of uncertainty regarding the ability of credit unions to realize value from these assets, especially under adverse financial conditions, and support assigning a 250 percent risk weight to MSAs.

While the Board agrees with commenters that MSAs may provide some hedge against falling rates under certain circumstances, MSAs' effectiveness as a hedge, relative to particular credit unions' balance sheets, is subject to too many variables to conclude that MSAs warrant a lower risk weight. More importantly, since IRR has been removed from the risk weights of this proposal, the commenters' argument is no longer directly applicable.

NCUA does not agree with commenters who speculated that the proposed 250 percent risk weight assigned to this relatively small asset class would significantly dis-incentivize credit unions from granting loans, engaging in loan participations, and retaining servicing of their member loans. NCUA notes that banks have been subject to at least as stringent (if not more stringent) risk weights for MSAs for some time and continue to sell loans and retain MSAs.

[163] *See, e.g.,* 12 CFR 324.32(l)(4)(i).

The January 1, 2019 effective date for this final rule provides credit unions more than three years to adjust to these new requirements and provides credit unions with a phase-in period comparable to that given to banks following a similar change to the Other Banking Agencies' capital regulations.[164]

Other On-Balance Sheet Assets

The Second Proposal assigned specific risk weights to additional asset classes, which are discussed in more detail below. Under the proposal, all assets listed on the statement of financial condition not specifically assigned a risk weight under proposed § 702.104 were assigned a 100 percent risk weight.[165]

Public Comments on the Second Proposal

The Board received several comments regarding the proposed risk weights for other on-balance sheet assets.

Some commenters opposed the Second Proposal's risk weighting of 20 percent for share-secured loan balances and member business (commercial) loans secured by compensating balances. By contrast, the commenters observed the comparable risk weight for community banks is zero percent if the cash is on deposit in the bank, which is appropriate given there is no risk. Thus, the commenters recommended that loan balances secured by shares or compensating balances on deposit at the originating credit union be reduced to a zero percent weighting, and loan balances secured by compensating balances on deposit at another financial institution be weighted at the proposed 20 percent.

One commenter agreed that the Board's efforts to align the risk-based capital regulation more closely with the Other Banking Agencies' regulations were appropriate. The commenter suggested that, absent a compelling rationale for different treatment between the two systems, regulators should strive to maintain equal treatment for equal risks in all depository institutions. The commenter also recommended that principal-only STRIPS be risk-weighted based on the underlying guarantor or collateral.

Some commenters suggested that imposing risk-based capital limitations on charitable donation accounts would contravene the appeal for credit unions to put money into these investments to fund charitable activities. Those commenters recommended that the Board amend the final rule to do one of the following: (1) Exempt CDAs from the risk-based capital regulation because the Board effectively balanced safety and soundness with effectuating credit unions' charitable intent when it passed the CDA regulation; (2) Assign a 100 percent risk weight to any equity or corporate bond exposure in a CDA investment; (3) Apply a 100 percent risk weight to non-significant equity exposures because banks are permitted to apply a 100 percent risk weight to certain equity exposures deemed non-significant. Those commenters suggested that such treatment would support broader participation by credit unions with community development investments and enhance the goodwill and reputation of the credit union industry as it builds an investment resource to support charitable contributions.

One commenter maintained that the Second Proposal would require a credit union to reduce its capital (in the numerator) by the amount of the underfunded portion of the pension plan, but was silent on how to reflect an overfunded pension asset. The commenter recommended that NCUA provide specific guidance on the treatment of an overfunded pension asset. Specifically, the commenter recommended the Board eliminate the inconsistent treatment by removing the overfunded pension asset from both the numerator and the denominator.

A state supervisory authority commenter requested clarification on the risk weighting treatment of credit union deposits in the Bank of North Dakota. The commenter noted that the Bank is state-owned, and its deposits are neither federally nor privately insured, but are backed by a guarantee from the State of North Dakota. The commenter acknowledged it is a unique institution, and thus was unsure which risk weighting would apply to the deposits. The commenter suggested the deposits are low risk due to the guarantee by the state, and recommended it be afforded a 20 percent or lower weighting.

At least one commenter recommend that the Board define auto and credit card servicing assets and assign them risk weights consistent with the risk weighting assigned to mortgage servicing assets.

One commenter contended that the ''full look-through'' approach described under the Second Proposal failed to apply risk weights to mutual fund investments in a consistent manner to the holding of the same securities by

[164] *See, e.g.,* 12 CFR 324.1(f).

[165] This is comparable to the Other Banking Agencies' capital rules, which maintained the 100 percent risk weight for assets not assigned to a risk weight category. *See, e.g.,* 12 CFR 324.32; *and* 78 FR 55339 (Sept. 10, 2013).

credit unions directly. The commenter explained that, for example, a credit union that holds ''U.S. Treasuries and Government Securities'' would assign a risk weight of zero percent to such holdings. By contrast, an investment fund, with similar U.S. Treasuries and Government Securities, would have a risk weight of 20 percent assigned to this asset. The commenter suggested this disparity in the treatment of the same asset when held by two different entities unnecessarily discriminates against a credit union's investments in mutual funds by penalizing the credit union for making the same investment indirectly that they could otherwise make directly. The commenter suggested further that the added layer of risk that the Second Proposal assumed will be present for indirect investments is not a factor with mutual funds, because they provide daily redemption at net asset value and generally provide sold share proceeds to the investor on the next business day. The commenter recommended that the Board revise the rule so that mutual fund risk weights are consistent with the risk weights on the underlying instruments. The commenter also recommended that the Board adopt a full look-through approach that is attuned to the distinctions between underlying assets that would allow low-risk mutual funds to carry risk ratios ranging between zero percent and 20 percent based upon the actual risk ratio of their holdings.

One commenter suggested that the proposal was silent on how to risk weight loans held for sale, and recommended the Board assign a risk weight of 25 percent to loans held for sale.

At least one commenter suggested that, under the Second Proposal, current non-federally insured student loans would be assigned a 100 percent risk weight, despite other potential sources of insurance. The commenter asked whether there should be a distinction, at least for insured private student loans, and whether insured private student loans should be assigned a 50 percent risk weight and uninsured private student loans at 100 percent. The commenter suggested that, at some credit unions, private student loans are not only insured by an independent insurance company, but reinsured with three separate carriers. In such a situation, the commenter suggested that a 100 percent risk weighting seemed excessive.

Discussion

The Board generally agrees with the commenter who suggested that principal-only mortgage-backed-security STRIPS should be risk weighted based on the underlying collateral, which would more closely align NCUA's regulations with the Other Banking Agencies' rules. Principal-only mortgage-backed-security STRIPS are purchased at a discount to par, and par is paid to the investor over the life of the bond. As with other mortgage-backed securities, the timing of the repayment of par is the primary risk when credit risk is not considered. Absent credit risk, the investor receives par. This is not the case with interest-only mortgage-backed-security STRIPS, where an investor can receive less than the amount paid even without a credit event. Accordingly, this final rule assigns non-subordinated principal-only mortgage-backed-security STRIPS a risk weight based on the underlying collateral.

The Board also agrees with commenters who suggested the risk weight for certain accounts used for charitable purposes should be aligned with the 100 percent risk weight assigned to community development investments under the Other Banking Agencies' regulations. Charitable donation accounts are limited to 5 percent of net worth, which limits the risks of such accounts to the Share Insurance Fund. In addition, charitable donation accounts are required to be transparent segregated accounts, which enables NCUA to ensure that such accounts comply with applicable laws through supervision. As explained above and in more detail below, this final rule would permit credit unions to assign a 100 percent risk weight to CDAs.

The Board disagrees with the commenter who recommended removing overfunded pension assets from both the numerator and denominator. Under the Second Proposal, overfunded pension assets were not included in the risk-based capital ratio numerator or denominator, primarily because they are not disclosed on the financial statement as an asset, so there is no need to remove them from the calculation. Overfunded pension assets were excluded completely from the proposed risk-based capital calculation, and their inclusion in the final rule would add only needless complexity and could create volatility in the risk-based capital ratio.

The Board disagrees with the commenter who suggested that any investment fund holding assets that are assigned a zero percent risk weight should receive a zero percent risk weight. As discussed in the Second Proposal, assets assigned a zero percent risk weight that are held in an investment fund are considered indirect obligations. The risk weight assigned to an investment fund that holds zero percent risk-weighted assets is 20 percent even though the underlying investments consist of zero risk-weighted assets due to the investment's structure as an investment fund. This is consistent with the Other Banking Agencies' regulations.

The Board agrees with the commenter who suggested that the final rule should clarify the timing of holding reports used for the full look-through approach. As explained in more detail below, new appendix A to part 702 now clarifies which holding report should be used for the full look-through approach.

The Board has decided to reduce the risk weight in the final rule for share-secured loans, where the shares securing the loan are on deposit at the credit union, to zero percent since the risk of loss is more a function of operational risk than credit risk. The Board maintained the 20 percent risk weight for share-secured loans where the collateral deposit is at another depository institution due to the added credit risk of the depository institution. The resulting risk weights for share-secured loans are more consistent with the Other Banking Agencies' related risk weights.

Loan servicing assets associated with credit card loans or auto loans are different than loan servicing assets associated with mortgages because of the much shorter duration of the associated cash flows. Since shorter-term assets are individually assigned a risk weight, they default to the 100 percent risk weight assigned to all other assets, which is a reasonable risk weight based on the general credit quality associated with the underlying consumer loans. The 100 percent risk weight is appropriate for this class of assets because the difference between the book balance of some particular fixed assets and the value of the assets in the event of liquidation can be substantial. For example, in an area that has experienced a decline in the value of real estate, the book value of a fairly recently constructed credit union headquarters could be well below the fair value. Differentiating between the risks of types of assets not otherwise identified is not currently possible due to lack of data, would add complexity to the rule, and require even more Call Report data. The 100 percent risk weight is appropriate when considering that most assets in this group are predominately non-earning assets which can hinder a credit union's ability to increase capital. Further, the proposed risk weights match the risk weights in the Other Banking Agencies' capital regulations.[166]

This final rule would include loans held for sale within the pool of loans subject to assignment of risk weights by loan type to avoid the added complexity of determining the age of the loans held for sale. Loans held for sale carry identical risks to the originating credit union as other loans held in the credit union's portfolio until transfer to the purchaser is final. Until the originating credit union transfers the loan to the purchaser, the originating credit union bears the risk of the loan defaulting. If the loan defaults prior to the finalization of the transfer, the originating credit union must account for any loss from the defaulting loan, similar to other loans held on the credit union's books. Accordingly, consistent with the Second Proposal, this final rule assigns loans held for sale a risk weight based on the loan's type.

Non-federally guaranteed student loans are appropriately classified under current consumer loans due to the higher risks (default risk and extension risk) associated with this product.

104(c)(2)(i) Category 1—Zero Percent Risk Weight

Proposed § 702.104(c)(2)(i) provided that a credit union must assign a zero percent risk weight to the following on-balance sheet assets:

- The balance of cash, currency and coin, including vault, automatic teller machine, and teller cash.
- The exposure amount of:
  - An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and principal and interest only mortgage-backed STRIPS.
  - Federal Reserve Bank stock and Central Liquidity Facility stock.
- Insured balances due from FDIC-insured depositories or federally insured credit unions.

For the reasons explained above, the Board decided to remove the proposed language excluding directly and unconditionally guaranteed principal-only mortgage-backed-security STRIPS that were an obligation of the U.S. Government, its central bank, or a U.S. Government agency. The final rule also adds the word ''security'' after the word ''mortgage-backed'' for clarity and consistently.

In addition, the Board decided to lower the risk weight for share-secured loans, where the shares securing the loan are on deposit with the credit union, to zero percent. Assigning a zero percent risk weight to share-secured loans under such circumstances is consistent with the risk weight assigned to such loans under the Other Banking Agencies.

Accordingly, § 702.104(c)(2)(i) of this final rule provides that a credit union must assign a zero percent risk weight to the following on-balance sheet assets:

- The balance of
  - Cash, currency and coin, including vault, automatic teller machine, and teller cash.
  - Share-secured loans, where the shares securing the loan are on deposit with the credit union.
- The exposure amount of:
  - An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and interest-only mortgage-backed-security STRIPS.
  - Federal Reserve Bank stock and Central Liquidity Facility stock.
- Insured balances due from FDIC-insured depositories or federally insured credit unions.

104(c)(2)(ii) Category 2—20 Percent Risk Weight

Proposed § 702.104(c)(2)(ii) provided that a credit union must assign a 20 percent risk weight to the following on-balance sheet assets:

- The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately insured credit unions.
- The exposure amount of:
  - A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding principal- and interest-only mortgage-backed STRIPS.[167]
  - A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding principal and interest only GSE obligation STRIPS.
  - Securities issued by public sector entities in the United States that represent general obligation securities.
  - Investment funds whose portfolios are permitted to hold only part 703 permissible investments that qualify for the zero or 20 percent risk categories.
  - Federal Home Loan Bank stock.
- The balances due from Federal Home Loan Banks.
- The balance of share-secured loans.
- The portions of outstanding loans with a government guarantee.
- The portions of commercial loans secured with contractual compensating balances.

For the reasons explained above, the Board has decided to remove the proposed language excluding conditionally guaranteed principal-only mortgage-backed-security STRIPS that were an obligation of the U.S. Government, its central bank, or a U.S. Government agency. In addition, the Board decided to add the word ''security'' after the word ''mortgage-backed'' for clarity and consistently. The Board also decided to revise the language regarding investment funds to clarify that the 20 percent risk weight includes only investment funds with portfolios permitted to hold only investments that are authorized under 12 CFR 703.14(c).

Accordingly, § 702.104(c)(2)(ii) of this final rule provides that a credit union must assign a 20 percent risk weight to the following on-balance sheet assets:

- The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately insured credit unions.
- The exposure amount of:
  - A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding interest-only mortgage-backed-security STRIPS.
  - A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding interest only GSE mortgage-backed-security STRIPS.
  - Securities issued by PSEs that represent general obligation securities.
  - Part 703 compliant investment funds that are restricted to holding only investments that qualify for a zero or 20 percent risk weight under § 702.104.
  - Federal Home Loan Bank stock.
- The balances due from Federal Home Loan Banks.
- The balance of share-secured loans, where the shares securing the loan are on deposit with another depository institution.
- The portions of outstanding loans with a government guarantee.
- The portions of commercial loans secured with contractual compensating balances.

104(c)(2)(iii) Category 3—50 Percent Risk Weight

Proposed § 702.104(c)(2)(iii) provided that a credit union must assign a 50 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans

[166] *See, e.g.,* 12 CFR 324.32(l).

[167] This would include the NCUA Guaranteed Notes (NGNs), which are an obligation of the NCUA and are backed by the full faith and credit of the United States.

held for sale, of current first-lien residential real estate loans less than or equal to 35 percent of assets.

- The exposure amount of:
  - Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.
  - Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed security, excluding principal- and interest-only STRIPS.

For the reasons explained above, the Board has decided to remove the proposed language excluding conditionally guaranteed principal-only mortgage-backed-security STRIPS that were non-subordinated, non-U.S. Government agency or non-GSE guaranteed residential mortgage-backed securities. In addition, the Board decided to add the word ''mortgage-backed-security'' before the word ''STRIPS'' for clarity and consistently.

Accordingly, § 702.104(c)(2)(iii) of this final rule provides that a credit union must assign a 50 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans held for sale, of current first-lien residential real estate loans less than or equal to 35 percent of assets.
- The exposure amount of:
  - Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.
  - Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed securities, excluding interest-only mortgage-backed-security STRIPS.

104(c)(2)(iv) Category 4—75 Percent Risk Weight

Proposed § 702.104(c)(2)(iv) provided that a credit union must assign a 75 percent risk weight to the outstanding balance (net of government guarantees), including loans held for sale, of the following on-balance sheet assets:

- Current first-lien residential real estate loans greater than 35 percent of assets.
- Current secured consumer loans.

For the reasons explained above, the Board has decided to retain this proposed section in the final rule without change.

104(c)(2)(v) Category 5—100 Percent Risk Weight

Proposed § 702.104(c)(2)(v) provided that a credit union must assign a 100 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans held for sale, of:
  - First-lien residential real estate loans that are not current.
  - Current junior-lien residential real estate loans less than or equal to 20 percent of assets.
  - Current unsecured consumer loans.
  - Current commercial loans, less contractual compensating balances that comprise less than 50 percent of assets.
  - Loans to CUSOs.
- The exposure amount of:
  - Industrial development bonds.
  - All stripped mortgage-backed securities (interest-only and principal-only STRIPS).
  - Part 703 compliant investment funds, with the option to use the look-through approaches in § 702.104(c)(3)(ii) of this section.
  - Corporate debentures and commercial paper.
  - Nonperpetual capital at corporate credit unions.
  - General account permanent insurance.
  - GSE equity exposure or preferred stock.
- All other assets listed on the statement of financial condition not specifically assigned a different risk weight under this subpart.

For the reasons explained above, the Board has decided to remove the proposed language including principal-only mortgage-backed-security STRIPS in the 100 percent risk-weight category. The Board has also decided to include the exposure amount of non-subordinated tranches of any investments in the 100 percent risk-weight category. Credit unions also are given the option to use the gross-up approach as an alternative to the 100 percent risk-weight.

Accordingly, § 702.104(c)(2)(v) of this final rule provides that a credit union must assign a 100 percent risk weight to the following on-balance sheet assets:

- The outstanding balance (net of government guarantees), including loans held for sale, of:
  - First-lien residential real estate loans that are not current.
  - Current junior-lien residential real estate loans less than or equal to 20 percent of assets.
  - Current unsecured consumer loans.
  - Current commercial loans, less contractual compensating balances that comprise less than 50 percent of assets.
  - Loans to CUSOs.
- The exposure amount of:
  - Industrial development bonds.
  - Interest-only mortgage-backed-security STRIPS.
  - Part 703 compliant investment funds, with the option to use the look-through approaches in § 702.104(c)(3)(iii)(B) of this section.
  - Corporate debentures and commercial paper.
  - Nonperpetual capital at corporate credit unions.[168]
  - General account permanent insurance.
  - GSE equity exposure or preferred stock.
  - Non-subordinated tranches of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section.
- All other assets listed on the statement of financial condition not specifically assigned a different risk weight under this subpart.

As discussed in more detail below, however, this final rule reduces the risk weight assigned to CUSO investments, corporate perpetual capital, and other equity investments to 100 percent for complex credit unions with non-significant equity exposures.[169]

104(c)(2)(vi) Category 6—150 Percent Risk Weight

Proposed § 702.104(c)(2)(vi) provided that a credit union must assign a 150 percent risk weight to the following on-balance sheet assets:

- The outstanding balance, net of government guarantees and including loans held for sale, of:
  - Current junior-lien residential real estate loans that comprise more than 20 percent of assets.
  - Junior-lien residential real estate loans that are not current.
  - Consumer loans that are not current.
  - Current commercial loans (net of contractual compensating balances), which comprise more than 50 percent of assets.
  - Commercial loans (net of contractual compensating balances), which are not current.
- The exposure amount of:
  - Perpetual contributed capital at corporate credit unions.[170]
  - Equity investments in CUSOs.[171]

As discussed in more detail below, however, this final rule reduces the risk weight assigned to CUSO investments, and corporate perpetual capital, to 100 percent for complex credit unions with

[168] Subject to non-significant equity exposure risk-weight under § 702.104(c)(3)(i).

[169] A credit union has ''non-significant equity exposures'' if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator.

[170] Subject to the lower 100 percent non-significant equity exposure risk-weight under § 702.104(c)(3)(i).

[171] Subject to the lower 100 percent non-significant equity exposure risk-weight under § 702.104(c)(3)(i).

non-significant equity exposures.[172] For the reasons explained above, the Board has decided to retain this proposed section in the final rule without change.

104(c)(2)(vii) Category 7—250 Percent Risk Weight

Proposed § 702.104(c)(2)(vii) provided that a credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets (MSAs) held on-balance sheet.

For the reasons explained above, the Board has decided to retain this proposed section in the final rule without change.

104(c)(2)(viii) Category 8—300 Percent Risk Weight

Proposed § 702.104(c)(2)(viii) provided that a credit union must assign a 300 percent risk weight to the exposure amount of the following on-balance sheet assets:

- Publicly traded equity investments, other than a CUSO investment.
- Investment funds that are not in compliance with 12 CFR part 703, with the option to use the look-through approaches in § 702.104(c)(3)(ii) of this section.
- Separate account insurance, with the option to use the look-through approaches in § 702.104(c)(3)(ii).

For the reasons explained above, the Board has decided to retain this proposed section in the final rule with only minor conforming changes.

Accordingly, § 702.104(c)(2)(viii) of this final rule provides that a credit union must assign a 300 percent risk weight to the exposure amount of the following on-balance sheet assets:

- Publicly traded equity investments, other than a CUSO investment.[173]
- Investment funds that do not meet the requirements under 12 CFR 703.14(c), with the option to use the look-through approaches in § 702.104(c)(3)(iii)(B).
- Separate account insurance, with the option to use the look-through approaches in § 702.104(c)(3)(iii)(B).

104(c)(2)(ix) Category 9—400 Percent Risk Weight

Proposed § 702.104(c)(2)(ix) provided that a credit union must assign a 400 percent risk weight to the exposure amount of non-publicly traded equity investments that are held on-balance sheet, other than equity investments in CUSOs.

For the reasons discussed above, the Board has decided to retain this proposed section in the final rule without change.[174]

104(c)(2)(x) Category 10—1,250 Percent Risk Weight

Proposed § 702.104(c)(2)(x) provided that a credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment held on balance sheet, with the option to use the gross-up approach in § 702.104(c)(3)(i).[175]

For the reasons discussed above and in additional detail below, the Board has decided to retain this proposed section in the final rule with only minor conforming changes to the cross citations.

104(c)(3) Alternative Risk Weights for Certain On-Balance Sheet Assets

Proposed § 702.104(c)(3) provided that instead of using the risk weights assigned in § 702.104(c)(2), a credit union may determine the risk weight of investment funds and subordinated tranches of any investment using the approaches which are discussed in more detail below. These alternative approaches provide a credit union with the ability to risk weight certain assets based on the underlying exposure of the subordinated tranche or investment fund without exposing the NCUSIF to additional risk.

Other than the comments already discussed above, the Board received few comments on this section of the proposal and has decided to retain the proposed gross-up approach and look-through approaches in this final rule with only minor changes, which are discussed in more detail below. In addition, this final rule restructures proposed § 702.104(c)(3).

As explained in more detail below, this final rule restructures the provisions in § 702.104(c)(3) to renumber the gross-up and look-through approaches and add in alternative risk-weighting methodologies for non-significant equity exposures and certain types of charitable donation accounts. These changes are in response to public comments received on the Second Proposal and, as explained below, would only lower the risk weights assigned to certain on-balance sheet assets under certain circumstances.

104(c)(3)(i) Non-Significant Equity Exposures

Under the Other Banking Agencies' capital regulations, banks are permitted to assign a 100 percent risk weight to equity exposures when the aggregate amount of the exposures does not exceed 10 percent of the bank's total capital. The Board did not include a similar approach in the Second Proposal because it would have added significant complexity to the rule. As previously discussed, however, a significant number of commenters requested that NCUA's risk-based capital requirement include an alternative risk-weighting methodology, similar to that provided under the Other Banking Agencies' capital regulations, for non-significant equity exposures at credit unions.

Applying a 100 percent risk weight to an equity exposure, provided the exposure does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator, will provide relief to certain credit unions holding limited amounts of higher-risk equity assets on their books. Such an approach is generally consistent with the Other Banking Agencies' regulations and will not increase risk weights for any equity exposures held by credit unions.

Accordingly, this final rule adds the following provisions assigning alternative risk weights to non-significant equity exposures.

104(c)(3)(i)(A) General

Section 702.104(c)(3)(i)(A) of this final rule provides that notwithstanding the risk weights assigned in § 702.104(c)(2), a credit union must assign a 100 percent risk weight to non-significant equity exposures.

104(c)(3)(i)(B) Determination of Non-Significant Equity Exposures

Section 702.104(c)(3)(i)(B) of this final rule provides that a credit union has non-significant equity exposures if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator (as defined under paragraph § 702.104(b)(1)).

104(c)(3)(i)(C) Determination of the Aggregate Amount of Equity Exposures

As discussed above, § 702.104(c)(3)(i)(C) of this final rule provides that when determining the aggregate amount of its equity exposures, a credit union must include

[172] A credit union has "non-significant equity exposures" if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator.

[173] Subject to the lower 100 percent non-significant equity exposure risk-weight under § 702.104(c)(3)(i).

[174] Subject to lower 100 percent non-significant equity exposure risk-weight under § 702.104(c)(3)(i).

[175] Based on June 30, 2014, Call Report data, NCUA estimates that 93.3 percent of all investments for credit unions with more than $100 million in assets would receive a risk weight of 20 percent or less; and, 96.1 percent of all investments would receive a risk weight of 100 percent or less.

the total amounts (as recorded on the statement of financial condition in accordance with GAAP) of the following:

- Equity investments in CUSOs,
- Perpetual contributed capital at corporate credit unions,
- Nonperpetual capital at corporate credit unions, and
- Equity investments subject to a risk weight in excess of 100 percent.

The Board determined that the assets identified above encompass the extent of funds invested in stock, equities, or debts associated with an ownership interest and are normally in a loss position subordinate to unsecured creditors. Non-perpetual capital at corporate credit unions, despite receiving a 100 percent risk-weight, is included in the calculation of equity exposure because its priority in liquidation is subordinate to shareholders and the NCUSIF. Limiting the sum of these higher credit risk accounts to 10 percent or less of the sum of a credit union's capital elements of the risk-based capital ratio numerator receiving a 100 percent risk weight ensures that the related loss exposure does not present a significant risk to the credit union or the NCUSIF.

104(c)(3)(ii) Charitable Donation Accounts

Under the Other Banking Agencies' capital regulations, banks are permitted to apply a 100 percent risk weight to equity exposures that qualify as community development investments. The Board did not include a similar approach in the Second Proposal because credit unions do not hold community development investments in the same manner banks do. As previously discussed, however, a significant number of commenters requested that NCUA's risk-based capital requirement include an alternative risk-weighting methodology, similar to that provided under the Other Banking Agencies' capital regulations, for charitable donation accounts.

The Board believes charitable donation accounts held at credit unions are similar enough in purpose to community development investments held at banks to warrant a 100 percent risk weight. Under this final rule, a credit union can choose whether to apply the 100 percent risk weight because the account may be entitled to a lower risk weight based on the investments held in the account. As explained in the definitions part of the preamble, the 100 percent risk weight would apply only to accounts that meet the definition of a ''charitable donation account'' and the criteria provided therein. These limits are prudent and provide credit unions the option of applying the 100 percent risk weight, if they choose.

Accordingly, this final rule revises § 702.104(c)(3)(ii) to provide that notwithstanding the risk weights assigned in § 702.104(c)(2), a credit union may assign a 100 percent risk weight to a charitable donation account.

104(c)(3)(iii) Alternative Approaches

As discussed above, this final rule reorganizes § 702.104(c)(3) and moves proposed §§ 702.104(c)(3)(i) and (ii) under § 702.104(c)(3)(iii) with only non-substantive conforming changes. Instead of citing to FDIC's regulations, this final rule incorporates the text explaining how to apply the gross up approach [176] and the look through approaches [177] into appendix A to part 702 of NCUA's regulations. As discussed below, to incorporate the full text of §§ 324.43(e) and 324.53 into NCUA's regulations, the Board made some minor conforming changes to the language and numbering used in the section. Other than the changes discussed above, no substantive changes are intended by these revisions.

Accordingly, § 702.104(c)(3)(iii) of this final rule provides that, notwithstanding the risk weights assigned in paragraph (c)(2) of this section, a credit union may determine the risk weight of investment funds, and non-subordinated or subordinated tranches of any investment as provided below.

104(c)(3)(iii)(A) Gross-Up Approach

Proposed § 702.104(c)(3)(i) provided that a credit union may use the gross-up approach under 12 CFR 324.43(e) to determine the risk weight of the carrying value of any subordinated tranche of any investment. When calculating the risk weight for a subordinated tranche of any investment using the proposed gross-up approach, a credit union must have the following information:

- The exposure amount of the subordinated tranche;
- The current outstanding par value of the credit union's subordinated tranche;
- The current outstanding par value of the total amount of the entire tranche where the credit union has exposure;
- The current outstanding par value of the more senior positions in the securitization that are supported by the subordinate tranche the credit union owns; and
- The weighted average risk weight applicable to the assets underlying the securitization.

The following is an example of the application of the gross-up approach: [178]

A credit union owns $4 million (exposure amount and outstanding par value) of a subordinated tranche of a private-label mortgage-backed security backed by first-lien residential mortgages. The total outstanding par value of the subordinated tranche that the credit union owns part of is $10 million. The current outstanding par value for the tranches that are senior to and supported by the credit union's tranche is $90 million.

		Calculation	Result
A	Current outstanding par value of the credit union's subordinated tranche divided by the current outstanding par value of the entire tranche where the credit union has exposure.	$4,000,000/$10,000,000	40%
B	Current outstanding par value of the senior positions in the securitization that are supporting the tranche the credit union owns.		$90,000,000
C	Pro-rata share of the more senior positions outstanding in the securitization that is supported by the credit union's subordinated tranche: (A) multiplied by (B).	40% times $90,000,000	$36,000,000
D	Current exposure amount for the credit union's subordinated tranche		$4,000,000
E	Enter the sum of (C) and (D)	$36,000,000 + $4,000,000	$40,000,000
F	The higher of the weighted average risk weight applicable to the assets underlying the securitization or 20%.	50% primary risk weight for 1st lien residential real estate loan.	50%

[176] 12 CFR 324.43(e).

[177] 12 CFR 324.53.

[178] More simple terminology than the FDIC rule language is used to make this example easier to follow.

		Calculation	Result
G	Risk-weighted asset amount of the credit union's purchased subordinated tranche: (E) multiplied by (F).	$40,000,000 times 50%	$20,000,000

In this example, under the gross-up approach, the credit union would be required to risk weight the subordinated tranche at $20 million. Conversely, under the 1,250 percent risk weight approach, the credit union would be required to risk weight the subordinated tranche at $50 million (1,250 percent times $4 million). This example shows the benefit to credit unions of the proposed inclusion of the gross-up approach.

In the case of master trust [179] type structures and structured products,[180] credits unions should calculate the pro-rata share of the more senior positions using the prospectus and current servicing/reference pool reports.

The Board received few comments objecting to allowing credit unions to use the gross-up approach, and has decided to retain the option of using the gross-up approach in this final rule. The final rule, however, incorporates the text of § 324.43(e) into NCUA's regulations instead of simply citing to FDIC's regulations. As discussed above, this final rule also would permit credit unions to use the gross-up approach to risk-weight a non-subordinated tranche of any investment.

Accordingly, § 702.104(c)(3)(iii)(A) of this final rule provides that a credit union may use the gross-up approach under appendix A of this part to determine the risk weight of the carrying value of non-subordinated or subordinated tranches of any investment.

104(c)(3)(iii)(B) Look-Through Approaches

Proposed § 702.104(c)(3)(ii) provided that a credit union may use one of the look-through approaches under 12 CFR 324.53 to determine the risk weight of the fair value of mutual funds that are not in compliance with part 703 of this chapter, the recorded value of separate account insurance, or part 703 compliant mutual funds. In particular, for purposes of applying risk weights to investment funds, the Board proposed giving credit unions the option of using the three look-through approaches that FDIC allows its regulated institutions to use under 12 CFR 324.53 of its regulations, instead of using the standard risk weights of 20, 100 and 300 percent that would be assigned under proposed § 702.104(c)(2). The Board included these alternative approaches to make NCUA's risk-based capital requirement more comparable to the Other Banking Agencies' regulations and to grant credit unions additional flexibility.

The first of the three full look-through approaches under 12 CFR 324.53 required a credit union to look at the underlying assets owned by the investment fund and apply an appropriate risk weight. The other two approaches under 12 CFR 324.53 required a credit union to use the information provided in the investment fund's prospectus. The minimum risk weight for any investment fund asset was 20 percent, regardless of which approach was used.

Regardless of the look-through approach selected, the credit union must include any derivative contract that is part of the investment fund, unless the derivative contract is used for hedging rather than speculative purposes and does not constitute a material portion of the fund's exposure.[181]

The following examples outline each of the three proposed look-through approaches:

Full look-through approach. The full look-through approach allowed credit unions to weight the underlying assets in the investment fund as if they were owned separately, with a minimum risk weight of 20 percent for all underlying assets. Credit unions were required to use the most recently available holdings reports when utilizing the full look-through approach.

[179] Master trust subordinated tranches do not support any particular senior tranche in the trust. The subordinated tranche supports an amount of senior tranches as defined in the prospectus and the current servicing reports.

[180] Structured products may allocate losses based on other securities or a reference pool. The credit union should calculate the pro-rata senior tranche based on the amount the subordinated tranche would support if it were an actual tranched security.

[181] At this time FCUs are not permitted to engage in derivative contract activity for the purpose of speculation. However, federally insured, state-chartered credit unions may be permitted to use derivative contracts for speculative purposes under applicable state law, and thus the Board is including this statement to address those scenarios.

An example of the application of the full look-through approach is as follow:

CREDIT UNION INVESTMENT: $10,000,000

Fund investment	Fund holding (% of fund) %	Credit union exposure [182]	Risk weight %	Dollar risk weight
US Treasury Notes	50	$5,000,000	20 [183]	$1,000,000
FNMA PACs	30	3,000,000	20	600,000
PSE Revenue Bonds	17.5	1,750,000	50	875,000
Subordinated MBS [184]	2.5	250,000	1,250	3,125,000
Totals		10,000,000	56 [185] (Weighted average Risk weight).	5,600,000 (Amount of Risk Assets)

Using the above example, the investment fund would have a weighted average risk weight of 56 percent, which would be lower than the 100 percent standard risk weight for part 703 compliant investment funds or the standard 300 percent risk weight for investment funds not compliant with part 703.

Simple modified look-through approach. The simple modified look-through approach allowed credit unions to risk weight their holdings in an investment fund by the highest risk weight of any asset permitted by the investment fund's prospectus. Credit unions should use the most recently available prospectus to determine investment permissibility for an investment fund. An example of the application of the simple modified look-through approach is as follows:

CREDIT UNION INVESTMENT: $10,000,000

Permissible investments	Fund limits (% of fund)	Risk weight
US Treasury Notes	100	[186] 20
Agency MBS (non IO or PO)	50	20
PSE GEO Bonds	20	20
PSE Revenue Bonds	20	50
Non-Government/Subordinated/IO/PO MBS	30	50
Subordinated MBS	10	[187] 1,250

Using the above example, the investment fund would have a risk weight of 1,250 percent using the simple modified look-through approach because the investment fund can hold 1,250 percent risk-weighted subordinated MBS. In this case, the credit union would most likely use a 100 percent standard risk weight for the part 703 compliant investment fund or the standard 300 percent risk weight for investment funds not in compliance with part 703.

Alternative modified look-through approach. The alternative modified look-through approach allowed credit unions to risk weight their holdings in an investment fund by applying the risk weights to the limits in the prospectus. In the case where the aggregate limits in the prospectus exceed 100 percent, the credit union must assume the fund will invest in the highest risk-weighted assets first. An example of the application of the simple modified look-through approach is as follows:

CREDIT UNION INVESTMENT: $10,000,000

Permissible investments	Fund Limits (% of fund)	Risk weight %	CU exposure	Dollar risk weight
US Treasury Notes	100	20 [188]	$0	
Agency MBS (non IO or PO)	50	20	2,000,000	400,000
PSE GEO Bonds	20	20	2,000,000	400,000
PSE Revenue Bonds	20	50	2,000,000	1,000,000
Non-Government/Subordinated/IO/PO MBS	30	50	3,000,000	1,500,000
Subordinated MBS	10	1,250 [189]	1,000,000	12,500,000
Total		158 [190] (weighted average risk weight).	10,000,000	15,800,000 (Amount of Risk Assets)

[182] Fund holdings (percent of fund) multiplied by the credit union investment.

[183] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[184] Use 1,250 percent risk weight or gross-up calculation.

[185] The weighted average risk weight was calculated by dividing the amount of risk assets ($5,600,000) by the credit union exposure ($10,000,000).

[186] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[187] Use 1,250 percent risk weight unless the prospectus limits gross-up risk weight.

[188] Minimum 20 percent risk weight for assets in an investment fund, even if the individual risk weight is zero percent.

[189] Use 1,250 percent risk weight unless the prospectus limits gross-up risk weights.

[190] The weighted average risk weight was calculated by dividing the amount of risk assets ($15,800,000) by the credit union exposure ($10,000,000).

Using the example above, the investment fund would have a weighted average risk weight of 158 percent using the alternative modified look-through approach. In this case, the credit union would most likely use a 100 percent standard risk weight for part 703 compliant investment funds or the alternative modified look-through approach for risk weights for investment funds that are not compliant with part 703.

Public Comments on the Second Proposal

The Board received a few comments relating to the proposed use of the look-through approaches. Most of these comments were addressed above. At least one commenter, however, suggested that the Board clarify that the timing of the most recent available holding reports are to be used by credit unions applying the full look-through approach.

Discussion

The Board received no comments objecting to allowing credit unions to use the look-through approaches, and has decided to retain the option of using the gross-up approach in this final rule. The final rule incorporates the relevant text of § 324.53 into NCUA's regulations instead of simply citing to FDIC's regulations and makes other minor conforming edits. In response to the comments received, the Board has also added language in paragraph (b)(2)(ii) of appendix A below to clarify which holding reports should be used when calculating a risk-weight using the full-look-through approach. The methodology for applying the look-through approaches is added to new appendix A to part 702, which is discussed in more detail below.

Accordingly, § 702.104(c)(3)(iii)(B) provides that a credit union may use one of the look-through approaches under appendix A part 702 to determine the risk weight of the exposure amount of any investment funds, the holdings of separate account insurance, or both.

104(c)(4) Risk Weights for Off-Balance-Sheet Activities

Under the Second Proposal, § 702.104(c)(4) provided that the risk-weighted amounts for all off-balance-sheet items are determined by multiplying the off-balance-sheet exposure amount by the appropriate credit conversion factor and the assigned risk weight as follows:

- For the outstanding balance of loans transferred to a Federal Home Loan Bank under the MPF program, a 20 percent CCF and a 50 percent risk weight.
- For other loans transferred with limited recourse, a 100 percent CCF applied to the off-balance-sheet exposure and:
  - For commercial loans, a 100 percent risk weight.
  - For first-lien residential real estate loans, a 50 percent risk weight.
  - For junior-lien residential real estate loans, a 100 percent risk weight.
  - For all secured consumer loans, a 75 percent risk weight.
  - For all unsecured consumer loans, a 100 percent risk weight.
- For unfunded commitments:
  - For commercial loans, a 50 percent CCF with a 100 percent risk weight.
  - For first-lien residential real estate loans, a 10 percent CCF with a 50 percent risk weight.
  - For junior-lien residential real estate loans, a 10 percent CCF with a 100 percent risk weight.
  - For all secured consumer loans, a 10 percent CCF with a 75 percent risk weight.
  - For all unsecured consumer loans, a 10 percent CCF with a 100 percent risk weight.

Public Comments on the Second Proposal

The Board received several comments regarding the proposed risk weights assigned to off-balance-sheet items. At least one commenter agreed with requiring capital for most off-balance-sheet activities. But the commenter suggested that credit unions should not be required to hold capital for off-balance-sheet exposures that are unconditionally cancellable (without cause), especially if the exposure is for less than one year. The commenter recommended that the Board adopt a more bank-like off-balance-sheet risk-based capital regime for such exposures. Another commenter stated that the proposal identifies the use of a 10 percent credit conversion factor for all noncommercial unused lines of credit, but noted that community banks utilize various credit conversion factors ranging from zero percent to 50 percent depending on whether the commitment is unconditionally cancellable (zero percent), conditionally cancellable within one year (20 percent), or conditionally cancellable beyond one year (50 percent). The commenter suggested that the design and inclusion of cancellation language in lending contracts is to mitigate the overall potential risk associated with unfunded amounts, and the type and extent of the specific language helps outline the extent and timeframe of the risk associated within each lending contract. As such, the commenter recommended that the credit conversion factors utilized by the community banks be adopted by NCUA to help ensure that the inherent risk embedded within specific cancellation language in lending contracts be accurately identified and risk weighted.

At least one commenter recommended that the Board lower the credit conversion factor for unfunded consumer loans. Other commenters recommended unfunded, unconditionally cancellable commitments should be risk weighted at zero percent.

Some commenters noted that under the proposal, the Board differentiates between partial recourse loans executed under the Federal Home Loan Banks' Mortgage Partnership Finance (MPF) Program and all other partial recourse lending programs. Commenters suggested that, although the MPF program loans enjoy a lower 20 percent credit conversion factor (CCF) compared to the 100 percent CCF applied to other partial recourse loans, credit unions that hold a contractual exposure amount that is less than 20 percent of the outstanding loan balance will have to hold more capital for MPF loans than for other partial recourse arrangements. For example, a $100,000 loan sold with a 3 percent contractual exposure would have an off-balance-sheet value of $3,000 if it were a normal recourse loan and $20,000 if it were an MPF loan.[191] Since MPF loans include a fixed contractual exposure amount, the commenter suggested there does not appear to be a strong justification for differentiating this loan program from other partial recourse loan arrangements. Even though this adjusted calculation may track historical losses in the MPF program more closely, commenters suggested that the Board consider whether it is appropriate to incorporate individualized risk weights for specific counterparties.

One commenter suggested that the proposed treatment of the MPF Program does not address the complexity and risks associated with the program, and would prevent credit unions from selling loans in the secondary market that have no recourse at all and therefore pose no risk to the credit union. Under the Second Proposal, the capital requirement (after a credit

[191] The MPF program takes the outstanding loan balance multiplied by a 20 percent CCF (100,000 * .20 = 20,000), while other partial recourse loans take the maximum contractual exposure multiplied by a 100 percent CCF (3,000 * 1 = 3,000). Both loans would be subject to a 50 percent risk-weight as a first-lien residential real estate loan.

conversion factor) is derived from the total outstanding principal balance of all loans sold under the MPF Program. The commenter suggested it is important to note that the MPF Program is actually composed of several different types of loan purchase programs, some of which have a limited recourse component and some that do not. The commenter suggested further that each loan sold under an MPF program that includes a credit-risk sharing component undergoes an FHLB calculation that assigns a specific dollar amount for credit enhancement to that loan. And some loans with very low credit risk may have no credit enhancement assigned, while other loans with characteristics of higher credit risk are assigned a higher credit enhancement. According to the commenter, the total of these credit enhancement calculations, which is tracked by the FHLB and available online, is the maximum amount of risk for which a credit union is liable. The commenter suggested that in some cases, the results of the calculation for a particular loan may determine whether that loan is sold under the MPF Xtra Program (with no credit enhancement) or under a different MPF program that includes some form of credit enhancement. The commenter contended that, by lumping all MPF loans into one calculation, the proposal would significantly alter an institution's analysis of how to price and sell individual loans without any benefit to the institution or to NCUA in managing risk. As an alternative, the commenter suggested the credit conversion and risk weight be applied to the total credit enhancement under the MPF program for which a credit union is liable, instead of to the loan balances.

Discussion

The small credit conversion factor for unused consumer lines of credit provides for the potential swift shift in credit risk that can occur when consumers access the lines. The other alternative credit conversion factors that include a determination of the term of the outstanding guarantee add additional complexity to the assignment of credit conversion factors and could result in a less consistent application of assigned risk weights even with expanded supervisory guidance.

The definition of the (MPF) Program will provide for assignments of proper risk weights in transactions where credit unions receive fees for managing the credit risk of the loans. Under the MPF Program, credit unions retain recourse risk through a credit enhancement obligation to the FHLB for credit losses on certain loans. For loans sold to the FHLB that do not meet the definition of MPF loans, the risk weight is based on the maximum contractual amount of the credit union's exposure. In a loan sale transaction that creates no contractual exposure, the risk-weight would be zero. Supervisory guidance and Call Report instructions will be provided to ensure proper treatment of loans transferred under the FHLB programs and all other loans transferred with limited recourse.

The proposed risk weights for off-balance-sheet activities will be retained, as they are clear and generally comparable to those assigned under the Other Banking Agencies' regulations.

104(c)(5) Derivatives

Proposed § 702.104(c)(5) would have provided that a complex credit union must assign a risk-weighted amount to any derivative contracts as determined under 12 CFR 702.105.

For the reasons discussed below, the Board has decided to retain this proposed section in the final rule without change.

Current § 702.105 Weighted-Average Life of Investments

As discussed above, proposed new § 702.105 would have replaced current § 702.105 regarding weighted-average life of investments. The definition of weighted-average life of investments and the term ''weighted-average life of investments'' would have been removed from part 702 altogether.

The Board received no comments objecting to this change and has decided to retain this change in the final rule.

Section 702.105 Derivatives Contract

Under the Second Proposal, § 702.105 assigned risk weights to derivatives in a manner generally consistent with the approach adopted by FDIC in its interim final rule regarding regulatory capital.[192] The NCUA Board proposed to focus only on interest-rate-related derivatives in the rule and referred credit unions to FDIC's rules for all non-interest-rate-related derivatives. The Board made this distinction because federal credit unions are restricted to interest-rate-related contracts under NCUA's final derivatives rule, which was approved in January 2014. Federally insured state-chartered credit unions, however, may have broader authorization to use non-interest-rate contracts if approved by the respective state supervisory authorities.

[192] *See* 78 FR 55339 (Sept. 10, 2013).

Public Comments on the Second Proposal

The Board received a few general comments on proposed § 702.105. One commenter recommended that the Board, rather than just cross-citing to FDIC's regulations, incorporate the FDIC risk weights for non-interest-rate derivatives into NCUA regulations verbatim. The commenter suggested that although the vast majority of credit unions will probably not engage in this activity, its inclusion in NCUA's regulations would ease the regulatory burden for credit unions and examiners in finding and citing the appropriate authority. The commenter cautioned, however, that the Board should not create its own risk-weight system for non-interest-rate-related derivatives. The commenter suggested that, given the complex nature of derivatives, modifying the established regulatory framework could result in unintended consequences for credit unions engaged in that activity. In addition, state regulators have experience supervising derivative activity in state-chartered banks within the FDIC framework, which will help facilitate effective state supervision for credit unions with minimum confusion.

Another commenter complained that the risk-weight calculations for derivatives were too complicated. The commenter suggested that derivatives, per GAAP, are fair valued daily, monthly, quarterly, and yearly, and reflected as an asset or a liability, while their impact runs through earnings or equity. Accordingly, the commenter recommended the Board apply a simpler formula to assess risk-based capital for derivatives, using a credit conversion factor to the notional amount and then applying a risk-weighted factor. Another commenter suggested that the Board simplify the calculation for derivatives based on the percentage of potential future exposure.

Discussion

The Board has considered the comments suggesting the derivatives calculations be simplified. But given the number of variables to be considered for risk weighting—which include the type of derivative (interest rate or other), the legal agreement governing the transactions (qualified master netting agreement), the type of collateral to be used to satisfy margin movements, the method the credit union will use for collateral risk mitigation, and the counterparty approach (dealer or exchange)—it is impractical to simplify the calculation any further given the number of options that need to be considered. Therefore the Board has maintained the proposed approach in this final rule.

Consistent with NCUA's recently finalized derivatives rule,[193] the Board is now adopting an approach to assign risk weights to derivatives that is generally consistent with the approach adopted by FDIC in its recently issued interim final rule regarding regulatory capital.[194] Under FDIC's interim rule, derivatives transactions covered under clearing arrangements are treated differently than non-cleared transactions. The Board addresses clearing separately below.

The final rule focuses only on interest-rate-related derivatives and refers credit unions to FDIC's rules for all non-interest-rate-related derivatives. The final rule makes this distinction because federal credit unions are restricted to interest-rate-related contracts under the final derivatives rule approved in January 2014; however, federally insured, state-chartered credit unions may have broader authorization to use non-interest-rate contracts if approved by the respective state supervisory authorities. NCUA is not aware of any non-interest-rate derivative contracts being used by federally insured, state-chartered credit unions (per Call Report data).

OTC Derivatives Transaction Risk Weight

Under the Second Proposal, a credit union would have undertaken the following process to determine the risk weight for OTC derivative contracts. To determine the risk-weighted asset amount for a derivatives contract a credit union must first determine its exposure amount for the contract. The credit union must then recognize the credit mitigation of financial collateral, if qualified, and apply to that amount a risk weight based on the counterparty or recognized collateral or exchange (Derivatives Clearing Organization or DCO). For a single interest rate derivatives contract that is not subject to a qualifying master netting agreement, the proposal required the exposure amount to be the sum of (1) the credit union's current credit exposure (CCE), which is the greater of fair value or zero, and (2) potential future exposure, which is calculated by multiplying the notional principal amount of the derivatives contract by the appropriate conversion factor, in accordance with the table below. Non-interest-rate derivative contract conversion factors can be referenced in 12 CFR 324.34 of the FDIC rule.

PROPOSED CONVERSION FACTOR MATRIX FOR INTEREST RATE DERIVATIVES CONTRACTS

Remaining maturity	IRR hedge derivatives
One year or less	0.00
Greater than one year and less than or equal to five years	0.005
Greater than five years	0.015

For multiple interest rate derivatives contracts subject to a qualifying master netting agreement, a credit union would calculate the exposure amount by adding the net CCE and the adjusted sum of the PFE amounts for all derivatives contracts subject to that qualifying master netting agreement.

Under the proposal, the net CCE would have been the greater of zero and the net sum of all positive and negative fair values of the individual derivatives contracts subject to the qualifying master netting agreement. The adjusted sum of the PFE amounts would have been calculated as described in proposed § 702.105(a)(2)(ii)(B).

Under the proposal, to recognize the netting benefit of multiple derivatives contracts, the contracts would have to be subject to the same qualifying master netting agreement. For example, a credit union with multiple derivatives contracts with a single counterparty could net the counterparty exposure if the transactions fall under the same International Swaps and Derivatives Association, Inc. (ISDA) Master Agreement and Schedule.

Under the proposal, if a derivatives contract were collateralized by financial collateral, a credit union would first determine the exposure amount of the derivatives contract as described in §§ 702.105(a)(i) or (a)(ii). Next, to recognize the credit risk mitigation benefits of the financial collateral, the credit union would use the approach for collateralized transactions as described in § 702.105(c) of the proposal, which is discussed in more detail below.

The Board received no comments objecting to this particular approach and has decided to retain the proposed process to determine the risk weight for OTC derivatives contracts in this final rule without change.

Cleared Derivatives Risk Weight

Proposed § 702.105 would have adopted an approach to assign risk weights to derivatives that is generally consistent with the approach adopted by the Other Banking Agencies.[195] Under the Second Proposal, a credit union was required to calculate a trade exposure amount, determine the risk mitigation of any financial collateral, and multiply that amount by the applicable risk weight. Such an approach allowed credit unions to take into account the lower degree of risk associated with cleared derivatives transactions and the benefit of collateral associated with these transactions. In addition, the proposed approach also accounted for the risk of loss associated with collateral posted by a credit union.

The Board received no comments objecting to this particular approach and has decided to retain the proposed process to determine the risk weight for cleared derivatives in this final rule without change.

Trade Exposure Amount

Under the Second Proposal, the trade exposure amount would have been equal to the amount of the derivative, calculated as if it were an OTC transaction under subsection (b) of this section, added to the fair value of the collateral posted by the credit union and held by a DCO, clearing member or custodian. This calculation took into account the exposure amount of the derivatives transaction and the exposure associated with any collateral posted by the credit union. This is the same approach employed by the Other Banking Agencies.[196]

The Board received no comments objecting to this particular approach and has decided to retain the proposed process to determine the trade exposure amount in this final rule without change.

Cleared Transaction Risk Weights

Under the Second Proposal, after a credit union determines its trade exposure amount, it would have been required to apply a risk weight that is based on agreements preventing risk of loss of the collateral posted by the counterparty to the transaction. The proposal required credit unions to apply a 2 percent risk weight if the collateral posted by a counterparty is subject to an agreement that prevents any losses caused by the default, insolvency, liquidation, or receivership of the clearing member or any of its clients. To qualify for this risk weight, a credit union would have been required to conduct a sufficient legal review and determine that the agreement to prevent risk of loss is legal, valid, binding, and enforceable. If a credit union did not

[193] *See* 78 FR 55339 (Sept. 10, 2013).

[194] *See* 78 FR 55339 (Sept. 10, 2013).

[195] *See* 78 FR 55339 (Sept. 10, 2013).

[196] *See, e.g.,* 12 CFR 324.35.

meet either or both of these requirements, the credit union would have to apply a 4 percent risk weight to the transaction.

The differing risk weights for cleared transactions took into account the risk that collateral will not be there because of a default or other event, which further exposes the credit union to loss. However, cleared transactions pose very low probability that collateral will not be available in the event of a default, which is reflected in the low overall risk weights. This is the same approach employed by the Other Banking Agencies.[197]

The Board received no comments objecting to this particular approach and has decided to retain the proposed process to determine the risk weights for cleared transactions in this final rule without change.

Collateralized Transactions

Under the Second Proposal, the Board proposed to permit a credit union to recognize risk-mitigating effects of financial collateral in OTC transactions. The collateralized portion of the exposure would receive the risk weight applicable to the collateral. In all cases, (1) the collateral must be subject to a collateral agreement (for example, an ISDA Credit Support Annex) for at least the life of the exposure; (2) the credit union must revalue the collateral at least every three months; and (3) the collateral and the exposure must be denominated in U.S. dollars.

Generally, the risk weight assigned to the collateralized portion of the exposure would be no less than 20 percent. However, the collateralized portion of an exposure may be assigned a risk weight of less than 20 percent for the following exposures. Derivatives contracts that are marked to fair value on a daily basis and subject to a daily margin maintenance agreement could receive (1) a zero percent risk weight to the extent that contracts are collateralized by cash on deposit, or (2) a 10 percent risk weight to the extent that the contracts are collateralized by an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i) of this proposed rule. In addition, a credit union could assign a zero percent risk weight to the collateralized portion of an exposure where the financial collateral is cash on deposit. It also could do so if the financial collateral is an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i) of this proposed rule, and the credit union has discounted the fair value of the collateral by 20 percent. The credit union would be required to use the same approach for similar exposures or transactions.

The Board received no comments objecting to this particular approach and, consistent with the proposal, has decided to permit a credit union to recognize risk-mitigating effects of financial collateral in OTC transactions in this final rule without change.

Risk Management Guidance for Recognizing Collateral

Under the Second Proposal, before a credit union could recognize collateral for credit risk mitigation purposes, it should: (1) Conduct sufficient legal review to ensure, at the inception of the collateralized transaction and on an ongoing basis, that all documentation used in the transaction is binding on all parties and legally enforceable in all relevant jurisdictions; (2) consider the correlation between risk of the underlying direct exposure and collateral in the transaction; and (3) fully take into account the time and cost needed to realize the liquidation proceeds and the potential for a decline in collateral value over this time period.

A credit union should also ensure that the legal mechanism under which the collateral is pledged or transferred ensures that the credit union has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the counterparty and, where applicable, the custodian holding the collateral.

Finally, a credit union should ensure that it (1) has taken all steps necessary to fulfill any legal requirements to secure its interest in the collateral so that it has, and maintains, an enforceable security interest; (2) has set up clear and robust procedures to ensure satisfaction of any legal conditions required for declaring the borrower's default and prompt liquidation of the collateral in the event of default; (3) has established procedures and practices for conservatively estimating, on a regular ongoing basis, the fair value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and deterioration of the collateral); and (4) has in place systems for promptly requesting and receiving additional collateral for transactions with terms requiring maintenance of collateral values at specified thresholds.

When collateral other than cash is used to satisfy a margin requirement, then a haircut is applied to incorporate the credit risk associated with collateral, such as securities. The Board proposed including this concept in the rule so that credit unions could accurately recognize the risk mitigation benefit of collateral. This is the same approach taken by the Other Banking Agencies.

The Board received no comments objecting to this particular approach and has decided to retain the proposed approach to risk management for recognizing collateral in this final rule without change.

The table below illustrates an example of the calculations for Risk-Weighted Asset Amounts for both OTC and clearing derivatives agreements. For this example, both the OTC and clearing are considered to be multiple contracts under a Qualified Master Netting Agreement. Credit unions can use this as a guide in confirming the calculations involved to produce a risk-weighted asset for derivatives. (See the number references below for each line number of the table example.)

1. The Agreement Type indicates the transaction legal agreement between the credit union and the counterparty.
2. The examples provide, but are not limited to the basis calculations required for various collateral and agreement approaches.
3. Variation Margin (amount as basis for margin calls which are satisfied with collateral) collateral used for these examples.
4. The Risk Weight of Collateral is applied when utilizing the Simple Approach in the recognition of credit risk of collateralized derivative contracts.
5. To recognize the risk-mitigating effects of financial collateral, a credit union may use the ''Simple Approach'' or the ''Collateral Haircut Approach''.
6. The Collateral Haircut is determined by using Table 2 to § 702.105 in the rule text: ''Standard Supervisor Market Price Volatility Haircuts.''
7. Counterparty risk weights are determined in § 702.104 for OTC and § 702.105 for clearing.

Lines 8 through 16 are calculations based on the approach and types of agreement, collateral, fair values and notional amounts of the credit union derivatives transactions.

[197] *See, e.g.,* 12 CFR 324.35.

Example of Derivatives Risk-Weight Calculations

DataSet: 31-Oct-14 (All amounts in USD whole dollars)

Product	Notional	Maturity	Fair Value	Exposure Amount Components CCE	PFE Factor	PFE Amt and aGross
Swap	10,000,000	10/31/2017	500,000		0.005	50,000
Swap	20,000,000	11/1/2021	(250,000)		0.015	300,000
Swap	25,000,000	11/2/2025	650,000		0.015	375,000
Totals	55,000,000		900,000	***900,000***		***725,000***

Calculations:	OTC Multiple*			Clearing**		
1.) Agreement Type	OTC Multiple*			Clearing**		
2.) Scenario	A	B	C	D	E	F
3.) Variation Margin Collateral....................................	Cash	MBS(1)	MBS(1)	Cash	MBS(1)	MBS(1)
4.) Risk Weight of Collateral (for Risk weight substitution).	0%	20%		0%	20%	
5.) Collateral Mitigation Method (c)...........................	Simple	Simple	Haircut	Simple	Simple	Haircut
6.) Collateral Haircut (Table #2 to §702.105).........................			6%(2)			6%(2)
7.) Counterparty Risk Weight See (3).............................	100%	100%	100%	2%	2%	2%
8.) Net Current Credit Exposure (NCCE) (a)(1)(A).......	900,000	900,000	900,000	900,000	900,000	900,000
9.) Potential Future Credit Exposure (PFE, Anet) (a)(1)(B)	630,435	630,435	630,435	630,435	630,435	630,435
10.) Exposure Amount..	1,530,435	1,530,435	1,530,435	1,530,435	1,530,435	1,530,435
11.) Collateral: (Market value of Variation Margin)(4)	750,000	750,000	750,000	750,000	750,000	750,000
12.) Net Exposure Amount..	780,435	780,435	780,435	780,435	780,435	780,435
Add:						
13.) Collateral Risk Weight (only in Simple Approach)........	0	150,000		0	150,000	
14.) Haircut (2) (only in Collateral Haircut approach).............			45,000			45,000
15.) Risk Asset before counterparty weighting........	780,435	930,435	825,435	780,435	930,435	825,435
16.) Risk Weighted Asset Amount (3)..	***780,435***	***930,435***	***825,435***	***15,609***	***18,609***	***16,509***

* Multiple OTC calculations assume qualified master netting agreement

** Initial Margin is assumed to be Bankruptcy Remote for this example and not included for Clearing Risk Weighted Asset Amount

(1) MBS considered to be GSE MBS pass-thru securities greater than 5 years of Residual Maturity

(2) See Table 2 to §702.105 for Haircut amounts

(3) Risk weight assumed to be 100% for OTC and 2% for Clearing

(4) Clearing margin thresholds are set by the exchange and will only by uncollaterized for the daily margin requirement while OTC minimum thresholds are negotiated

Federally Insured, State-Chartered Credit Unions' Derivative Transactions

Under the Second Proposal, the Board included language that would require federally insured, state-chartered credit unions (FISCUs) to calculate risk weights in accordance with FDIC's rules for derivatives transactions that are not permissible under NCUA's derivatives rule. As noted above, one commenter requested that NCUA incorporate all of FDIC's language into the final RBC rule. FDIC's rules for derivatives are very detailed and lengthy. Incorporating these rules into this final rule would add unnecessary complexity. Further, as the options available to FISCUs are based on state laws, it would be a very time-consuming and expensive process to monitor FDIC's rules to make future conforming changes in NCUA's risk-based capital regulations. For these reasons, the Board is retaining the cross-reference and is not incorporating the text of FDIC's derivatives regulations into this final rule.

Current Section 702.106 Standard Calculation of Risk-Based Net Worth Requirement

The Second Proposal would eliminate current § 702.106 regarding the standard RBNW requirement. The current rule is structured so that credit unions have a standard measure and optional alternatives for measuring a credit union's RBNW. The Second Proposal, on the other hand, contained only a single measurement for calculating a credit union's risk-based capital ratio. Accordingly, current § 702.106 will no longer be necessary.

The Board received no comments on this particular revision and has decided to eliminate current § 702.106 from this final rule as proposed.

Current Section 702.107 Alternative Component for Standard Calculation

The Second Proposal would eliminate current § 702.107 regarding the use of alternative risk weight measures. The Board observed that the current alternative risk weight measures add unnecessary complexity to the rule. The current alternative risk weights focus almost exclusively on IRR, which has resulted in some credit unions with higher risk operations reducing their regulatory minimum capital requirement to a level inconsistent with the risk of the credit union's business model. The proposed risk weights would provide for lower risk-based capital requirements for those credit unions making good quality loans, investing prudently, and avoiding excessive concentrations of assets.

The Board received no comments on this particular revision and has decided to eliminate current § 702.107 from this final rule as proposed.

Current Section 702.108 Risk Mitigation Credit

The Second Proposal would eliminate current § 702.108 regarding the risk mitigation credit. The risk mitigation credit provides a system for reducing a credit union's risk-based capital requirement if it can demonstrate significant mitigation of credit risk or IRR. Credit unions have rarely taken advantage of risk mitigation credits; only one credit union has ever received a risk mitigation credit.

The Board received no comments on this particular revision and has decided to eliminate current § 702.107 from this final rule as proposed.

Section 702.106 Prompt Corrective Action for Adequately Capitalized Credit Unions

The Second Proposal renumbered current § 702.201 as proposed § 702.106, and would have made only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.106(a) would also remove the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Section 702.107 Prompt Corrective Action for Undercapitalized Credit Unions

The Second Proposal renumbered current § 702.202 as proposed § 702.107, and made only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.107(a)(1) would also remove the requirement that undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Section 702.108 Prompt Corrective Action for Significantly Undercapitalized Credit Unions

The Second Proposal renumbered current § 702.203 as proposed § 702.108, and made only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.108(a)(1) would also remove the requirement that significantly undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Public Comments on the Second Proposal

One state agency commenter noted that under the proposal, credit unions classified as significantly undercapitalized or worse would be required to restrict member business loans. The commenter acknowledged that it may be prudent to limit member business lending in some such cases, but felt there could be instances in which rational loan workout agreements require additional loans be granted to protect the cash flow or collateral position on loans already granted. The commenter suggested that forcing a restriction without some element of discretion on the part of the state examiner or federal examiner and corresponding state regulatory official and NCUA regional office may have the unintended consequence of artificially creating a liquidity problem for a borrower, and potentially jeopardizing the collection of existing credits. The commenter recommended that the decision to limit any type of lending be done on a case-by-case basis rather than a sweeping decision to be applied to all regardless of the circumstances.

Discussion

The Board is bound by statute because section 216(g)(2) of the FCUA provides in relevant part:

> [A]n insured credit union that is undercapitalized may not make any increase in the total amount of member business loans (as defined in section 107A(c) of this title) outstanding at that credit union at any one time, until such time as the credit union becomes adequately capitalized.

The statutory language does not preclude a credit union from entering into loan workout agreements provided the total amount of member business loans outstanding, including unused commitments, does not increase. Accordingly, the Board has retained the language in proposed § 702.108 in this final rule without change.

Section 702.109 Prompt Corrective Action for Critically Undercapitalized Credit Unions

The Second Proposal renumbered current § 702.204 as proposed § 702.109, and made only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), proposed § 702.109(a)(1) would also remove the requirement that critically undercapitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Section 702.110 Consultation With State Official on Proposed Prompt Corrective Action

The Second Proposal renumbered current § 702.205 as proposed § 702.110, and made only minor conforming amendments to the text of the section.

Public Comments on the Second Proposal

One state supervisory authority commenter pointed out that, under the proposal, authority to approve certain actions (such as net worth restoration plans, earnings retention waivers, etc.) must come from the NCUA Board, after consulting with the state regulator. The commenter recommended, however, that the authority to approve actions may be better placed with NCUA regional directors, after consulting with the state regulator. The commenter suggested that most states have a long and well established working relationship with regional offices, and regional directors should be in a better position to evaluate the reasonableness of this type of request.

Discussion

The Board appreciates the commenter's suggestion, but declines to make the recommended change at this time. However, the Board may choose delegate its authority to approve actions under this section to regional directors without having to change NCUA's regulations. Accordingly, the Board has decided to retain proposed § 702.110 in this final rule without change.

Section 702.111 Net Worth Restoration Plans (NWRPs)

The Second Proposal renumbered current § 702.206 as proposed § 702.111, and made only minor conforming amendments to the text of most of the subsections, with a few exceptions discussed in more detail below.

The Board reviewed the comments received on this section, which are discussed in more detail below, and has decided to adopt proposed § 702.111 in this final rule without change.

111(c) Contents of NWRP

Under the Second Proposal, § 702.111(c)(1)(i) provided that the contents of an NWRP must specify a quarterly timetable of steps the credit union will take to increase its net worth ratio *and risk-based capital ratio, if applicable,* so that it becomes adequately capitalized by the end of the term of the NWRP, and will remain so for four consecutive calendar quarters.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

111(g)(4) Submission of Multiple Unapproved NWRPs

Under the Second Proposal, § 702.111(g)(4) provided that the submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA.[198] The proposed amendments were intended to clarify that submitting multiple NWRPs that are rejected by NCUA, or the applicable state official, because of the inability of the credit union to produce an acceptable NWRP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

Public Comments on the Second Proposal

At least one commenter claimed that a number of credit unions are not aware of proposed new § 702.111(g)(4) because NCUA led them to believe that the rule only applied to complex credit unions. The commenter suggested that NCUA has significant latitude to approve or deny net worth restoration plans, even if a credit union submits a plan that meets the stated requirements. The commenter opposed including the new provision in the final rule, and recommended the Board include safeguards to ensure that credit unions acting in good faith are able to successfully submit NWRPs. Another commenter contended that the Board presented no evidence that submitting multiple net worth restoration plans represents an unsafe and unsound condition.

Discussion

The failure of a credit union to prepare an adequate net worth restoration plan places the credit union in violation of the FCUA requiring submission of an acceptable plan within the time allowed. The submission and rejection of multiple plans results in delays in resolving the problem of insured credit unions. Accordingly, to further ensure compliance with the FCUA, the Board has decided to adopt proposed § 702.111(g)(4) in this final rule without change.

The Board clarifies, however, that non-complex credit unions will not be expected to address risk-based capital in net worth restoration plans.

111(j) Termination of NWRP

Under the Second Proposal, § 702.111(j) provided that, for purposes of part 702, an NWRP terminates once the credit union has been classified as adequately capitalized or well capitalized for four consecutive quarters. The proposed paragraph also provided, as an example, that if a credit union with an active NWRP attains the classification as adequately capitalized on December 31, 2015, this would be quarter one and the fourth consecutive quarter would end September 30, 2016. The proposed paragraph was intended to provide clarification for credit unions on the timing of an NWRP's termination.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Section 702.112 Reserves

The Second Proposal renumbered current § 702.401 as proposed § 702.112. Consistent with the text of current § 702.401(a), the proposal also would require that each credit union establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or, in special cases, by the Board or appropriate state official.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Regular Reserve Account

As mentioned above, the proposed rule would eliminate current § 702.401(b) regarding the regular reserve account from the earnings retention process. The process and substance of requesting permission for charges to the regular reserve would be eliminated upon the effective date of a final rule. Upon the effective date of a final rule, a federal credit union would close out the regular reserve balance into undivided earnings. A state-chartered, federally insured credit union may, however, still be required to maintain a regular reserve account by its respective state supervisory authority.

The Board received no comments on the elimination of current § 702.401(b) and has decided to adopt the proposed revision in this final rule without change.

Section 702.113 Full and Fair Disclosure of Financial Condition

The Second Proposal renumbered current § 702.402 as proposed § 702.113, and made only minor conforming amendments to the text of the section with the exception of the changes to proposed § 702.113(d) that are discussed in more detail below.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

113(d) Charges for Loan and Lease Losses

Consistent with the proposed elimination of the regular reserve requirement which is discussed above, proposed § 702.113(d) would remove current § 702.402(d)(4), which provides that the maintenance of an ALLL shall not affect the requirement to transfer earnings to a credit union's regular reserve when required under subparts B or C of part 702.

In addition, the proposed rule would remove current § 702.402(d)(4), which provides that adjustments to the valuation ALLL will be recorded in the expense account ''Provision for Loan and Lease Losses.'' This change is intended to clarify that the ALLL is to be maintained in accordance with GAAP, as discussed above.

The Board received no comments on these proposed revisions and has decided to adopt the proposed amendments in this final rule without change.

(d)(1)

Proposed § 702.113(d)(1) would amend current § 702.401(d)(1) to provide that charges for loan *and lease* losses shall be made *timely and* in accordance with GAAP. The italicized words ''and lease'' and ''timely and'' would be added to the language in the current rule to clarify that the requirement also applies to lease losses and to require that credit unions make charges for loan and lease losses in a timely manner. As with the section above, these changes are intended to clarify that charges for potential lease losses are to be recorded in accordance with GAAP through the same allowance account as loan losses. In addition, timely recording is critical to maintain full and fair disclosure as required under this section.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

(d)(2)

Proposed § 702.113(d)(2) would amend current § 702.401(d)(2) to eliminate the detailed requirement and simply provide that the ALLL must be maintained in accordance with GAAP. This change is intended to provide full

[198] 12 U.S.C. 1786; *and* 1790d.

and fair disclosure to a credit union member, NCUA, or, at the discretion of a credit union's board of directors, to creditors to fairly inform them of the credit union's financial condition and operations.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

(d)(3)

Proposed § 702.113(d)(3) retained the language in current § 702.401(d)(5) with no changes.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

Section 702.114 Payment of Dividends

The Second Proposal renumbered current § 702.402 as proposed § 702.114 and made amendments to the text of paragraphs (a) and (b).

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

114(a) Restriction on Dividends

Current § 702.402(a) permits credit unions with a depleted undivided earnings balance to pay dividends out of the regular reserve account without regulatory approval, as long as the credit union will remain at least adequately capitalized. Under proposed § 702.114(a), however, only credit unions that have substantial net worth, but no undivided earnings, would be allowed to pay dividends without regulatory approval. Because of the removal of the regular reserve account, and to conform to GAAP, the proposal would amend the language to clarify that dividends may be paid when there is sufficient net worth. Net worth may incorporate accounts in addition to undivided earnings. Accordingly, § 702.114(a) of this proposal would provide that dividends shall be available only from net worth, net of any special reserves established under § 702.112, if any.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

114(b) Payment of Dividends and Interest Refunds

The Second Proposal would eliminate the language in current § 702.403(b) and replace it with a new provision. Proposed new § 702.114(b) would provide that the board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under subpart A of part 702 unless the appropriate regional director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise). Proposed paragraph (b) would have provided further that the request for written approval must include the plan for eliminating any negative retained earnings balance.

The Board received no comments on this section and has decided to adopt the proposed amendments in this final rule without change.

B. Subpart B—Alternative Prompt Corrective Action for New Credit Unions

Consistent with the Second Proposal, this final rule adds new subpart B, which contains most of the capital adequacy rules that apply to ''new'' credit unions. The current net worth measures, net worth classification, and text of the PCA requirements applicable to new credit unions are renumbered. They remain mostly unchanged from the current rule, except for minor conforming changes and the following substantive amendments:

(1) Clarification of the language in current § 702.301(b) regarding the ability of credit unions to become ''new'' again due to a decrease in asset size after having exceeded the $10 million threshold.

(2) Elimination of the regular reserve account requirement in current § 702.401(b) and all cross-references to the requirement.

(3) Addition of new § 701.206(f)(3) clarifying that the submission of more than two revised business plans would be considered an unsafe and unsound condition.

(4) Amendment of the language of current § 702.402 regarding the full and fair disclosure of financial condition.

(5) Amendment of the requirements of current § 702.403 regarding the payment of dividends.

Section 702.201 Scope

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.301 as § 702.201. The final rule also clarifies that a credit union may not regain a designation of ''new'' after reporting total assets in excess of $10 million.

Section 702.202 Net Worth Categories for New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.302 as § 702.202, and makes only minor technical edits and conforming amendments to the text of the section.

Section 702.203 Prompt Corrective Action for Adequately Capitalized New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.303 as § 702.203, and makes only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), this final rule also removes the requirement that adequately capitalized credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.204 Prompt Corrective Action for Moderately Capitalized, Marginally Capitalized or Minimally Capitalized New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.304 as § 702.204, and makes only minor conforming amendments to the text of the section. Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), this final rule removes the requirement that such credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

Section 702.205 Prompt Corrective Action for Uncapitalized New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.305 as proposed § 702.205, and makes only minor conforming amendments to the text of the section.

Section 702.206 Revised Business Plans (RBPs) for New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.306 as § 702.206, makes mostly minor conforming amendments to the text of the section, and adds new § 702.206(g)(3). Consistent with the proposed elimination of the regular reserve requirement in current § 702.401(b), this final rule also removes the requirement that new credit unions transfer the earnings retention amount from undivided earnings to their regular reserve account.

206(g)(3) Submission of Multiple Unapproved Revised Business Plans

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, § 702.206(g)(3) of this final rule provides that the submission of more than two RBPs that were not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA.[199] As explained in the preamble to the Second Proposal, NCUA regional directors have expressed concerns that some credit unions have in the past submitted multiple RBPs that could not be approved due to non-compliance with the requirements of the current rule, resulting in delayed implementation of actions to improve the credit union's net worth. This amendment is intended clarify that submitting multiple RBPs that are rejected by NCUA, or a state official, because of the failure of the credit union to produce an acceptable RBP is an unsafe and unsound practice and may subject the credit union to further actions as permitted under the FCUA.

Section 702.207 Incentives for New Credit Unions

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.307 as proposed § 702.207, and makes only minor conforming amendments to the text of the section.

Section 702.208 Reserves

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule adds new § 702.208 regarding reserves for new credit unions. Also, consistent with the text of the current reserve requirement in § 702.401(a), this final rule requires that each new credit union establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases, by the Board or appropriate state official.

As explained under the part of the preamble associated with § 702.112 above, this final rule eliminates the regular reserve account under current § 702.402(b) from the earnings retention requirement. Additionally, the process and substance of requesting permission for charges to the regular reserve will be eliminated upon the effective date of this final rule. Upon the effective date of this final rule, a federal credit union should close out its regular reserve balance into undivided earnings. A federally insured state-chartered credit union, however, may still maintain a regular reserve account if required under state law or by its state supervisory authority.

[199] 12 U.S.C. 1786 and 1790d.

Section 702.209 Full and Fair Disclosure of Financial Condition

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, this final rule renumbers current § 702.402 as § 702.209 and makes only minor conforming amendments to the text of this section with the exception of the changes to paragraph (d) that are discussed in more detail below.

209(d) Charges for Loan and Lease Losses

The Board received no comments on this section. Accordingly, consistent with the proposed elimination of the regular reserve requirement, § 702.209(d) of this final rule removes the language in current § 702.402(d)(4), which provides that the maintenance of an ALLL shall not affect the requirement to transfer earnings to a credit union's regular reserve when required under subparts B or C of part 702. In addition, this final rule removes current § 702.402(d)(3), which provides that adjustments to the valuation ALLL will be recorded in the expense account ''Provision for Loan and Lease Losses.'' As discussed in the part of the preamble associated with § 702.113, the changes to this section emphasize the need to record the ALLL in accordance with GAAP.

(d)(1)

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, current § 702.401(d)(1) is renumbered as § 702.209(d)(1) and amended to provide that charges for loan *and lease* losses shall be made *timely and* in accordance with GAAP. This final rule adds the italicized words ''and lease'' and ''timely and'' to the language in the current rule to clarify that the requirement also applies to lease losses and to require that credit unions make charges for loan and lease losses in a timely manner. As with the section above, this section is changed to clarify that charges for potential lease losses should be recorded in accordance with GAAP through the same allowance account as loan losses. In addition, timely recording is critical to maintain full and fair disclosure as required under this section.

(d)(2)

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, current § 702.401(d)(2) is renumbered as § 702.209(d)(2) and is amended to provide that the ALLL must be maintained in accordance with GAAP. This change is intended to provide full and fair disclosure to credit union members, NCUA, or, at the discretion of a credit union's board of directors, to creditors to fairly inform them of the credit union's financial condition and operations.

(d)(3)

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, current § 702.401(d)(5) is renumbered as § 702.209(d)(3) and retains the language with no changes.

Section 702.210 Payment of Dividends

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, the language in current § 702.403 is incorporated into new § 702.210 of this final rule.

210(a) Restriction on Dividends

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, § 702.210(a) provides that, for new credit unions, dividends shall be available only from net worth, net of any special reserves established under § 702.208, if any.

210(b) Payment of Dividends if Retained Earnings Depleted

The Board received no comments on this section. Accordingly, consistent with the Second Proposal, § 702.210 provides that the board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under subpart B of part 702 unless the appropriate regional director and, if state-chartered, the appropriate state official, has given prior written approval (in an RBP or otherwise). Paragraph (b) provides further that the request for written approval must include the plan for eliminating any negative retained earnings balance.

C. Appendix A to Part 702—Alternative Risk Weights for Certain On-Balance Sheet Assets

As discussed in the part of the preamble that discusses § 702.104(c)(3) of this final rule, the Board is adding new appendix A to part 702 of NCUA's regulations. As previously stated, this final rule allows credit unions to determine the risk weight of certain investment funds, and the risk weight of a subordinated tranche of any investment instead of using the risk weights assigned in § 702.104(c)(2). This final rule incorporates the relevant portions of §§ 324.43(e) and 324.53 of FDIC's regulations, which were incorporated only by reference in the Second Proposal, into new appendix A of part 702 of NCUA's regulations. To incorporate the text of FDIC's regulations into NCUA's regulations, the Board had to make some minor conforming changes to the proposed language incorporated into appendix A. No substantive changes to the proposed methodology for calculating the gross-up and look-through approaches are intended.

Accordingly, Appendix A to part 702 of this final rule provides that instead of using the risk weights assigned in § 702.104(c)(2), a credit union may determine the risk weight of certain investment funds, and the risk weight of non-subordinated or subordinated tranches of any investment as provided below.

(a) Gross Up-Approach

(a)(1) Applicability

Paragraph (a)(1) of appendix A provides that: Section 702.104(c)(3)(iii)(A) of part 702 provides that, a credit union may use the gross-up approach in this appendix to determine the risk weight of the carrying value of non-subordinated or subordinated tranches of any investment.

(a)(2) Calculation

Paragraph (a)(2) of appendix A provides, to use the gross-up approach, a credit union must calculate the following four inputs:

• Pro rata share, which is the par value of the credit union's exposure as a percent of the par value of the tranche in which the securitization exposure resides;

• Enhanced amount, which is the par value of tranches that are more senior to the tranche in which the credit union's securitization resides;

• Exposure amount, which is the amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities; and

• Risk weight, which is the weighted-average risk weight of underlying exposures of the securitization as calculated under this appendix.

(a)(3) Credit Equivalent Amount

Paragraph (a)(3) of appendix A provides that the ''credit equivalent amount'' of a securitization exposure under this part equals the sum of:

• The exposure amount of the credit union's exposure; and

• The pro rata share multiplied by the enhanced amount, each calculated in accordance with paragraph (a)(2) of appendix A to part 702.

(a)(4) Risk-Weighted Assets

Paragraph (a)(4) of appendix A provides, to calculate risk-weighted assets for a securitization exposure under the gross-up approach, a credit union must apply the risk weight required under paragraph (a)(2) of appendix A to part 702 to the credit equivalent amount calculated in paragraph (a)(3) of appendix A to part 702.

(a)(5) Securitization Exposure Defined

Paragraph (a)(5) of appendix A provides, for purposes of paragraph (a) of appendix A to part 702, ''securitization exposure'' means:

• A credit exposure that arises from a securitization; or

• An exposure that directly or indirectly references a securitization exposure described in first element of this definition.

(a)(6) Securitization Defined

Paragraph (a)(6) of appendix A provides, for purposes of paragraph (a) of appendix A to part 702, ''securitization'' means a transaction in which:

• The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

• Performance of the securitization exposures depends upon the performance of the underlying exposures; and

• All or substantially all of the underlying exposures are financial exposures (such as loans, receivables, asset-backed securities, mortgage-backed securities, or other debt securities).

(b) Look-Through Approaches

(b)(1) Applicability

Paragraph (b)(1) of appendix A provides: Section 702.104(c)(3)(iii)(B) provides that, a credit union may use one of the look-through approaches in appendix A to part 702 to determine the risk weight of the exposure amount of any investment fund, or the holding of separate account insurance.

(b)(2) Full Look-Through Approach

(b)(2)(i) General

Paragraph (b)(2)(i) of appendix A provides, a credit union that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund may set the risk-weighted asset amount of the credit union's exposure to the fund equal to the product of:

• The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the credit union; and

• The credit union's proportional ownership share of the fund.

(b)(2)(ii) Holding Report

Paragraph (b)(2)(ii) of appendix A provides, to calculate the risk-weighted amount under paragraph (b)(2)(i) of appendix A, a credit union should:

• Use the most recently issued investment fund holding report; and

• Use an investment fund holding report that reflects holdings that are not older than six months from the quarter-end effective date (as defined in § 702.101(c)(1) of part 702).

(b)(3) Simple Modified Look-Through Approach

Paragraph (b)(3) of appendix A provides that under the simple modified look-through approach, the risk-weighted asset amount for a credit union's exposure to an investment fund equals the exposure amount multiplied by the highest risk weight that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(b)(4) Alternative Modified Look-Through Approach

Paragraph (b)(4) of appendix A provides that under the alternative modified look-through approach, a credit union may assign the credit union's exposure amount to an investment fund on a pro rata basis to different risk weight categories under subpart A of part 702 based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The paragraph provides further that the risk-weighted asset amount for the credit union's exposure to the investment fund equals the sum of each portion of the exposure amount assigned to an exposure type multiplied by the applicable risk weight under subpart A of this part. The paragraph also notes that if the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the credit union must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under subpart A of this part and continues to make investments in order of the exposure type with the next highest applicable risk weight under subpart A of this part until the maximum total investment level is reached. The paragraph also provides that if more than one exposure type applies to an exposure, the credit union must use the highest applicable risk weight. Finally, the paragraph provides that a credit union may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

D. Other Conforming Changes to the Regulations

The Board received only one comment on this section. The commenter expressed concern that the references to the risk weightings for member business loans under § 723.1(d) and (e) were confusing and should be eliminated because of the proposed rule's use of the term ''commercial loan,'' instead of member business loans, in assigning risk weights. The Board generally agrees with the commenter's concerns and has revised § 723.1(d) and (e) to remove the words referring to the risk-weighting standards for member business loans. Accordingly, consistent with the Second Proposal, this final rule makes minor conforming amendments to §§ 700.2, 701.21, 701.23, 701.34, 703.14, 713.6, 723.1, 723.7, 747.2001, 747.2002, and 747.2003.

V. Effective Date

How much time would credit unions have to implement these new requirements?

In the preamble to the Second Proposal, the Board proposed an effective date of January 1, 2019 to provide credit unions and NCUA a lengthy implementation period to make the necessary adjustments, such as systems, processes, and procedures, and to reduce the burden on affected credit unions in meeting the new requirements.

Public Comments on the Second Proposal

The Board received many comments regarding the proposed effective date of the final rule. Several commenters suggested that given the significant operational implications for both credit unions and the NCUA, a 2019 effective date is appropriate. Those commenters suggested the proposed effective date would allow credit unions to adjust their balance sheets and strategic plans to achieve a well-capitalized standard under the rule without disrupting member products and services. Commenters also noted that the proposed effective date aligns with the implementation timeframe of the Other Banking Agencies and, thus, would avoid creating a competitive disadvantage across competing financial services entities.

A substantial number of other commenters, however, requested that the effective date be delayed until 2021 to coincide with refunds the commenters expect to receive from the Corporate Stabilization Fund. The commenters suggested the refunds will be important to those credit unions that will need to increase capital levels in order to comply with the new regulation.

Other commenters argued that the proposed timeframe was insufficient given the significance of the impact of the proposed requirements and the length of time it would take credit unions to adjust their business strategies, portfolios and capital to best position themselves relative to the rule. Commenters complained the task would be burdensome for credit unions given their limited options for raising capital when compared to banks, which were afforded seven years to fully implement BASEL III. Accordingly, those commenters recommended various extended implementation periods ranging from five years to seven years, or phase-in periods over a similar timeframe.

One commenter speculated that extending the implementation until 2019 would create a dual standard for credit unions near threshold levels. The commenter asked: What measure should be the plan for the coming 2–3 years? The commenter acknowledged that for some credit unions, the change will result in better risk-based capital levels than under the current rule. But the commenter argued that fixing the current capital levels under rules being phased out could cause real harm to memberships and credit union health.

Several commenters noted that the Financial Accounting Standards Board (FASB) plans to replace the current credit impairment model with a current expected credit loss model. Commenters suggested further that any final rule issued by FASB will require NCUA and FASB harmonization with respect to forecasting models utilized by credit unions to reduce conflicts between examination guidance. Accordingly, commenters recommended that the NCUA Board delay implementation of any final risk-based capital rule until the final FASB rule has been fully implemented by credit unions.

One commenter recommended that if IRR, access to additional supplemental forms of capital, and risk-based share insurance premium changes are likely in the near future, the Board should delay finalization and implementation of the proposed rule until a comprehensive analysis can be conducted to ensure an integrated, aligned approach to risk-based capital. The commenter contended that addressing interest rate risk, supplemental capital, risk-based share insurance premiums and risk-based capital in silos will not create the most efficient and effective solution.

Discussion

The proposed January 1, 2019 effective date provides credit unions with more than three years to ramp up implementation, which should be more than sufficient time to make the necessary adjustments to systems and operations before the effective date of this final rule. In addition, as noted above, the effective date generally coincides with the full phase-in of FDIC's capital regulations. In response to commenters who asked the Board to phase in the implementation, the Board found that phasing in the new capital rules for credit unions would add additional complexity with minimal benefit.

Further, it would be inappropriate to delay implementation due to potential changes in accounting that may be forthcoming, and the elimination of the cap on the amount of the ALLL will reduce the impact of the announced change in maintaining the ALLL.

Accordingly, this final rule will become effective on January 1, 2019.

VI. Impact of This Final Rule

This final rule will apply to credit unions with $100 million or greater in total assets. As of December 31, 2014, there were 1,489 credit unions (23.7 percent of all credit unions) with assets of $100 million or greater. As a result, approximately 76 percent of all credit unions will be exempt from the risk-based capital requirement.[200] A net of 16 complex credit unions with total assets of $9.8 billion would have a

[200] The proposed risk-based capital requirements applied only to credit unions with assets of $100 million or more, compared to the Other Banking Agencies' rules that apply to banks of all sizes. There were 1,872 FDIC-insured banks with assets less than $100 million as of December 2014.

lower capital classification as a result this rule with a capital shortfall of approximately $67 million.[201] Approximately 98.5 percent of all complex credit unions will remain well capitalized.[202] The aggregate and average RBC ratios for complex credit unions are 17.9 and 19.2 percent respectively.[203] As shown in the table below most complex credit unions will have a risk-based capital ratio well in excess of the 10 percent needed to be well capitalized.

DISTRIBUTION OF NET WORTH RATIO AND FINAL RISK-BASED CAPITAL RATIO

Number of CUs Net Worth Ratio RBC Ratio	Less than well capitalized <7% <10%	Well capitalized to well +2% 7%–9% 10%–12%	Well capitalized +2% to +3.5% 9%–10.5% 12%–13.5%	Well capitalized +3.5% to +5% 10.5%–12% 13.5%–15%	Greater than well capitalized +5% >12% >15%
Net Worth Ratio	14	297	449	334	395
Final RBC Ratio	23	107	140	194	1,025

Public Comments on the Second Proposal

The Board received a substantial number of comments regarding NCUA's estimates of the impacts of the Second Proposal. Most commenters who mentioned the impacts of the proposal suggested the rule would have negative impacts on the credit union industry. Numerous commenters speculated that the proposal would unjustifiably slow credit union growth in the future, and that the funds used to meet the newly proposed requirements could otherwise be used to make loans to consumers or small businesses, or be used in other productive ways. Commenters also speculated that the requirements in the proposal would restrict credit union lending to consumers by forcing credit unions to maintain capital on their books rather than lending to their members. At least one commenter recommended that the Board more thoughtfully consider the actual market effect on the credit union industry and produce more reasonably calibrated risk weights based on the cooperative nature of credit unions. The commenter recommended that the Board also reconsider the value of concentration escalators and provide empirical data that reflect what actual additional risk is created based on concentration of certain asset categories. Other commenters claimed the higher capital levels that would be required under the proposal would reduce the amount of support, both monetary and operational, that larger credit unions have historically provided to their smaller counterparts, which would put additional strain on the finances and operations of many smaller credit unions.

One credit union trade association commenter speculated that under the proposal, the number of credit unions downgraded would more than double during a downturn in the business cycle. Under the commenter's analysis, 45 credit unions would have been downgraded during the most 2007–2009 financial crisis if this proposal had been in place in 2009. According to the commenter, of those 45 credit unions, 41 would be well capitalized today. The commenter suggested that to have avoided a downgrade, those credit unions would have had to increase their capital by $145 million, or an average of $3.2 million per credit union. The commenter stated that almost all of the credit unions that would have been downgraded (95 percent) are well capitalized or adequately capitalized today. The commenter claimed this empirically proves that the proposal is unnecessary and unduly burdensome, as it would further strain the credit union system during a financial downturn. The commenter estimated that, in order to satisfy the proposal's well capitalized threshold, credit unions would need to hold at least an additional $729 million. The commenter estimated further that, to satisfy the proposal's adequately capitalized threshold, credit unions would need to hold at least an additional $260 million.

Another commenter argued that the Board's cost estimates failed to include the one-time costs that would be incurred by the entire credit union industry in system changes, additional reports, potential additional segregation and segmentation of the balance sheet, etc. in order to fill out the new Call Report forms. The commenter speculated that such costs will far outweigh the costs that the Board has identified in the proposal.

Yet another commenter maintained that, according to the proposal, most complex credit unions are currently well capitalized under both the net worth ratio and the proposed risk-based capital ratio. The commenter calculated that as of September 30, 2014, complex credit unions had an average net worth ratio of 10.7 percent and a risk-based capital ratio of 19.3 percent, both well in excess of guidelines identifying well capitalized status. The commenter suggested that only 19 complex credit unions would fall from well capitalized status under the proposal. Thus, the commenter concluded that the costs associated with the proposal seemed excessive given how extremely well capitalized the credit union industry is today under current guidelines.

One credit union commenter suggested that for the risk-based capital requirement to be effective, it would have to be more complex. The commenter explained that this would mean requiring more information on the Call Report and adding new categories of loans in the final rule. Another credit union commenter supported making the risk-based capital framework as complicated as it needs to be to more accurately reflect the unique needs and structure of the credit union industry.

Several commenters noted that in March 2015, FASB announced expectations to finalize the standard for timely financial reporting of credit losses in the third quarter of 2015. Commenters recommended the Board consider the possible effects of the FASB proposal in relation to NCUA's risk-based capital regulations and remove any duplicative regulatory burdens that may be created.

[201] In the second proposal using data as of December 31, 2013, NCUA estimated less than 20 credit unions would experience a decline in their capital classification with a capital shortfall of $53.6 million.

[202] Of the 1,489 impacted credit unions, only 23, or 1.54 percent, would have less than the 10 percent risk-based capital requirement to be well capitalized. Of these, seven have net worth ratios less than 7 percent and therefore are already categorized as less than well capitalized.

[203] In the second proposal, based on December 2013 Call Report data, NCUA estimated the aggregate average risk-based capital ratio would be 18.2 percent with an average risk-based capital ratio of 19.3 percent.

A significant number of commenters requested that the Board minimize the burden on credit unions of expanding the Call Report. Several commenters suggested the Board consider an approach where credit unions would have the option of providing the additional, detailed information required under the proposal. One commenter suggested such an approach could be accomplished by including additional optional data fields within the Call Report, similar to the approach used by FDIC. The commenter suggested further that any changes required of a credit union require the expenditure of resources, and in a time when many credit unions are struggling to comply with existing rules from NCUA and other regulators, the Board should consider any alternatives that will reduce the burden of this rule on credit unions. Another commenter contended that NCUA's current estimate of the public burden of collecting information for the Call Report grossly understates the actual amount of time required. The commenter suggested that the variety of data needed to generate a quarterly Call Report takes employees from some credit unions 66 hours (10 times NCUA's current 6.6 hour estimate). The commenter recommended the Board consider the time and resources dedicated to producing the additional Call Report data required by the proposal and focus on minimizing that burden and impact to credit unions. At least one commenter recommended that any Call Report updates required by this rulemaking be made available to credit unions at least six months before the effective date of the final rule.

Discussion

The Board has considered the comments received and recognizes that unduly high minimum regulatory capital requirements and unnecessary burdens could lead to less-than-optimal outcomes. Thus, as discussed throughout this preamble and in the Paperwork Reduction Act section to follow, the Board has made appropriate efforts to target the impacts and reduce the burdens of this final rule. This final rule only targets outlier credit unions with insufficient capital relative to their risk. The final rule meets Congress' express purpose of prompt corrective action ''. . . to resolve the problems of insured credit unions at the least possible long-term cost to the Fund,'' [204] by establishing a risk-based capital requirement which will reduce the likelihood that a credit union will become undercapitalized and eventually fail at a cost to the Fund.

The Board's elimination of the 1.25 percent of risk-assets cap on the amount of ALLL in the risk-based capital ratio numerator will reduce the impact of the risk-based capital ratio during economic downturns when credit unions are more likely to be funding higher levels of loan losses. Removal of the ALLL cap will also mitigate concerns with FASB's proposed related changes to GAAP.[205] A reduction in capital ratios during economic downturns is a normal result for both the risk-based capital ratio and the net worth ratio. The capital adequacy requirement will enhance a credit union's ability to measure and plan for economic downturns.

Sound capital levels are vital to the long-term health of all financial institutions. Credit unions are already expected to incorporate into their business models and strategic plans provisions for maintaining prudent levels of capital. This final rule ensures minimum regulatory capital levels for complex credit unions will be more accurately correlated to risk. The final rule achieves a reasonable balance between requiring credit unions posing an elevated risk to hold more capital, while not overburdening lower-risk credit unions.

As indicated in the table below, according to the impact measure used in the Second Proposal, 72 complex credit unions would have had higher capital requirements due to the risk-based capital ratio requirement based on December 31, 2014 data.[206]

DISTRIBUTION OF RISK-BASED LEVERAGE EQUIVALENT RATIO [207]

RBC ratio—leverage equivalent	<6%	6–7.5%	7.5–8.5%	8.5–9.5%	9.5–11%	>11%	Average
Number of CUs	816	601	57	11	4	0	5.90%

Using another more conservative measure developed based on suggestions received from commenters, NCUA identified 308 credit unions, or 20 percent of all complex credit unions, that are likely to have a higher minimum capital requirement under the risk-based capital ratio requirement being adopted under this final rule.[208] While up to 20 percent of credit unions are likely to have the risk-based capital ratio as the binding constraint, only 20 of those credit unions have an estimated risk-based capital ratio below 10 percent.[209]

NCUA's latest analysis concludes it is reasonable for the risk-based capital ratio requirement to be the primary determiner of the capital requirement for about 20 percent of complex credit unions because these 308 credit unions have an average risk-weighted assets to total assets ratio of 72 percent—which is significantly higher than the 59 percent average ratio for all complex credit unions.

As noted earlier, concentration risk is a material risk addressed in this final rule. Based on December 31, 2014 Call Report data, if this final rule were effective today, NCUA estimates that the additional capital required for concentration risk would have the following impact:

[204] 12 U.S.C. 1790d(a)(1).

[205] *See* Financial Standards Accounting Board, Proposed Accounting Standards Update, *Financial Instruments—Credit Losses, Subtopic 825–15 (Dec. 20, 2012).*

[206] The method used in the Second Proposal was calculated by taking 10 percent of estimated risk assets divided by total assets with results exceeding 7.5 percent indicating the risk-based capital requirement is the higher minimum-capital requirement.

[207] This computation calculates the amount of capital required by multiplying the estimated proposed risk weighted assets by 10 percent (the level to be well capitalized), and then dividing this result by total assets. This provides a measure comparable to the net worth ratio. Since the risk-based capital provisions provide for a broader definition of capital included in the risk-based capital ratio numerator, which on average benefits credit unions by approximately 50 basis points, the appropriate comparison point for the leverage equivalent is 7.5 percent, not the 7 percent level for well capitalized for the net worth ratio.

[208] Calculated based on a positive result to the following formula: ((risk-weighted assets times 10 percent) − allowance for loan losses − equity acquired in merger − total adjusted retained earnings acquired through business combinations + NCUA share insurance capitalization deposit + goodwill + identifiable intangible assets) − (total assets times 7 percent).

[209] Also, given the new treatment of non-significant equity exposures, which could not be estimated due to existing data limitations, this impact may be further reduced.

Concentration threshold	Number of credit unions with total assets greater than $100 million as of 12/31/2014	Percentage of 1,489 credit unions with total assets greater than $100 million
First-Lien Residential Real Estate (>35% of Total Assets)	135	9.1
Junior-Lien Residential Real Estate (>20% of Total Assets)	57	3.8
Commercial Loans (using MBLs as a proxy)[210] (>50% of Total Assets)	12	0.8

The Board considered the impact of the individual data items necessary to compute the risk-based capital ratio. Many commenters' requests for further stratification of risk weights were determined to create a data burden in excess of the benefits. All revisions to the Call Report will be subject to the publication and opportunity for comment process in accordance with the requirements of the Paperwork Reduction Act of 1994 to obtain a valid control number from the U.S. Office of Management and Budget (OMB). Interested parties are invited to submit written comments to each notice of information collection that NCUA will submit to OMB for review.

VII. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a final rulemaking, an agency prepare and make available a final regulatory flexibility analysis that describes the impact of the final rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $50 million[211]) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule.

Public Comments on the Second Proposal

A small credit union commenter suggested that while credit unions with less than $100 million in assets are not subject to the requirements of this proposal, there is great apprehension among small credit unions that NCUA examiners will require them to meet the basic requirements in the risk-based capital rule.

Several commenters contended that NCUA's current estimate of the public burden of collecting information for the Call Report grossly understates the actual amount of time required. At least one commenter suggested that the variety of data needed to generate a quarterly Call Report takes employees from some credit unions 66 hours (10 times NCUA's estimate of 6.6 hours).

Discussion

The amendments this final rule makes to part 702 primarily affect complex credit unions, which are those with $100 million or more in assets. The revised risk-based capital requirement and capital adequacy plan under this final rule do not apply to small credit unions.

NCUA recognizes that because many commenters suggested NCUA collect more granular data for credit union Call Reports, small credit unions with assets less than $50 million could be affected if they are asked to assemble and report additional data. NCUA, however, will make every reasonable effort to redesign the Call Report system so that all credit unions with $100 million or less in assets are not unnecessarily burdened by the data requirements that apply to complex credit unions. NCUA plans to propose information collection changes to reflect the new requirements of this final rule in the future, and publish the regulatory reporting requirements separately—including the steps NCUA has taken to minimize the impact of the reporting burden on small credit unions—for comment.

In addition, this final rule makes a number of minor changes to current part 702 of NCUA's regulations including:

- Part 702—Reorganizing and renumbering part 702, including sections of the part applicable to small credit unions.
- Section 702.2—Making minor amendments to certain definitions applicable to all credit unions under part 702.
- Section 702.111(g)(4) & 702.206(g)(3)—Making minor clarifications regarding the submission of multiple unapproved NWRPs or RBPs.
- Sections 702.112 & 702.208—Eliminating the regular reserve account requirement for all credit unions.
- Sections 702.113(d) & 702.209(d)—Making minor amendments to the treatment of loan and lease losses.
- Section 702.114 & 702.210—Making minor amendments to part 702 regarding the payments of dividends for all credit unions.
- Section 702.201—Making minor revisions to the definition of ''new credit union.''

NCUA believes the one time burden associated with the policy review and revisions related to these amended provisions will be one hour for small credit unions. Accordingly, the effects of this final rule on small credit unions are minor.

Based on the above assessment, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or increases an existing burden.[212] For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure or recordkeeping requirement, each referred to as an information collection. The changes made to part 702 by this final rule will impose new information collection requirements.

NCUA determined that the proposed changes to part 702 would have costs associated with updating internal policies, and updating data collection and reporting systems for preparing Call Reports. Based on December 2013 Call Report data, NCUA in the Second Proposal estimated that all 6,554 credit unions would have to amend their procedures and systems for preparing Call Reports. NCUA proposed addressing the costs and providing notice of the particular changes that would be made in other collections, such as the NCUA Call Report and Profile as part of its regular amendments separate from this proposed rule.

[210] Using MBL data as the current Call Report does not capture ''commercial loan'' data as defined in this final rule.

[211] On September 24, 2015, the Board published Interpretative Ruling and Policy Statement 15–1, which amends the definition of small credit unions for purposes of the RFA to credit unions with assets of less than $100 million. 80 FR 57512 (Sept. 24, 2015). This change, however, does not take effect until November 23, 2015, which is after the date this rule is scheduled to be voted on by the Board.

[212] 44 U.S.C. 3507(d); 5 CFR part 1320.

NCUA also estimated that approximately 21.5 percent, or 1,455 credit unions, would be defined as ''complex'' under the proposed rule and would have additional data collection requirements related to the new risk-based capital requirements.

NCUA's Total Estimated One-Time Costs of the Second Proposal:

One-time burden for policy review and revision, (20 hours times 5,099 credit unions (non-complex), or 40 hours times 1,455 credit unions (complex)). The total one-time cost for non-complex credit unions totals 101,980 hours or $3,252,142, an average of $638 per credit union. The total one-time cost for complex credit unions totals 58,200 hours or $1,855,998, an average of $1,276 per credit union.

Public Comments on the Second Proposal

A significant number of commenters maintained that the proposal did not incorporate the estimated burden for establishing a comprehensive written strategy for maintaining an appropriate level of capital and other changes to a complex credit union's operations other than data collection. Commenters suggested the effects of the proposal would be a greater burden for complex credit unions upon the implementation year and for ongoing years. Commenters noted that NCUA's final rule on Capital Planning and Stress Testing estimated 750 hours of paperwork burden in the initial year and 250 hours in subsequent years, and suggested it was unclear how the requirements of the Second Proposal would differ from the final rule on Capital Planning and Stress Testing in terms of burden. Using the cost estimate previously utilized by NCUA for the final rule on Capital Planning and Stress Testing, one commenter suggested a more reasonable estimate for this proposal would be $23,926 per credit union or $34.8 million to the industry for the initial year of the final RBC rule. The commenter also suggested there would be an ongoing annual cost of $7,975 per credit union or $11.6 million to the industry, which, over a five-year period, would have a cumulative cost to the industry of approximately $81.2 million.

In addition, several commenters contended that NCUA's current estimate of the public burden of collecting information for the Call Report grossly understates the actual amount of time required. At least one commenter suggested that the variety of data needed to generate a quarterly Call Report takes employees from some credit unions 66 hours (10 times NCUA's estimate 6.6 hours).

Discussion

The final changes will result in some costs for complex credit unions associated with updating internal policies, including a comprehensive strategy for maintaining an appropriate level of capital, the cost estimates for which are discussed in more detail below. Further, there will be marginal costs associated with updating data collection and reporting systems for the NCUA Call Reports. The changes to the Call Reporting requirements, however, will be handled as part of NCUA's regular Call Report updates separately from this proposed rule. The information collection requirements for the Call Report are approved by OMB under Control No. 3133–004.

In response to commenters who believe all complex credit unions will need substantial time to establish and maintain a comprehensive written capital strategy, NCUA field staff report that many well-managed complex credit unions already have comprehensive strategies for maintaining appropriate levels of capital. Further, commenters compared the burden of the Capital Planning and Stress Testing hours; however, for the vast majority of complex credit unions, the written capital strategy will not necessarily approach the complexity and more rigorous requirements associated with stress testing.

NCUA has updated its PRA analysis based on December 2014 Call Report data. Again, NCUA will make every effort to redesign the Call Report system so that small credit unions are not unnecessarily burdened by the data requirements that apply to complex credit unions.

The final rule contains minor changes to §§ 702.2, 702.111(g)(4), 702.206(g)(3), 702.112, 702.208, 702.113(d), 702.209(d), 702.114, 702.210, and 702.201 for which all credit union's should be aware. The information collection requirements contained in 702.111(g)(4) and 702.206(g)(3) are generally related to information collected under OMB Control No. 3133–0154.

NCUA estimates that 1,489 credit unions defined as ''complex'' will have additional data collection requirements related to the new risk-based capital requirements. This slight increase from 1,455 credit unions in the Second Proposal occurred as some credit unions that had assets of less than $100 million grew in size and now meet the definition of ''complex.''

As a result, NCUA's Total Estimated One-Time Costs based on the December 2014 Call Report data have changed slightly:

One-time burden for policy review and revision:

- 40 hours times 1,489 complex credit unions. The total one-time cost for complex credit unions totals 59,560 hours or $1,898,174, an average of $1,275 per credit union.
- 1 hour times 4,784 non-complex credit unions. The total one-time cost for credit unions with $100 million or less in assets totals 4,784 hours, for a total estimated cost of $152,562.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the principles of the executive order to adhere to fundamental federalism principles. This final rule will apply to all federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions. Accordingly, it may have, to some degree, a 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. The Board believes this impact is minor, and it is an unavoidable consequence of carrying out the statutory mandate to adopt a system of PCA to apply to all federally insured, natural-person credit unions. Throughout the rulemaking process, NCUA has consulted with representatives of state regulators regarding the impact of PCA on state-chartered credit unions. Comments and suggestions of those state regulators are reflected in this final rule.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 701

Credit, Credit unions, Insurance, Reporting and recordkeeping requirements.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

12 CFR Part 713

Bonds, Credit unions, Insurance.

12 CFR Part 723

Credit unions, Loan programs-business, Reporting and recordkeeping requirements.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Crime, Equal access to justice, Investigations, Lawyers, Penalties.

By the National Credit Union Administration Board on October 15, 2015.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the Board proposes to amend 12 CFR parts 700, 701, 702, 703, 713, 723, and 747 as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.2 [Amended]

■ 2. Amend the definition of ''net worth'' in § 700.2 by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.21 [Amended]

■ 4. Amend § 701.21(h)(4)(iv) by removing ''§ 702.2(f)'' and adding in its place ''§ 702.2''.

§ 701.23 [Amended]

■ 5. Amend § 701.23(b)(2) by removing the words ''net worth'' and adding in their place the word ''capital'', and removing the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement''.

§ 701.34 [Amended]

■ 6. Amend § 701.34 as follows:
■ a. In paragraph (b)(12) remove the words ''§§ 702.204(b)(11), 702.304(b) and 702.305(b)'' and add in their place the words ''part 702''.
■ b. In paragraph (d)(1)(i) remove the words ''net worth'' and add in their place the word ''capital''.
■ c. In the appendix to § 701.34, amend the paragraph beginning ''8. Prompt Corrective Action'' by removing the words ''net worth classifications (*see* 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be)'' and adding in their place the words ''capital classifications (*see* 12 CFR part 702)''.

PART 702—CAPITAL ADEQUACY

■ 7. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 8. Revise §§ 702.101, 702.202, and subparts A and B to read as follows:

Subpart A—Prompt Corrective Action

§ 702.1 Authority, purpose, scope, and other supervisory authority.

(a) *Authority.* Subparts A and B of this part and subpart L of part 747 of this chapter are issued by the National Credit Union Administration (NCUA) pursuant to sections 120 and 216 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1776 and 1790d (section 1790d), as revised by section 301 of the Credit Union Membership Access Act, Public Law 105–219, 112 Stat. 913 (1998).

(b) *Purpose.* The express purpose of prompt corrective action under section 1790d is to resolve the problems of federally insured credit unions at the least possible long-term loss to the National Credit Union Share Insurance Fund. Subparts A and B of this part carry out the purpose of prompt corrective action by establishing a framework of minimum capital requirements, and mandatory and discretionary supervisory actions applicable according to a credit union's capital classification, designed primarily to restore and improve the capital adequacy of federally insured credit unions.

(c) *Scope.* Subparts A and B of this part implement the provisions of section 1790d as they apply to federally insured credit unions, whether federally- or state-chartered; to such credit unions defined as ''new'' pursuant to section 1790d(b)(2); and to such credit unions defined as ''complex'' pursuant to section 1790d(d). Certain of these provisions also apply to officers and directors of federally insured credit unions. Subpart C applies capital planning and stress testing to credit unions with $10 billion or more in total assets. This part does not apply to corporate credit unions. Unless otherwise provided, procedures for issuing, reviewing and enforcing orders and directives issued under this part are set forth in subpart L of part 747 of this chapter.

(d) *Other supervisory authority.* Neither section 1790d nor this part in any way limits the authority of the NCUA Board or appropriate state official under any other provision of law to take additional supervisory actions to address unsafe or unsound practices or conditions, or violations of applicable law or regulations. Action taken under this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the NCUA Board or appropriate state official, including issuance of cease and desist orders, orders of prohibition, suspension and removal, or assessment of civil money penalties, or any other actions authorized by law.

§ 702.2 Definitions.

Unless otherwise provided in this part, the terms used in this part have the same meanings as set forth in FCUA sections 101 and 216, 12 U.S.C. 1752, 1790d. The following definitions apply to this part:

Allowances for loan and lease losses (ALLL) means valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans, lease financing receivables or other extensions of credit as determined in accordance with GAAP.

Amortized cost means the purchase price of a security adjusted for amortizations of premium or accretion of discount if the security was purchased at other than par or face value.

Appropriate state official means the state commission, board or other supervisory authority that chartered the affected credit union.

Call Report means the Call Report required to be filed by all credit unions under § 741.6(a)(2) of this chapter.

Carrying value means the value of the asset or liability on the statement of financial condition of the credit union, determined in accordance with GAAP.

Central counterparty (CCP) means a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

Charitable donation account means an account that satisfies all of the conditions in § 721.3(b)(2)(i), (b)(2)(ii), and (b)(2)(v) of this chapter.

Commercial loan means any loan, line of credit, or letter of credit (including any unfunded commitments) for commercial, industrial, and professional purposes, but not for investment or personal expenditure purposes. Commercial loan excludes loans to CUSOs, first- or junior-lien residential real estate loans, and consumer loans.

Commitment means any legally binding arrangement that obligates the credit union to extend credit, purchase or sell assets, enter into a borrowing agreement, or enter into a financial transaction.

Consumer loan means a loan for household, family, or other personal expenditures, including any loans that, at origination, are wholly or substantially secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan. Consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of one or more vehicles to be part of a fleet of vehicles.

Contractual compensating balance means the funds a commercial loan borrower must maintain on deposit at the lender credit union as security for the loan in accordance with the loan agreement, subject to a proper account hold and on deposit as of the measurement date.

Credit conversion factor (CCF) means the percentage used to assign a credit exposure equivalent amount for selected off-balance sheet accounts.

Credit union means a federally insured, natural person credit union, whether federally- or state-chartered.

Current means, with respect to any loan, that the loan is less than 90 days past due, not placed on non-accrual status, and not restructured.

CUSO means a credit union service organization as defined in part 712 and 741 of this chapter.

Custodian means a financial institution that has legal custody of collateral as part of a qualifying master netting agreement, clearing agreement, or other financial agreement.

Depository institution means a financial institution that engages in the business of providing financial services; that is recognized as a bank or a credit union by the supervisory or monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. Depository institution includes all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions and international banking facilities of domestic depository institutions, and all privately insured state chartered credit unions.

Derivatives Clearing Organization (DCO) means the same as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d).

Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days.

Equity investment means investments in equity securities and any other ownership interests, including, for example, investments in partnerships and limited liability companies.

Equity investment in CUSOs means the unimpaired value of the credit union's equity investments in a CUSO as recorded on the statement of financial condition in accordance with GAAP.

Exchange means a central financial clearing market where end users can enter into derivative transactions.

Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029.

Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029.

Exposure amount means:

(1) The amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities.

(2) The outstanding balance for Federal Reserve Bank Stock, Central Liquidity Facility Stock, Federal Home Loan Bank Stock, nonperpetual capital and perpetual contributed capital at corporate credit unions, and equity investments in CUSOs.

(3) The carrying value for non-CUSO equity investments, and investment funds.

(4) The carrying value for the credit union's holdings of general account permanent insurance, and separate account insurance.

(5) The amount calculated under § 702.105 of this part for derivative contracts.

Fair value has the same meaning as provided in GAAP.

Financial collateral means collateral approved by both the credit union and the counterparty as part of the collateral agreement in recognition of credit risk mitigation for derivative contracts.

First-lien residential real estate loan means a loan or line of credit primarily secured by a first-lien on a one-to-four family residential property where:

(1) The credit union made a reasonable and good faith determination at or before consummation of the loan that the member will have a reasonable ability to repay the loan according to its terms; and

(2) In transactions where the credit union holds the first-lien and junior lien(s), and no other party holds an intervening lien, for purposes of this part the combined balance will be treated as a single first-lien residential real estate loan.

GAAP means generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC).

General account permanent insurance means an account into which all premiums, except those designated for separate accounts are deposited, including premiums for life insurance and fixed annuities and the fixed portfolio of variable annuities, whereby the general assets of the insurance company support the policy.

General obligation means a bond or similar obligation that is backed by the full faith and credit of a public sector entity.

Goodwill means an intangible asset, maintained in accordance with GAAP, representing the future economic benefits arising from other assets acquired in a business combination (*e.g.,* merger) that are not individually identified and separately recognized. Goodwill does not include excluded goodwill.

Government guarantee means a guarantee provided by the U.S. Government, FDIC, NCUA or other U.S. Government agency, or a public sector entity.

Government-sponsored enterprise (GSE) means an entity established or chartered by the U.S. Government to serve public purposes specified by the U.S. Congress, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government.

Guarantee means a financial guarantee, letter of credit, insurance, or similar financial instrument that allows one party to transfer the credit risk of one or more specific exposures to another party.

Identified losses means those items that have been determined by an evaluation made by NCUA, or in the case of a state chartered credit union the appropriate state official, as measured on the date of examination in accordance with GAAP, to be chargeable against income, equity or valuation allowances such as the allowances for loan and lease losses. Examples of identified losses would be assets classified as losses, off-balance sheet items classified as losses, any provision expenses that are necessary to replenish valuation allowances to an adequate level, liabilities not shown on the books, estimated losses in contingent liabilities, and differences in accounts that represent shortages.

Industrial development bond means a security issued under the auspices of a state or other political subdivision for the benefit of a private party or enterprise where that party or enterprise, rather than the government entity, is obligated to pay the principal and interest on the obligation.

Intangible assets mean assets, maintained in accordance with GAAP, other than financial assets, that lack physical substance.

Investment fund means an investment with a pool of underlying investment assets. Investment fund includes an investment company that is registered under section 8 of the Investment Company Act of 1940, and collective investment funds or common trust investments that are unregistered investment products that pool fiduciary client assets to invest in a diversified pool of investments.

Junior-lien residential real estate loan means a loan or line of credit secured by a subordinate lien on a one-to-four family residential property.

Loan secured by real estate means a loan that, at origination, is secured wholly or substantially by a lien(s) on real property for which the lien(s) is central to the extension of the credit. A lien is ''central'' to the extension of credit if the borrowers would not have been extended credit in the same amount or on terms as favorable without the liens on real property. For a loan to be ''secured wholly or substantially by a lien(s) on real property,'' the estimated value of the real estate collateral at origination (after deducting any more senior liens held by others) must be greater than 50 percent of the principal amount of the loan at origination.

Loan to a CUSO means the outstanding balance of any loan from a credit union to a CUSO as recorded on the statement of financial condition in accordance with GAAP.

Loans transferred with limited recourse means the total principal balance outstanding of loans transferred, including participations, for which the transfer qualified for true sale accounting treatment under GAAP, and for which the transferor credit union retained some limited recourse (*i.e.,* insufficient recourse to preclude true sale accounting treatment). Loans transferred with limited recourse excludes transfers that qualify for true sale accounting treatment but contain only routine representation and warranty clauses that are standard for sales on the secondary market, provided the credit union is in compliance with all other related requirements, such as capital requirements.

Mortgage-backed security (MBS) means a security backed by first- or junior-lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure.

Mortgage partnership finance program means a Federal Home Loan Bank program through which loans are originated by a depository institution that are purchased or funded by the Federal Home Loan Banks, where the depository institution receives fees for managing the credit risk of the loans. The credit risk must be shared between the depository institution and the Federal Home Loan Banks.

Mortgage servicing assets mean those assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.

NCUSIF means the National Credit Union Share Insurance Fund as defined by 12 U.S.C. 1783.

Net worth means:

(1) The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to paragraph (3) of this definition.

(2) For a low income-designated credit union, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the NCUSIF.

(3) For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case

to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under GAAP. A mutual combination, including a supervisory combination, is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term ''net worth'' also includes loans to and accounts in an insured credit union, established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

(i) Have a remaining maturity of more than 5 years;

(ii) Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;

(iii) Are not pledged as security on a loan to, or other obligation of, any party;

(iv) Are not insured by the NCUSIF;

(v) Have non-cumulative dividends;

(vi) Are transferable; and

(vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

Net worth ratio means the ratio of the net worth of the credit union to the total assets of the credit union rounded to two decimal places.

New credit union has the same meaning as in § 702.201.

Nonperpetual capital has the same meaning as in § 704.2 of this chapter.

Off-balance sheet exposure means:

(1) For loans transferred under the Federal Home Loan Bank mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For unfunded commitments, the remaining unfunded portion of the contractual agreement.

Off-balance sheet items means items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes.

On-balance sheet means a credit union's assets, liabilities, and equity, as disclosed on the statement of financial condition at a specific point in time.

Other intangible assets means intangible assets, other than servicing assets and goodwill, maintained in accordance with GAAP. Other intangible assets does not include excluded other intangible assets.

Over-the-counter (OTC) interest rate derivative contract means a derivative contract that is not cleared on an exchange.

Part 703 compliant investment fund means an investment fund that is restricted to holding only investments that are permissible under § 703.14(c) of this chapter.

Perpetual contributed capital has the same meaning as in § 704.2 of this chapter.

Public sector entity (PSE) means a state, local authority, or other governmental subdivision of the United States below the sovereign level.

Qualifying master netting agreement means a written, legally enforceable agreement, provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the credit union the right to accelerate, terminate, and close out on a net basis all transactions under the agreement and to liquidate or set off collateral promptly upon an event of default, including upon an event of conservatorship, receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or under any similar insolvency law applicable to GSEs;

(3) The agreement does not contain a walkaway clause (that is, a provision that permits a non-defaulting counterparty to make a lower payment than it otherwise would make under the agreement, or no payment at all, to a defaulter or the estate of a defaulter, even if the defaulter or the estate is a net creditor under the agreement); and

(4) In order to recognize an agreement as a qualifying master netting agreement for purposes of this part, a credit union must conduct sufficient legal review, at origination and in response to any changes in applicable law, to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(i) The agreement meets the requirements of paragraph (2) of this definition; and

(ii) In the event of a legal challenge (including one resulting from default or from conservatorship, receivership, insolvency, liquidation, or similar proceeding), the relevant court and administrative authorities would find the agreement to be legal, valid, binding, and enforceable under the law of relevant jurisdictions.

Recourse means a credit union's retention, in form or in substance, of any credit risk directly or indirectly associated with an asset it has transferred that exceeds a *pro rata* share of that credit union's claim on the asset and disclosed in accordance with GAAP. If a credit union has no claim on an asset it has transferred, then the retention of any credit risk is recourse. A recourse obligation typically arises when a credit union transfers assets in a sale and retains an explicit obligation to repurchase assets or to absorb losses due to a default on the payment of principal or interest or any other deficiency in the performance of the underlying obligor or some other party. Recourse may also exist implicitly if the credit union provides credit enhancement beyond any contractual obligation to support assets it has transferred.

Residential mortgage-backed security means a mortgage-backed security backed by loans secured by a first-lien on residential property.

Residential property means a house, condominium unit, cooperative unit, manufactured home, or the construction thereof, and unimproved land zoned for one-to-four family residential use. Residential property excludes boats or motor homes, even if used as a primary residence, or timeshare property.

Restructured means, with respect to any loan, a restructuring of the loan in which a credit union, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Restructured excludes loans modified or restructured solely pursuant to the U.S. Treasury's Home Affordable Mortgage Program.

Revenue obligation means a bond or similar obligation that is an obligation of a PSE, but which the PSE is committed to repay with revenues from the specific project financed rather than general tax funds.

Risk-based capital ratio means the percentage, rounded to two decimal places, of the risk-based capital ratio numerator to risk-weighted assets, as calculated in accordance with § 702.104(a).

Risk-weighted assets means the total risk-weighted assets as calculated in accordance with § 702.104(c).

Secured consumer loan means a consumer loan associated with collateral or other item of value to protect against loss where the creditor has a perfected security interest in the collateral or other item of value.

Senior executive officer means a senior executive officer as defined by § 701.14(b)(2) of this chapter.

Separate account insurance means an account into which a policyholder's cash surrender value is supported by assets segregated from the general assets of the carrier.

Shares means deposits, shares, share certificates, share drafts, or any other depository account authorized by federal or state law.

Share-secured loan means a loan fully secured by shares, and does not include the imposition of a statutory lien under § 701.39 of this chapter.

STRIPS means a separately traded registered interest and principal security.

Structured product means an investment that is linked, via return or loss allocation, to another investment or reference pool.

Subordinated means, with respect to an investment, that the investment has a junior claim on the underlying collateral or assets to other investments in the same issuance. An investment that does not have a junior claim to other investments in the same issuance on the underlying collateral or assets is non-subordinated. A Security that is junior only to money market eligible securities in the same issuance is also non-subordinated.

Supervisory merger or combination means a transaction that involved the following:

(1) An assisted merger or purchase and assumption where funds from the NCUSIF were provided to the continuing credit union;

(2) A merger or purchase and assumption classified by NCUA as an ''emergency merger'' where the acquired credit union is either insolvent or ''in danger of insolvency'' as defined under appendix B to Part 701 of this chapter; or

(3) A merger or purchase and assumption that included NCUA's or the appropriate state official's identification and selection of the continuing credit union.

Swap dealer has the meaning as defined by the Commodity Futures Trading Commission in 17 CFT 1.3(ggg).

Total assets means a credit union's total assets as measured [1] by either:

(1) *Average quarterly balance.* The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(2) *Average monthly balance.* The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(3) *Average daily balance.* The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(4) *Quarter-end balance.* The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.

Tranche means one of a number of related securities offered as part of the same transaction. Tranche includes a structured product if it has a loss allocation based off of an investment or reference pool.

Unsecured consumer loan means a consumer loan not secured by collateral.

U.S. Government agency means an instrumentality of the U.S. Government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the U.S. Government. U.S. Government agency includes NCUA.

Subpart A—Prompt Corrective Action

§ 702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.

(a) *Capital measures.* For purposes of this part, a credit union must determine its capital classification at the end of each calendar quarter using the following measures:

(1) The net worth ratio; and

(2) If determined to be applicable under § 702.103, the risk-based capital ratio.

(b) *Capital adequacy.* (1) Notwithstanding the minimum requirements in this part, a credit union defined as complex must maintain capital commensurate with the level and nature of all risks to which the institution is exposed.

(2) A credit union defined as complex must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.

[1] For each quarter, a credit union must elect one of the measures of total assets listed in paragraph (2) of this definition to apply for all purposes under this part except §§ 702.103 through 702.106 (risk-based capital requirement).

(c) *Effective date of capital classification.* For purposes of this part, the effective date of a federally insured credit union's capital classification shall be the most recent to occur of:

(1) *Quarter-end effective date.* The last day of the calendar month following the end of the calendar quarter;

(2) *Corrected capital classification.* The date the credit union received subsequent written notice from NCUA or, if state-chartered, from the appropriate state official, of a decline in capital classification due to correction of an error or misstatement in the credit union's most recent Call Report; or

(3) *Reclassification to lower category.* The date the credit union received written notice from NCUA or, if state-chartered, the appropriate state official, of reclassification on safety and soundness grounds as provided under §§ 702.102(b) or 702. 202(d).

(d) *Notice to NCUA by filing Call Report.* (1) Other than by filing a Call Report, a federally insured credit union need not notify the NCUA Board of a change in its capital measures that places the credit union in a lower capital category;

(2) Failure to timely file a Call Report as required under this section in no way alters the effective date of a change in capital classification under paragraph (b) of this section, or the affected credit union's corresponding legal obligations under this part.

§ 702.102 Capital classification.

(a) *Capital categories.* Except for credit unions defined as ''new'' under subpart B of this part, a credit union shall be deemed to be classified (Table 1 of this section)—

(1) *Well capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 10 percent or greater.

(2) *Adequately capitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 6.0 percent or greater; and

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 8.0 percent or greater; and

(iii) Does not meet the definition of a well capitalized credit union.

(3) *Undercapitalized* if:

(i) *Net worth ratio.* The credit union has a net worth ratio of 4.0 percent or more but less than 6.0 percent; or

(ii) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of less than 8.0 percent.

(4) *Significantly undercapitalized* if:

(i) The credit union has a net worth ratio of 2.0 percent or more but less than 4.0 percent; or

(ii) The credit union has a net worth ratio of 4.0 percent or more but less than 5.0 percent, and either—

(A) Fails to submit an acceptable net worth restoration plan within the time prescribed in § 702.110;

(B) Materially fails to implement a net worth restoration plan approved by the NCUA Board; or

(C) Receives notice that a submitted net worth restoration plan has not been approved.

(5) *Critically undercapitalized* if it has a net worth ratio of less than 2.0 percent.

TABLE 1 TO § 702.102—CAPITAL CATEGORIES

A credit union's capital classification is . . .	Net worth ratio		Risk-based capital ratio also applicable if complex	And subject to following condition(s) . . .
Well Capitalized	7% or greater	And	10.0% or greater	
Adequately Capitalized	6% or greater	And	8% or greater	And does not meet the criteria to be classified as well capitalized.
Undercapitalized	4% to 5.99%	Or	Less than 8%	
Significantly Undercapitalized.	2% to 3.99%	....	N/A	Or if "undercapitalized at <5% net worth and (a) fails to timely submit, (b) fails to materially implement, or (c) receives notice of the rejection of a net worth restoration plan.
Critically Undercapitalized	Less than 2%	....	N/A	

(b) *Reclassification based on supervisory criteria other than net worth.* The NCUA Board may reclassify a well capitalized credit union as adequately capitalized and may require an adequately capitalized or undercapitalized credit union to comply with certain mandatory or discretionary supervisory actions as if it were classified in the next lower capital category (each of such actions hereinafter referred to generally as "reclassification") in the following circumstances:

(1) *Unsafe or unsound condition.* The NCUA Board has determined, after providing the credit union with notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union is in an unsafe or unsound condition; or

(2) *Unsafe or unsound practice.* The NCUA Board has determined, after providing the credit union with notice and opportunity for hearing pursuant to § 747.2003 of this chapter, that the credit union has not corrected a material unsafe or unsound practice of which it was, or should have been, aware.

(c) *Non-delegation.* The NCUA Board may not delegate its authority to reclassify a credit union under paragraph (b) of this section.

(d) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (b) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.103 Applicability of the risk-based capital ratio measure.

For purposes of § 702.102, a credit union is defined as "complex" and the risk-based capital ratio measure is applicable only if the credit union's quarter-end total assets exceed one hundred million dollars ($100,000,000), as reflected in its most recent Call Report.

§ 702.104 Risk-based capital ratio.

A complex credit union must calculate its risk-based capital ratio in accordance with this section.

(a) *Calculation of the risk-based capital ratio.* To determine its risk-based capital ratio, a complex credit union must calculate the percentage, rounded to two decimal places, of its risk-based capital ratio numerator as described in paragraph (b) of this section, to its total risk-weighted assets as described in paragraph (c) of this section.

(b) *Risk-based capital ratio numerator.* The risk-based capital ratio numerator is the sum of the specific capital elements in paragraph (b)(1) of this section, minus the regulatory adjustments in paragraph (b)(2) of this section.

(1) *Capital elements of the risk-based capital ratio numerator.* The capital elements of the risk-based capital numerator are:

(i) Undivided earnings;

(ii) Appropriation for non-conforming investments;

(iii) Other reserves;

(iv) Equity acquired in merger;

(v) Net income

(vi) ALLL, maintained in accordance with GAAP;

(vii) Secondary capital accounts included in net worth (as defined in § 702.2); and

(viii) Section 208 assistance included in net worth (as defined in § 702.2).

(2) *Risk-based capital ratio numerator deductions.* The elements deducted from the sum of the capital elements of the risk-based capital ratio numerator are:

(i) NCUSIF Capitalization Deposit;

(ii) Goodwill;

(iii) Other intangible assets; and

(iv) Identified losses not reflected in the risk-based capital ratio numerator.

(c) *Risk-weighted assets.* (1) *General.* Risk-weighted assets includes risk-weighted on-balance sheet assets as described in paragraphs (c)(2) and (3) of this section, plus the risk-weighted off-balance sheet assets in paragraph (c)(4) of this section, plus the risk-weighted derivatives in paragraph (c)(5) of this section, less the risk-based capital ratio numerator deductions in paragraph (b)(2) of this section. If a particular asset, derivative contract, or off balance sheet item has features or characteristics that suggest it could potentially fit into more than one risk weight category, then a credit union shall assign the asset, derivative contract, or off balance sheet item to the risk weight category that most accurately and appropriately reflects its associated credit risk.

(2) *Risk weights for on-balance sheet assets.* The risk categories and weights for assets of a complex credit union are as follows:

(i) *Category 1—zero percent risk weight.* A credit union must assign a zero percent risk weight to:

(A) The balance of:

(*1*) Cash, currency and coin, including vault, automatic teller machine, and teller cash.

(*2*) share-secured loans, where the shares securing the loan are on deposit with the credit union.

(B) The exposure amount of:

(*1*) An obligation of the U.S. Government, its central bank, or a U.S. Government agency that is directly and unconditionally guaranteed, excluding detached security coupons, ex-coupon securities, and interest-only mortgage-backed-security STRIPS.

(*2*) Federal Reserve Bank stock and Central Liquidity Facility stock.

(C) Insured balances due from FDIC-insured depositories or federally insured credit unions.

(ii) *Category 2—20 percent risk weight.* A credit union must assign a 20 percent risk weight to:

(A) The uninsured balances due from FDIC-insured depositories, federally insured credit unions, and all balances due from privately-insured credit unions.

(B) The exposure amount of:

(*1*) A non-subordinated obligation of the U.S. Government, its central bank, or a U.S. Government agency that is conditionally guaranteed, excluding interest-only mortgage-backed-security STRIPS.

(*2*) A non-subordinated obligation of a GSE other than an equity exposure or preferred stock, excluding interest-only GSE mortgage-backed-security STRIPS.

(*3*) Securities issued by PSEs that represent general obligation securities.

(*4*) Part 703 compliant investment funds that are restricted to holding only investments that qualify for a zero or 20 percent risk-weight under this section.

(*5*) Federal Home Loan Bank stock.

(C) The balances due from Federal Home Loan Banks.

(D) The balance of share-secured loans, where the shares securing the loan are on deposit with another depository institution.

(E) The portions of outstanding loans with a government guarantee.

(F) The portions of commercial loans secured with contractual compensating balances.

(iii) *Category 3—50 percent risk weight.* A credit union must assign a 50 percent risk weight to:

(A) The outstanding balance (net of government guarantees), including loans held for sale, of current first-lien residential real estate loans less than or equal to 35 percent of assets.

(B) The exposure amount of:

(*1*) Securities issued by PSEs in the U.S. that represent non-subordinated revenue obligation securities.

(*2*) Other non-subordinated, non-U.S. Government agency or non-GSE guaranteed, residential mortgage-backed security, excluding interest-only mortgage-backed security STRIPS.

(iv) *Category 4—75 percent risk weight.* A credit union must assign a 75 percent risk weight to the outstanding balance (net of government guarantees), including loans held for sale, of:

(A) Current first-lien residential real estate loans greater than 35 percent of assets.

(B) Current secured consumer loans.

(v) *Category 5—100 percent risk weight.* A credit union must assign a 100 percent risk weight to:

(A) The outstanding balance (net of government guarantees), including loans held for sale, of:

(*1*) First-lien residential real estate loans that are not current.

(*2*) Current junior-lien residential real estate loans less than or equal to 20 percent of assets.

(*3*) Current unsecured consumer loans.

(*4*) Current commercial loans, less contractual compensating balances that comprise less than 50 percent of assets.

(*5*) Loans to CUSOs.

(B) The exposure amount of:

(*1*) Industrial development bonds.

(*2*) Interest-only mortgage-backed security STRIPS.

(*3*) Part 703 compliant investment funds, with the option to use the look-through approaches in paragraph (c)(3)(iii)(B) of this section.

(*4*) Corporate debentures and commercial paper.

(*5*) Nonperpetual capital at corporate credit unions.

(*6*) General account permanent insurance.

(*7*) GSE equity exposure or preferred stock.

(*8*) Non-subordinated tranches of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section.

(C) All other assets listed on the statement of financial condition not specifically assigned a different risk weight under this subpart.

(vi) *Category 6—150 percent risk weight.* A credit union must assign a 150 percent risk weight to:

(A) The outstanding balance, net of government guarantees and including loans held for sale, of:

(*1*) Current junior-lien residential real estate loans that comprise more than 20 percent of assets.

(*2*) Junior-lien residential real estate loans that are not current.

(*3*) Consumer loans that are not current.

(*4*) Current commercial loans (net of contractual compensating balances), which comprise more than 50 percent of assets.

(*5*) Commercial loans (net of contractual compensating balances), which are not current.

(B) The exposure amount of:

(*1*) Perpetual contributed capital at corporate credit unions.

(*2*) Equity investments in CUSOs.

(vii) *Category 7—250 percent risk weight.* A credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets.

(viii) *Category 8—300 percent risk weight.* A credit union must assign a 300 percent risk weight to the exposure amount of:

(A) Publicly traded equity investments, other than a CUSO investment.

(B) Investment funds that do not meet the requirements under § 703.14(c) of this chapter, with the option to use the look-through approaches in paragraph (c)(3)(iii)(B) of this section.

(C) Separate account insurance, with the option to use the look-through approaches in paragraph (c)(3)(iii)(B) of this section.

(ix) *Category 9*—400 percent risk weight. A credit union must assign a 400 percent risk weight to the exposure amount of non-publicly traded equity investments, other than equity investments in CUSOs.

(x) *Category 10—1,250 percent risk weight.* A credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section.

(3) *Alternative risk weights for certain on-balance sheet assets*—(i) *Non-significant equity exposures.*— (A) *General.* Notwithstanding the risk weights assigned in paragraph (c)(2) of this section, a credit union must assign a 100 percent risk weight to non-significant equity exposures.

(B) *Determination of non-significant equity exposures.* A credit union has non-significant equity exposures if the aggregate amount of its equity exposures does not exceed 10 percent of the sum of the credit union's capital elements of the risk-based capital ratio numerator (as defined under paragraph (b)(1) of this section).

(C) *Determination of the aggregate amount of equity exposures.* When determining the aggregate amount of its equity exposures, a credit union must include the total amounts (as recorded on the statement of financial condition in accordance with GAAP) of the following:

(*1*) Equity investments in CUSOs,

(*2*) Perpetual contributed capital at corporate credit unions,

(*3*) Nonperpetual capital at corporate credit unions, and

(*4*) Equity investments subject to a risk weight in excess of 100 percent.

(ii) *Charitable donation accounts.* Notwithstanding the risk weights assigned in paragraph (c)(2) of this section, a credit union may assign a 100 percent risk weight to a charitable donation account.

(iii) *Alternative approaches.* Notwithstanding the risk weights assigned in paragraph (c)(2) of this section, a credit union may determine the risk weight of investment funds, and non-subordinated or subordinated tranches of any investment as follows:

(A) *Gross-up approach.* A credit union may use the gross-up approach under appendix A of this part to determine the risk weight of the carrying value of non-subordinated or subordinated tranches of any investment.

(B) *Look-through approaches.* A credit union may use one of the look-through approaches under appendix A of this part to determine the risk weight of the exposure amount of any investment funds, the holdings of separate account insurance, or both.

(4) *Risk weights for off-balance sheet activities.* The risk weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate CCF and the assigned risk weight as follows:

(i) For the outstanding balance of loans transferred to a Federal Home Loan Bank under the mortgage partnership finance program, a 20 percent CCF and a 50 percent risk weight.

(ii) For other loans transferred with limited recourse, a 100 percent CCF applied to the off-balance sheet exposure and:

(A) For commercial loans, a 100 percent risk weight.

(B) For first-lien residential real estate loans, a 50 percent risk weight.

(C) For junior-lien residential real estate loans, a 100 percent risk weight.

(D) For all secured consumer loans, a 75 percent risk weight.

(E) For all unsecured consumer loans, a 100 percent risk weight.

(iii) For unfunded commitments:

(A) For commercial loans, a 50 percent CCF with a 100 percent risk weight.

(B) For first-lien residential real estate loans, a 10 percent CCF with a 50 percent risk weight.

(C) For junior-lien residential real estate loans, a 10 percent CCF with a 100 percent risk weight.

(D) For all secured consumer loans, a 10 percent CCF with a 75 percent risk weight.

(E) For all unsecured consumer loans, a 10 percent CCF with a 100 percent risk weight.

(5) *Derivative contracts.* A complex credit union must assign a risk-weighted amount to any derivative contracts as determined under § 702.105.

§ 702.105 Derivative contracts.

(a) *OTC interest rate derivative contracts*—(1) *Exposure amount*—(i) *Single OTC interest rate derivative contract.* Except as modified by paragraph (a)(2) of this section, the exposure amount for a single OTC interest rate derivative contract that is not subject to a qualifying master netting agreement is equal to the sum of the credit union's current credit exposure and potential future credit exposure (PFE) on the OTC interest rate derivative contract.

(A) *Current credit exposure.* The current credit exposure for a single OTC interest rate derivative contract is the greater of the fair value of the OTC interest rate derivative contract or zero.

(B) *PFE.* (*1*) The PFE for a single OTC interest rate derivative contract, including an OTC interest rate derivative contract with a negative fair value, is calculated by multiplying the notional principal amount of the OTC interest rate derivative contract by the appropriate conversion factor in Table 1 of this section.

(*2)* A credit union must use an OTC interest rate derivative contract's effective notional principal amount (that is, the apparent or stated notional principal amount multiplied by any multiplier in the OTC interest rate derivative contract) rather than the apparent or stated notional principal amount in calculating PFE.

TABLE 1 TO § 702.105—CONVERSION FACTOR MATRIX FOR INTEREST RATE DERIVATIVE CONTRACTS [2]

Remaining maturity	Conversion factor
One year or less	0.00
Greater than one year and less than or equal to five years	0.005
Greater than five years	0.015

(ii) *Multiple OTC interest rate derivative contracts subject to a qualifying master netting agreement.* Except as modified by paragraph (a)(2) of this section, the exposure amount for multiple OTC interest rate derivative contracts subject to a qualifying master netting agreement is equal to the sum of the net current credit exposure and the adjusted sum of the PFE amounts for all OTC interest rate derivative contracts subject to the qualifying master netting agreement.

(A) *Net current credit exposure.* The net current credit exposure is the greater of the net sum of all positive and negative fair value of the individual OTC interest rate derivative contracts subject to the qualifying master netting agreement or zero.

(B) *Adjusted sum of the PFE amounts (Anet).* The adjusted sum of the PFE amounts is calculated as Anet = (0.4 × Agross) + (0.6 × NGR × Agross), where:

(*1*) Agross equals the gross PFE (that is, the sum of the PFE amounts as determined under paragraph (a)(1)(i)(B) of this section for each individual derivative contract subject to the qualifying master netting agreement); and

(*2*) Net-to-gross Ratio (NGR) equals the ratio of the net current credit exposure to the gross current credit exposure. In calculating the NGR, the gross current credit exposure equals the sum of the positive current credit exposures (as determined under paragraph (a)(1)(i) of this section) of all individual derivative contracts subject to the qualifying master netting agreement.

(2) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* A credit union may recognize credit risk mitigation benefits of financial collateral that secures an OTC derivative contract or multiple OTC derivative contracts subject to a qualifying master netting agreement (netting set) by following the requirements of paragraph (c) of this section.

(b) *Cleared transactions for interest rate derivatives.* (1) *General requirements*—A credit union must use the methodologies described in paragraph (b) of this section to calculate risk-weighted assets for a cleared transaction.

(2) *Risk-weighted assets for cleared transactions.* (i) To determine the risk weighted asset amount for a cleared transaction, a credit union must multiply the trade exposure amount for the cleared transaction, calculated in accordance with paragraph (b)(3) of this section, by the risk weight appropriate for the cleared transaction, determined in accordance with paragraph (b)(4) of this section.

(ii) A credit union's total risk-weighted assets for cleared transactions is the sum of the risk-weighted asset amounts for all its cleared transactions.

(3) *Trade exposure amount.* For a cleared transaction the trade exposure amount equals:

(i) The exposure amount for the derivative contract or netting set of derivative contracts, calculated using the methodology used to calculate

[2] Non-interest rate derivative contracts are addressed in paragraph (d) of this section.

exposure amount for OTC interest rate derivative contracts under paragraph (a) of this section; plus

(ii) The fair value of the collateral posted by the credit union and held by the, clearing member, or custodian.

(4) *Cleared transaction risk weights.* A credit union must apply a risk weight of:

(i) Two percent if the collateral posted by the credit union to the DCO or clearing member is subject to an arrangement that prevents any losses to the credit union due to the joint default or a concurrent insolvency, liquidation, or receivership proceeding of the clearing member and any other clearing member clients of the clearing member; and the clearing member credit union has conducted sufficient legal review to conclude with a well-founded basis (and maintains sufficient written documentation of that legal review) that in the event of a legal challenge (including one resulting from an event of default or from liquidation, insolvency, or receivership proceedings) the relevant court and administrative authorities would find the arrangements to be legal, valid, binding and enforceable under the law of the relevant jurisdictions; or

(ii) Four percent if the requirements of paragraph (b)(4)(i) are not met.

(5) *Recognition of credit risk mitigation of collateralized OTC derivative contracts.* A credit union may recognize the credit risk mitigation benefits of financial collateral that secures a cleared derivative contract by following the requirements of paragraph (c) of this section.

(c) *Recognition of credit risk mitigation of collateralized interest rate derivative contracts.* (1) A credit union may recognize the credit risk mitigation benefits of financial collateral that secures an OTC interest rate derivative contract or multiple interest rate derivative contracts subject to a qualifying master netting agreement (netting set) or clearing arrangement by using the simple approach in paragraph (c)(3) of this section.

(2) As an alternative to the simple approach, a credit union may recognize the credit risk mitigation benefits of financial collateral that secures such a contract or netting set if the financial collateral is marked-to-fair value on a daily basis and subject to a daily margin maintenance requirement by applying a risk weight to the exposure as if it were uncollateralized and adjusting the exposure amount calculated under paragraph (a) or (b) of this section using the collateral approach in paragraph (c)(3) of this section. The credit union must substitute the exposure amount calculated under paragraphs (b) or (c) of this section in the equation in paragraph (c)(3) of this section.

(3) *Collateralized transactions*—(i) *General.* A credit union may use the approach in paragraph (c)(3)(ii) of this section to recognize the risk-mitigating effects of financial collateral.

(ii) *Simple collateralized derivatives approach.* To qualify for the simple approach, the financial collateral must meet the following requirements:

(A) The collateral must be subject to a collateral agreement for at least the life of the exposure;

(B) The collateral must be revalued at least every six months; and

(C) The collateral and the exposure must be denominated in the same currency.

(iii) *Risk weight substitution.* (A) A credit union may apply a risk weight to the portion of an exposure that is secured by the fair value of financial collateral (that meets the requirements for the simple collateralized approach of this section) based on the risk weight assigned to the collateral as established under § 702.104(c).

(B) A credit union must apply a risk weight to the unsecured portion of the exposure based on the risk weight applicable to the exposure under this subpart.

(iv) *Exceptions to the 20 percent risk weight floor and other requirements.* Notwithstanding the simple collateralized derivatives approach in paragraph (c)(3)(ii) of this section:

(A) A credit union may assign a zero percent risk weight to an exposure to a derivatives contract that is marked-to-market on a daily basis and subject to a daily margin maintenance requirement, to the extent the contract is collateralized by cash on deposit.

(B) A credit union may assign a 10 percent risk weight to an exposure to a derivatives contract that is marked-to-market daily and subject to a daily margin maintenance requirement, to the extent that the contract is collateralized by an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i).

(v) A credit union may assign a zero percent risk weight to the collateralized portion of an exposure where:

(A) The financial collateral is cash on deposit; or

(B) The financial collateral is an exposure that qualifies for a zero percent risk weight under § 702.104(c)(2)(i), and the credit union has discounted the fair value of the collateral by 20 percent.

(4) *Collateral haircut approach.* (i) A credit union may recognize the credit risk mitigation benefits of financial collateral that secures a collateralized derivative contract by using the standard supervisory haircuts in paragraph (c)(3) of this section.

(ii) The collateral haircut approach applies to both OTC and cleared interest rate derivatives contracts discussed in this section.

(iii) A credit union must determine the exposure amount for a collateralized derivative contracts by setting the exposure amount equal to the max {0,[(exposure amount − value of collateral) + (sum of current fair value of collateral instruments * market price volatility haircut of the collateral instruments)]}, where:

(A) The value of the exposure equals the exposure amount for OTC interest rate derivative contracts (or netting set) calculated under paragraphs (a)(1)(i) and (ii) of this section.

(B) The value of the exposure equals the exposure amount for cleared interest rate derivative contracts (or netting set) calculated under paragraph (b)(3) of this section.

(C) The value of the collateral is the sum of cash and all instruments under the transaction (or netting set).

(D) The sum of current fair value of collateral instruments as of the measurement date.

(E) A credit union must use the standard supervisory haircuts for market price volatility in Table 2 to this section.

TABLE 2 TO § 702.105—STANDARD SUPERVISORY MARKET PRICE VOLATILITY HAIRCUTS

[Based on a 10 business-day holding period]

Residual maturity	Haircut (in percent) assigned based on: Collateral risk weight (in percent)	
	Zero	20 or 50
Less than or equal to 1 year	0.5	1.0
Greater than 1 year and less than or equal to 5 years	2.0	3.0
Greater than 5 years	4.0	6.0
Cash collateral held	Zero	
Other exposure types	25.0	

(d) *All other derivative contracts and transactions.* Credit unions must follow the requirements of the applicable provisions of 12 CFR part 324, when assigning risk weights to exposure amounts for derivatives contracts not addressed in paragraphs (a) or (b) of this section.

§ 702.106 Prompt corrective action for adequately capitalized credit unions.

(a) *Earnings retention.* Beginning on the effective date of classification as adequately capitalized or lower, a federally insured credit union must increase the dollar amount of its net worth quarterly either in the current quarter, or on average over the current and three preceding quarters, by an amount equivalent to at least 1/10th percent (0.1%) of its total assets (or more by choice), until it is well capitalized.

(b) *Decrease in retention.* Upon written application received no later than 14 days before the quarter end, the NCUA Board, on a case-by-case basis, may permit a credit union to increase the dollar amount of its net worth by an amount that is less than the amount required under paragraph (a) of this section, to the extent the NCUA Board determines that such lesser amount:

(1) Is necessary to avoid a significant redemption of shares; and

(2) Would further the purpose of this part.

(c) *Decrease by FISCU.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before permitting a federally insured state-chartered credit union to decrease its earnings retention under paragraph (b) of this section.

(d) *Periodic review.* A decision under paragraph (b) of this section to permit a credit union to decrease its earnings retention is subject to quarterly review and revocation except when the credit union is operating under an approved net worth restoration plan that provides for decreasing its earnings retention as provided under paragraph (b) of this section.

§ 702.107 Prompt corrective action for undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111, *provided however,* that a credit union in this category having a net worth ratio of less than five percent (5%) which fails to timely submit such a plan, or which materially fails to implement an approved plan, is classified significantly undercapitalized pursuant to § 702.102(a)(4)(i);

(3) *Restrict increase in assets.* Beginning the effective date of classification as undercapitalized or lower, not permit the credit union's assets to increase beyond its total assets for the preceding quarter unless—

(i) *Plan approved.* The NCUA Board has approved a net worth restoration plan which provides for an increase in total assets and—

(A) The assets of the credit union are increasing consistent with the approved plan; and

(B) The credit union is implementing steps to increase the net worth ratio consistent with the approved plan;

(ii) *Plan not approved.* The NCUA Board has not approved a net worth restoration plan and total assets of the credit union are increasing because of increases since quarter-end in balances of:

(A) Total accounts receivable and accrued income on loans and investments; or

(B) Total cash and cash equivalents; or

(C) Total loans outstanding, not to exceed the sum of total assets plus the quarter-end balance of unused commitments to lend and unused lines of credit provided however that a credit union which increases a balance as permitted under paragraphs (a)(3)(ii)(A), (B) or (C) of this section cannot offer rates on shares in excess of prevailing rates on shares in its relevant market area, and cannot open new branches;

(4) *Restrict member business loans.* Beginning the effective date of classification as undercapitalized or lower, not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Second tier discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to an undercapitalized credit union having a net worth ratio of less than five percent (5%), or a director, officer or employee of such a credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, unless the NCUA Board has approved the credit union's net worth restoration plan, the credit union is implementing its plan, and the NCUA Board determines that the proposed action is consistent with and will further the objectives of that plan;

(2) *Restricting transactions with and ownership of a CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to reduce or divest its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates the credit union pays on shares to the prevailing rates paid on comparable accounts and maturities in the relevant market area, as determined by the NCUA Board, except that dividend rates already declared on shares acquired before imposing a restriction under this paragraph may not be retroactively restricted;

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce its assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(8) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval); and

(9) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (8) of this section.

(c) *First tier application of discretionary supervisory actions.* An undercapitalized credit union having a net worth ratio of five percent (5%) or more, or which is classified undercapitalized by reason of failing to maintain a risk-based capital ratio equal to or greater than 8 percent under § 702.104, is subject to the discretionary supervisory actions in paragraph (b) of this section if it fails to comply with any mandatory supervisory action in paragraph (a) of this section or fails to timely implement an approved net worth restoration plan under § 702.111, including meeting its prescribed steps to increase its net worth ratio.

§ 702.108 Prompt corrective action for significantly undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is significantly undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any significantly undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided in § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Except with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as significantly undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Other actions to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (10) of this section; and

(12) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Discretionary conservatorship or liquidation if no prospect of becoming adequately capitalized.* Notwithstanding any other actions required or permitted to be taken under this section, when a credit union becomes significantly undercapitalized (including by reclassification under § 702.102(b)), the NCUA Board may place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.109 Prompt corrective action for critically undercapitalized credit unions.

(a) *Mandatory supervisory actions by credit union.* A credit union which is critically undercapitalized must—

(1) *Earnings retention.* Increase net worth in accordance with § 702.106;

(2) *Submit net worth restoration plan.* Submit a net worth restoration plan pursuant to § 702.111;

(3) *Restrict increase in assets.* Not permit the credit union's total assets to increase except as provided in § 702.107(a)(3); and

(4) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as provided in § 702.107(a)(4).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures for issuing, reviewing and enforcing directives set forth in subpart L of part 747 of this chapter, the NCUA Board may, by directive, take one or more of the following actions with respect to any critically undercapitalized credit union, or a director, officer or employee of such credit union, if it determines that those actions are necessary to carry out the purpose of this part:

(1) *Requiring prior approval for acquisitions, branching, new lines of business.* Prohibit a credit union from, directly or indirectly, acquiring any interest in any business entity or financial institution, establishing or acquiring any additional branch office, or engaging in any new line of business, except as provided by § 702.107(b)(1);

(2) *Restricting transactions with and ownership of CUSO.* Restrict the credit union's transactions with a CUSO, or require the credit union to divest or reduce its ownership interest in a CUSO;

(3) *Restricting dividends paid.* Restrict the dividend rates that the credit union pays on shares as provided in § 702.107(b)(3);

(4) *Prohibiting or reducing asset growth.* Prohibit any growth in the credit union's assets or in a category of assets, or require the credit union to reduce assets or a category of assets;

(5) *Alter, reduce or terminate activity.* Require the credit union or its CUSO(s) to alter, reduce, or terminate any activity which poses excessive risk to the credit union;

(6) *Prohibiting nonmember deposits.* Prohibit the credit union from accepting all or certain nonmember deposits;

(7) *New election of directors.* Order a new election of the credit union's board of directors;

(8) *Dismissing director or senior executive officer.* Require the credit union to dismiss from office any director or senior executive officer, *provided however,* that a dismissal under this clause shall not be construed to be a formal administrative action for removal under 12 U.S.C. 1786(g);

(9) *Employing qualified senior executive officer.* Require the credit union to employ qualified senior executive officers (who, if the NCUA Board so specifies, shall be subject to its approval);

(10) *Restricting senior executive officers' compensation.* Reduce or, with the prior written approval of the NCUA Board, limit compensation to any senior executive officer to that officer's average rate of compensation (excluding bonuses and profit sharing) during the four (4) calendar quarters preceding the effective date of classification of the credit union as critically undercapitalized, and prohibit payment of a bonus or profit share to such officer;

(11) *Restrictions on payments on uninsured secondary capital.* Beginning 60 days after the effective date of classification of a credit union as critically undercapitalized, prohibit payments of principal, dividends or interest on the credit union's uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law;

(12) *Requiring prior approval.* Require a critically undercapitalized credit union to obtain the NCUA Board's prior written approval before doing any of the following:

(i) Entering into any material transaction not within the scope of an approved net worth restoration plan (or approved revised business plan under subpart C of this part);

(ii) Extending credit for transactions deemed highly leveraged by the NCUA Board or, if state-chartered, by the appropriate state official;

(iii) Amending the credit union's charter or bylaws, except to the extent necessary to comply with any law, regulation, or order;

(iv) Making any material change in accounting methods; and

(v) Paying dividends or interest on new share accounts at a rate exceeding the prevailing rates of interest on insured deposits in its relevant market area;

(13) *Other action to carry out prompt corrective action.* Restrict or require such other action by the credit union as the NCUA Board determines will carry out the purpose of this part better than any of the actions prescribed in paragraphs (b)(1) through (12) of this section; and

(14) *Requiring merger.* Require the credit union to merge with another financial institution if one or more grounds exist for placing the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i).

(c) *Mandatory conservatorship, liquidation or action in lieu thereof* —(1) *Action within 90 days.* Notwithstanding any other actions required or permitted to be taken under this section (and regardless of a credit union's prospect of becoming adequately capitalized), the NCUA Board must, within 90 calendar days after the effective date of classification of a credit union as critically undercapitalized—

(i) *Conservatorship.* Place the credit union into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(G); or

(ii) *Liquidation.* Liquidate the credit union pursuant to 12 U.S.C. 1787(a)(3)(A)(ii); or

(iii) *Other corrective action.* Take other corrective action, in lieu of conservatorship or liquidation, to better achieve the purpose of this part, provided that the NCUA Board documents why such action in lieu of conservatorship or liquidation would do so, *provided however,* that other corrective action may consist, in whole or in part, of complying with the quarterly timetable of steps and meeting the quarterly net worth targets prescribed in an approved net worth restoration plan.

(2) *Renewal of other corrective action.* A determination by the NCUA Board to take other corrective action in lieu of conservatorship or liquidation under paragraph (c)(1)(iii) of this section shall expire after an effective period ending no later than 180 calendar days after the determination is made, and the credit union shall be immediately placed into conservatorship or liquidation under paragraphs (c)(1)(i) and (ii) of this section, unless the NCUA Board makes a new determination under paragraph (c)(1)(iii) of this section before the end of the effective period of the prior determination;

(3) *Mandatory liquidation after 18 months* —(i) *Generally.* Notwithstanding paragraphs (c)(1) and (2) of this section, the NCUA Board must place a credit union into liquidation if it remains critically undercapitalized for a full calendar quarter, on a monthly average basis, following a period of 18 months from the effective date the credit union was first classified critically undercapitalized.

(ii) *Exception.* Notwithstanding paragraph (c)(3)(i) of this section, the NCUA Board may continue to take other corrective action in lieu of liquidation if it certifies that the credit union—

(A) Has been in substantial compliance with an approved net worth restoration plan requiring consistent improvement in net worth since the date the net worth restoration plan was approved;

(B) Has positive net income or has an upward trend in earnings that the NCUA Board projects as sustainable; and

(C) Is viable and not expected to fail.

(iii) *Review of exception.* The NCUA Board shall, at least quarterly, review the certification of an exception to liquidation under paragraph (c)(3)(ii) of this section and shall either—

(A) Recertify the credit union if it continues to satisfy the criteria of paragraph (c)(3)(ii) of this section; or

(B) Promptly place the credit union into liquidation, pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), if it fails to satisfy the criteria of paragraph (c)(3)(ii) of this section.

(4) *Nondelegation.* The NCUA Board may not delegate its authority under paragraph (c) of this section, unless the credit union has less than $5,000,000 in total assets. A credit union shall have a right of direct appeal to the NCUA Board of any decision made by delegated authority under this section within ten (10) calendar days of the date of that decision.

(d) *Mandatory liquidation of insolvent federal credit union.* In lieu of paragraph (c) of this section, a critically undercapitalized federal credit union that has a net worth ratio of less than zero percent (0%) may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.110 Consultation with state officials on proposed prompt corrective action.

(a) *Consultation on proposed conservatorship or liquidation.* Before placing a federally insured state-chartered credit union into conservatorship (pursuant to 12 U.S.C. 1786(h)(1)(F) or (G)) or liquidation (pursuant to 12 U.S.C. 1787(a)(3)) as permitted or required under subparts A or B of this part to facilitate prompt corrective action—

(1) The NCUA Board shall seek the views of the appropriate state official (as defined in § 702.2), and give him or her an opportunity to take the proposed action;

(2) The NCUA Board shall, upon timely request of the appropriate state official, promptly provide him or her with a written statement of the reasons for the proposed conservatorship or liquidation, and reasonable time to respond to that statement; and

(3) If the appropriate state official makes a timely written response that disagrees with the proposed conservatorship or liquidation and gives reasons for that disagreement, the

NCUA Board shall not place the credit union into conservatorship or liquidation unless it first considers the views of the appropriate state official and determines that—

(i) The NCUSIF faces a significant risk of loss if the credit union is not placed into conservatorship or liquidation; and

(ii) Conservatorship or liquidation is necessary either to reduce the risk of loss, or to reduce the expected loss, to the NCUSIF with respect to the credit union.

(b) *Nondelegation.* The NCUA Board may not delegate any determination under paragraph (a)(3) of this section.

(c) *Consultation on proposed discretionary action.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before taking any discretionary supervisory action under §§ 702.107(b), 702.108(b), 702.109(b), 702.204(b) and 702.205(b) with respect to a federally insured state-chartered credit union; shall provide prompt notice of its decision to the appropriate state official; and shall allow the appropriate state official to take the proposed action independently or jointly with NCUA.

§ 702.111 Net worth restoration plans (NWRP).

(a) *Schedule for filing*—(1) *Generally.* A credit union shall file a written net worth restoration plan (NWRP) with the appropriate Regional Director and, if state-chartered, the appropriate state official, within 45 calendar days of the effective date of classification as either undercapitalized, significantly undercapitalized or critically undercapitalized, unless the NCUA Board notifies the credit union in writing that its NWRP is to be filed within a different period.

(2) *Exception.* An otherwise adequately capitalized credit union that is reclassified undercapitalized on safety and soundness grounds under § 702.102(b) is not required to submit a NWRP solely due to the reclassification, unless the NCUA Board notifies the credit union that it must submit an NWRP.

(3) *Filing of additional plan.* Notwithstanding paragraph (a)(1) of this section, a credit union that has already submitted and is operating under a NWRP approved under this section is not required to submit an additional NWRP due to a change in net worth category (including by reclassification under § 702.102(b)), unless the NCUA Board notifies the credit union that it must submit a new NWRP. A credit union that is notified to submit a new or revised NWRP shall file the NWRP in writing with the appropriate Regional Director within 30 calendar days of receiving such notice, unless the NCUA Board notifies the credit union in writing that the NWRP is to be filed within a different period.

(4) *Failure to timely file plan.* When a credit union fails to timely file an NWRP pursuant to this paragraph, the NCUA Board shall promptly notify the credit union that it has failed to file an NWRP and that it has 15 calendar days from receipt of that notice within which to file an NWRP.

(b) *Assistance to small credit unions.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing an NWRP required to be filed under paragraph (a) of this section.

(c) *Contents of NWRP.* An NWRP must—

(1) Specify—

(i) A quarterly timetable of steps the credit union will take to increase its net worth ratio, and risk-based capital ratio if applicable, so that it becomes adequately capitalized by the end of the term of the NWRP, and to remain so for four (4) consecutive calendar quarters;

(ii) The projected amount of net worth increases in each quarter of the term of the NWRP as required under § 702.106(a), or as permitted under § 702.106(b);

(iii) How the credit union will comply with the mandatory and any discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(iv) The types and levels of activities in which the credit union will engage; and

(v) If reclassified to a lower category under § 702.102(b), the steps the credit union will take to correct the unsafe or unsound practice(s) or condition(s);

(2) Include pro forma financial statements, including any off-balance sheet items, covering a minimum of the next two years; and

(3) Contain such other information as the NCUA Board has required.

(d) *Criteria for approval of NWRP.* The NCUA Board shall not accept a NWRP plan unless it—

(1) Complies with paragraph (c) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in restoring the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(e) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an NWRP under this section, consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(f) *Review of NWRP*—(1) *Notice of decision.* Within 45 calendar days after receiving an NWRP under this part, the NCUA Board shall notify the credit union in writing whether the NWRP has been approved, and shall provide reasons for its decision in the event of disapproval.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (f)(1) of this section, the NWRP is deemed approved.

(3) *Consultation with state officials.* In the case of an NWRP submitted by a federally insured state-chartered credit union (whether an original, new, additional, revised or amended NWRP), the NCUA Board shall, when evaluating the NWRP, seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(g) *NWRP not approved* —(1) *Submission of revised NWRP.* If an NWRP is rejected by the NCUA Board, the credit union shall submit a revised NWRP within 30 calendar days of receiving notice of disapproval, unless it is notified in writing by the NCUA Board that the revised NWRP is to be filed within a different period.

(2) *Notice of decision on revised NWRP.* Within 30 calendar days after receiving a revised NWRP under paragraph (g)(1) of this section, the NCUA Board shall notify the credit union in writing whether the revised NWRP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Disapproval of reclassified credit union's NWRP.* A credit union which has been classified significantly undercapitalized shall remain so classified pending NCUA Board approval of a new or revised NWRP.

(4) *Submission of multiple unapproved NWRPs.* The submission of more than two NWRPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement actions under section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(h) *Amendment of NWRP.* A credit union that is operating under an approved NWRP may, after prior written notice to, and approval by the NCUA Board, amend its NWRP to reflect a change in circumstance. Pending approval of an amended NWRP, the credit union shall implement the NWRP as originally approved.

(i) *Publication.* An NWRP need not be published to be enforceable because publication would be contrary to the public interest.

(j) *Termination of NWRP.* For purposes of this part, an NWRP terminates once the credit union is classified as adequately capitalized and remains so for four consecutive quarters. For example, if a credit union with an active NWRP attains the classification as adequately classified on December 31, 2015 this would be quarter one and the fourth consecutive quarter would end September 30, 2016.

§ 702.112 Reserves.

Each credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.113 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan and lease losses.* Full and fair disclosure demands that a credit union properly address charges for loan losses as follows:

(1) Charges for loan and lease losses shall be made timely and in accordance with GAAP;

(2) The ALLL must be maintained in accordance with GAAP; and

(3) At a minimum, adjustments to the ALLL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.114 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, net of any special reserves established under § 702.112, if any.

(b) *Payment of dividends and interest refunds.* The board of directors must not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under this subpart unless the appropriate Regional Director and, if state-chartered, the appropriate state official, have given prior written approval (in an NWRP or otherwise). The request for written approval must include the plan for eliminating any negative retained earnings balance.

Subpart B—Alternative Prompt Corrective Action for New Credit Unions

§ 702.201 Scope and definition.

(a) *Scope.* This subpart B applies in lieu of subpart A of this part exclusively to credit unions defined in paragraph (b) of this section as ''new'' pursuant to section 216(b)(2) of the FCUA, 12 U.S.C. 1790d(b)(2).

(b) *New credit union defined.* A ''new'' credit union for purposes of this subpart is a credit union that both has been in operation for less than ten (10) years and has total assets of not more than $10 million. Once a credit union reports total assets of more than $10 million on a Call Report, the credit union is no longer new, even if its assets subsequently decline below $10 million.

(c) *Effect of spin-offs.* A credit union formed as the result of a ''spin-off'' of a group from the field of membership of an existing credit union is deemed to be in operation since the effective date of the spin-off. A credit union whose total assets decline below $10 million because a group within its field of membership has been spun-off is deemed ''new'' if it has been in operation less than 10 years.

(d) *Actions to evade prompt corrective action.* If the NCUA Board determines that a credit union was formed, or was reduced in asset size as a result of a spin-off, or was merged, primarily to qualify as ''new'' under this subpart, the credit union shall be deemed subject to prompt corrective action under subpart A of this part.

§ 702.202 Net worth categories for new credit unions.

(a) *Net worth measures.* For purposes of this part, a new credit union must determine its capital classification quarterly according to its net worth ratio.

(b) *Effective date of net worth classification of new credit union.* For purposes of subpart B of this part, the effective date of a new credit union's classification within a capital category in paragraph (c) of this section shall be determined as provided in § 702.101(c); and written notice of a decline in net worth classification in paragraph (c) of this section shall be given as required by § 702.101(c).

(c) *Net worth categories.* A credit union defined as ''new'' under this section shall be classified—

(1) *Well capitalized* if it has a net worth ratio of seven percent (7%) or greater;

(2) *Adequately capitalized* if it has a net worth ratio of six percent (6%) or more but less than seven percent (7%);

(3) *Moderately capitalized* if it has a net worth ratio of three and one-half percent (3.5%) or more but less than six percent (6%);

(4) *Marginally capitalized* if it has a net worth ratio of two percent (2%) or more but less than three and one-half percent (3.5%);

(5) *Minimally capitalized* if it has a net worth ratio of zero percent (0%) or greater but less than two percent (2%); and

(6) *Uncapitalized* if it has a net worth ratio of less than zero percent (0%).

TABLE 1 TO § 702.202—CAPITAL CATEGORIES FOR NEW CREDIT UNIONS

A new credit union's capital classification is	If it's net worth ratio is
Well Capitalized	7% or above.
Adequately Capitalized	6 to 7%.
Moderately Capitalized	3.5% to 5.99%.
Marginally Capitalized	2% to 3.49%.
Minimally Capitalized	0% to 1.99%.
Uncapitalized	Less than 0%.

(d) *Reclassification based on supervisory criteria other than net worth.* Subject to § 702.102(b), the NCUA Board may reclassify a well capitalized, adequately capitalized or moderately capitalized new credit union to the next lower capital category (each of such actions is hereinafter referred to generally as ''reclassification'') in either of the circumstances prescribed in § 702.102(b).

(e) *Consultation with state officials.* The NCUA Board shall consult and seek to work cooperatively with the appropriate state official before reclassifying a federally insured state-chartered credit union under paragraph (d) of this section, and shall promptly notify the appropriate state official of its decision to reclassify.

§ 702.203 Prompt corrective action for adequately capitalized new credit unions.

Beginning on the effective date of classification, an adequately capitalized new credit union must increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan in accordance with § 702.204(a)(2), or in the absence of such a plan, in accordance with § 702.106 until it is well capitalized.

§ 702.204 Prompt corrective action for moderately capitalized, marginally capitalized, or minimally capitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the date of classification as moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)), a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in its approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206 if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans (defined as loans outstanding and unused commitments to lend) as of the preceding quarter-end unless it is granted an exception under 12 U.S.C. 1757a(b).

(b) *Discretionary supervisory actions by NCUA.* Subject to the applicable procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Discretionary conservatorship or liquidation.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board may place a new credit union which is moderately capitalized, marginally capitalized or minimally capitalized (including by reclassification under § 702.202(d)) into conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), or into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(i), provided that the credit union has no reasonable prospect of becoming adequately capitalized.

§ 702.205 Prompt corrective action for uncapitalized new credit unions.

(a) *Mandatory supervisory actions by new credit union.* Beginning on the effective date of classification as uncapitalized, a new credit union must—

(1) *Earnings retention.* Increase the dollar amount of its net worth by the amount reflected in the credit union's approved initial or revised business plan;

(2) *Submit revised business plan.* Submit a revised business plan within the time provided by § 702.206, providing for alternative means of funding the credit union's earnings deficit, if the credit union either:

(i) Has not increased its net worth ratio consistent with its then-present approved business plan;

(ii) Has no then-present approved business plan; or

(iii) Has failed to comply with paragraph (a)(3) of this section; and

(3) *Restrict member business loans.* Not increase the total dollar amount of member business loans as provided in § 702.204(a)(3).

(b) *Discretionary supervisory actions by NCUA.* Subject to the procedures set forth in subpart L of part 747 of this chapter for issuing, reviewing and enforcing directives, the NCUA Board may, by directive, take one or more of the actions prescribed in § 702.109(b) if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

(c) *Mandatory liquidation or conservatorship.* Notwithstanding any other actions required or permitted to be taken under this section, the NCUA Board—

(1) *Plan not submitted.* May place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union which fails to submit a revised business plan within the time provided under paragraph (a)(2) of this section; or

(2) *Plan rejected, approved, implemented.* Except as provided in paragraph (c)(3) of this section, must place into liquidation pursuant to 12 U.S.C. 1787(a)(3)(A)(ii), or conservatorship pursuant to 12 U.S.C. 1786(h)(1)(F), an uncapitalized new credit union that remains uncapitalized one hundred twenty (120) calendar days after the later of:

(i) The effective date of classification as uncapitalized; or

(ii) The last day of the calendar month following expiration of the time period provided in the credit union's initial business plan (approved at the time its charter was granted) to remain uncapitalized, regardless whether a revised business plan was rejected, approved or implemented.

(3) *Exception.* The NCUA Board may decline to place a new credit union into liquidation or conservatorship as provided in paragraph (c)(2) of this section if the credit union documents to the NCUA Board why it is viable and has a reasonable prospect of becoming adequately capitalized.

(d) *Mandatory liquidation of uncapitalized federal credit union.* In lieu of paragraph (c) of this section, an uncapitalized federal credit union may be placed into liquidation on grounds of insolvency pursuant to 12 U.S.C. 1787(a)(1)(A).

§ 702.206 Revised business plans (RBP) for new credit unions.

(a) *Schedule for filing*—(1) *Generally.* Except as provided in paragraph (a)(2) of this section, a new credit union classified moderately capitalized or lower must file a written revised business plan (RBP) with the appropriate Regional Director and, if state-chartered, with the appropriate state official, within 30 calendar days of either:

(i) The last of the calendar month following the end of the calendar quarter that the credit union's net worth ratio has not increased consistent with the-present approved business plan;

(ii) The effective date of classification as less than adequately capitalized if the credit union has no then-present approved business plan; or

(iii) The effective date of classification as less than adequately capitalized if the credit union has increased the total amount of member business loans in violation of § 702.204(a)(3).

(2) *Exception.* The NCUA Board may notify the credit union in writing that its RBP is to be filed within a different period or that it is not necessary to file an RBP.

(3) *Failure to timely file plan.* When a new credit union fails to file an RBP

as provided under paragraphs (a)(1) or (a)(2) of this section, the NCUA Board shall promptly notify the credit union that it has failed to file an RBP and that it has 15 calendar days from receipt of that notice within which to do so.

(b) *Contents of revised business plan.* A new credit union's RBP must, at a minimum—

(1) Address changes, since the new credit union's current business plan was approved, in any of the business plan elements required for charter approval under chapter 1, section IV.D. of appendix B to part 701 of this chapter, or for state-chartered credit unions under applicable state law;

(2) Establish a timetable of quarterly targets for net worth during each year in which the RBP is in effect so that the credit union becomes adequately capitalized by the time it no longer qualifies as ''new'' per § 702.201;

(3) Specify the projected amount of earnings of net worth increases as provided under § 702.204(a)(1) or 702.205(a)(1);

(4) Explain how the new credit union will comply with the mandatory and discretionary supervisory actions imposed on it by the NCUA Board under this subpart;

(5) Specify the types and levels of activities in which the new credit union will engage;

(6) In the case of a new credit union reclassified to a lower category under § 702.202(d), specify the steps the credit union will take to correct the unsafe or unsound condition or practice; and

(7) Include such other information as the NCUA Board may require.

(c) *Criteria for approval.* The NCUA Board shall not approve a new credit union's RBP unless it—

(1) Addresses the items enumerated in paragraph (b) of this section;

(2) Is based on realistic assumptions, and is likely to succeed in building the credit union's net worth; and

(3) Would not unreasonably increase the credit union's exposure to risk (including credit risk, interest-rate risk, and other types of risk).

(d) *Consideration of regulatory capital.* To minimize possible long-term losses to the NCUSIF while the credit union takes steps to become adequately capitalized, the NCUA Board shall, in evaluating an RBP under this section, consider the type and amount of any form of regulatory capital which may become established by NCUA regulation, or authorized by state law and recognized by NCUA, which the credit union holds, but which is not included in its net worth.

(e) *Review of revised business plan*—(1) *Notice of decision.* Within 30 calendar days after receiving an RBP under this section, the NCUA Board shall notify the credit union in writing whether its RBP is approved, and shall provide reasons for its decision in the event of disapproval. The NCUA Board may extend the time within which notice of its decision shall be provided.

(2) *Delayed decision.* If no decision is made within the time prescribed in paragraph (e)(1) of this section, the RBP is deemed approved.

(3) *Consultation with state officials.* When evaluating an RBP submitted by a federally insured state-chartered new credit union (whether an original, new or additional RBP), the NCUA Board shall seek and consider the views of the appropriate state official, and provide prompt notice of its decision to the appropriate state official.

(f) *Plan not approved*—(1) *Submission of new revised plan.* If an RBP is rejected by the NCUA Board, the new credit union shall submit a new RBP within 30 calendar days of receiving notice of disapproval of its initial RBP, unless it is notified in writing by the NCUA Board that the new RBP is to be filed within a different period.

(2) *Notice of decision on revised plan.* Within 30 calendar days after receiving an RBP under paragraph (f)(1) of this section, the NCUA Board shall notify the credit union in writing whether the new RBP is approved. The Board may extend the time within which notice of its decision shall be provided.

(3) *Submission of multiple unapproved RBPs.* The submission of more than two RBPs that are not approved is considered an unsafe and unsound condition and may subject the credit union to administrative enforcement action pursuant to section 206 of the FCUA, 12 U.S.C. 1786 and 1790d.

(g) *Amendment of plan.* A credit union that has filed an approved RBP may, after prior written notice to and approval by the NCUA Board, amend it to reflect a change in circumstance. Pending approval of an amended RBP, the new credit union shall implement its existing RBP as originally approved.

(h) *Publication.* An RBP need not be published to be enforceable because publication would be contrary to the public interest.

§ 702.207 Incentives for new credit unions.

(a) *Assistance in revising business plans.* Upon timely request by a credit union having total assets of less than $10 million (regardless how long it has been in operation), the NCUA Board shall provide assistance in preparing a revised business plan required to be filed under § 702.206.

(b) *Assistance.* Management training and other assistance to new credit unions will be provided in accordance with policies approved by the NCUA Board.

(c) *Small credit union program.* A new credit union is eligible to join and receive comprehensive benefits and assistance under NCUA's Small Credit Union Program.

§ 702.208 Reserves.

Each new credit union shall establish and maintain such reserves as may be required by the FCUA, by state law, by regulation, or in special cases by the NCUA Board or appropriate state official.

§ 702.209 Full and fair disclosure of financial condition.

(a) *Full and fair disclosure defined.* ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a new credit union, to NCUA, or, at the discretion of the board of directors, to creditors to fairly inform them of the financial condition and the results of operations of the credit union.

(b) *Full and fair disclosure implemented.* The financial statements of a new credit union shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation (allowance) accounts as may be necessary to present fairly the financial condition; and all income and expenses necessary to present fairly the statement of income for the reporting period.

(c) *Declaration of officials.* The Statement of Financial Condition, when presented to members, to creditors or to NCUA, shall contain a dual declaration by the treasurer and the chief executive officer, or in the latter's absence, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial condition and the statement of income for the period covered.

(d) *Charges for loan and lease losses.* Full and fair disclosure demands that a new credit union properly address charges for loan losses as follows:

(1) Charges for loan and lease losses shall be made timely in accordance with generally accepted accounting principles (GAAP);

(2) The ALLL must be maintained in accordance with GAAP; and

(3) At a minimum, adjustments to the ALLL shall be made prior to the distribution or posting of any dividend to the accounts of members.

§ 702.210 Payment of dividends.

(a) *Restriction on dividends.* Dividends shall be available only from net worth, net of any special reserves established under § 702.208, if any.

(b) *Payment of dividends and interest refunds.* The board of directors may not pay a dividend or interest refund that will cause the credit union's capital classification to fall below adequately capitalized under subpart A of this part unless the appropriate regional director and, if state-chartered, the appropriate state official, have given prior written approval (in an RBP or otherwise). The request for written approval must include the plan for eliminating any negative retained earnings balance.

Subparts C and D—[Removed]

■ 9. Remove subparts C and D.

Subpart E—[Redesignated as Subpart C]

■ 10. Redesignate subpart E, consisting of §§ 702.501–702.506, as subpart C, consisting of §§ 702.301–702.306.

§ 702.504 [Amended]

■ 11. Amend newly redesignated § 702.504(b)(4) by removing the citation ''§ 702.506(c)'' and adding in its place ''§ 702.306(c)''.

§ 702.505 [Amended]

■ 12. Amend newly redesignated § 702.505(b)(4) by removing the citation ''§ 702.504'' and adding in its place ''§ 702.304''.

■ 13. Appendix A to part 702 is added to read as follows:

Appendix A to Part 702—Gross-Up Approach, and Look-Through Approaches

Instead of using the risk weights assigned in § 702.104(c)(2) a credit union may determine the risk weight of certain investment funds, and the risk weight of a non-subordinated or subordinated tranche of any investment as follows:

(a) *Gross-up approach*—(1) *Applicability.* Section 702.104(c)(3)(iii)(A) of this part provides that, a credit union may use the gross-up approach in this appendix to determine the risk weight of the carrying value of non-subordinated or subordinated tranches of any investment.

(2) *Calculation.* To use the gross-up approach, a credit union must calculate the following four inputs:

(i) Pro rata share, which is the par value of the credit union's exposure as a percent of the par value of the tranche in which the securitization exposure resides;

(ii) Enhanced amount, which is the par value of tranches that are more senior to the tranche in which the credit union's securitization resides;

(iii) Exposure amount, which is the amortized cost for investments classified as held-to-maturity and available-for-sale, and the fair value for trading securities; and

(iv) Risk weight, which is the weighted-average risk weight of underlying exposures of the securitization as calculated under this appendix.

(3) *Credit equivalent amount.* The ''credit equivalent amount'' of a securitization exposure under this part equals the sum of:

(i) The exposure amount of the credit union's exposure; and

(ii) The pro rata share multiplied by the enhanced amount, each calculated in accordance with paragraph (a)(2) of this appendix.

(4) *Risk-weighted assets.* To calculate risk-weighted assets for a securitization exposure under the gross-up approach, a credit union must apply the risk weight required under paragraph (a)(2) of this appendix to the credit equivalent amount calculated in paragraph (a)(3) of this appendix.

(5) *Securitization exposure defined.* For purposes of this this paragraph (a), ''securitization exposure'' means:

(i) A credit exposure that arises from a securitization; or

(ii) An exposure that directly or indirectly references a securitization exposure described in paragraph (a)(5)(i) of this appendix.

(6) *Securitization defined.* For purposes of this paragraph (a), ''securitization'' means a transaction in which:

(i) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority;

(ii) Performance of the securitization exposures depends upon the performance of the underlying exposures; and

(iii) All or substantially all of the underlying exposures are financial exposures (such as loans, receivables, asset-backed securities, mortgage-backed securities, or other debt securities).

(b) *Look-through approaches.*—(1) *Applicability.* Section 702.104(c)(3)(iii)(B) provides that, a credit union may use one of the look-through approaches in this appendix to determine the risk weight of the exposure amount of any investment fund, or the holding of separate account insurance.

(2) *Full look-through approach.* (i) *General.* A credit union that is able to calculate a risk-weighted asset amount for its proportional ownership share of each exposure held by the investment fund may set the risk-weighted asset amount of the credit union's exposure to the fund equal to the product of:

(A) The aggregate risk-weighted asset amounts of the exposures held by the fund as if they were held directly by the credit union; and

(B) The credit union's proportional ownership share of the fund.

(ii) *Holding report.* To calculate the risk-weighted amount under paragraph (b)(2)(i) of this appendix, a credit union should:

(A) Use the most recently issued investment fund holding report; and

(B) Use an investment fund holding report that reflects holding that are not older than 6-months from the quarter-end effective date (as defined in § 702.101(c)(1).

(3) *Simple modified look-through approach.* Under the simple modified look-through approach, the risk-weighted asset amount for a credit union's exposure to an investment fund equals the exposure amount multiplied by the highest risk weight that applies to any exposure the fund is permitted to hold under the prospectus, partnership agreement, or similar agreement that defines the fund's permissible investments (excluding derivative contracts that are used for hedging rather than speculative purposes and that do not constitute a material portion of the fund's exposures).

(4) *Alternative modified look-through approach.* Under the alternative modified look-through approach, a credit union may assign the credit union's exposure amount to an investment fund on a pro rata basis to different risk weight categories under subpart A of this part based on the investment limits in the fund's prospectus, partnership agreement, or similar contract that defines the fund's permissible investments. The risk-weighted asset amount for the credit union's exposure to the investment fund equals the sum of each portion of the exposure amount assigned to an exposure type multiplied by the applicable risk weight under subpart A of this part. If the sum of the investment limits for all exposure types within the fund exceeds 100 percent, the credit union must assume that the fund invests to the maximum extent permitted under its investment limits in the exposure type with the highest applicable risk weight under subpart A of this part and continues to make investments in order of the exposure type with the next highest applicable risk weight under subpart A of this part until the maximum total investment level is reached. If more than one exposure type applies to an exposure, the credit union must use the highest applicable risk weight. A credit union may exclude derivative contracts held by the fund that are used for hedging rather than for speculative purposes and do not constitute a material portion of the fund's exposures.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 14. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.14 [Amended]

■ 15. Amend § 703.14 as follows:

■ a. In paragraph (i) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

■ b. In paragraph (j)(4) remove the words ''net worth classification'' and add in their place the words ''capital classification'', and remove the words ''or, if subject to a risk-based net worth

(RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

PART 713—FIDELITY BOND AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

■ 16. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1761a, 1761b, 1766(a), 1766(h), 1789(a)(11).

■ 17. Amend § 713.6 as follows:

■ a. In paragraph (a)(1), revise the table; and

■ b. In paragraph (c) remove the words ''net worth'' each place they appear and add in their place the word ''capital'', and remove the words ''or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained 'well capitalized' for the six (6) immediately preceding quarters after applying the applicable RBNW requirement,''.

§ 713.6 What is the permissible deductible?

(a)(1) * * *

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000.
$250,000 to $1,000,000	$2,000.
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum of $200,000; for credit unions that have received a composite CAMEL rating of "1" or "2" for the last two (2) full examinations and maintained a capital classification of "well capitalized" under part 702 of this chapter for the six (6) immediately preceding quarters the maximum deductible is $1,000,000.

* * * * *

PART 723—MEMBER BUSINESS LOANS

■ 18. The authority citation for part 723 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757, 1757A, 1766, 1785, 1789.

§ 723.1 [Amended]

■ 19. Amend § 723.1 as follows:

■ a. In paragraph (d) remove the words ''and the risk weighting standards of part 702 of this chapter''; and

■ b. In paragraph (e) remove the words ''and the risk weighting standards under part 702 of this chapter''.

§ 723.7 [Amended]

■ 20. Amend § 723.7(c)(1) by removing the words ''as defined by § 702.102(a)(1)'' and adding in their place the words ''under part 702''.

PART 747—ADMINSTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 21. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 120 Stat. 1966.

§ 747.2001 [Amended]

■ 22. Amend § 747.2001(a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

§ 747.2002 [Amended]

■ 23. Amend § 747.2002(a) by removing the words ''§§ 702.202(b), 702.203(b) and 702.204(b)'' and adding in their place the words ''§§ 702.107 (b), 702.108(b) or 702.109(b)'', and by removing the words ''§ 702.304(b) or § 702.305(b)'' and adding in their place the words ''§ 702.204(b) or § 702.205(b)''.

§ 747.2003 [Amended]

■ 24. Amend § 747.2003(a) by removing the citation ''702.302(d)'' and adding in its place the citation ''702.202(d)''.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

Office of Inspector General

42 CFR Chapter V

Medicare Program; Final Waivers in Connection With the Shared Savings Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Chapter IV

Office of Inspector General

42 CFR Chapter V

[CMS–1439–F]

RIN 0938–AR30

Medicare Program; Final Waivers in Connection With the Shared Savings Program

AGENCY: Centers for Medicare & Medicaid Services (CMS) and Office of Inspector General (OIG), HHS.

ACTION: Final rule.

SUMMARY: This final rule finalizes waivers of the application of the physician self-referral law, the Federal anti-kickback statute, and the civil monetary penalties (CMP) law provision relating to beneficiary inducements to specified arrangements involving accountable care organizations (ACOs) under section 1899 of the Social Security Act (the Act) (the ''Shared Savings Program''), as set forth in the Interim Final Rule with comment period (IFC) dated November 2, 2011. As explained in greater detail below, in light of legislative changes that occurred after publication of the IFC, this final rule does not finalize waivers of the application of the CMP law provision relating to ''gainsharing'' arrangements. Section 1899(f) of the Act, as added by the Affordable Care Act, authorizes the Secretary to waive certain fraud and abuse laws as necessary to carry out the provisions of section 1899 of the Act.

DATES: These regulations are effective on October 29, 2015.

FOR FURTHER INFORMATION CONTACT:

1877CallCenter@cms.hhs.gov, (410) 786–6887, for general issues and issues related to the physician self-referral law.

Meredith Williams, (202) 619–0335, or Elizabeth Isbey, (202) 619–0335, for general issues and issues related to the Federal anti-kickback statute or civil monetary penalties.

I. Introduction and Overview

This final rule sets forth waivers of specified fraud and abuse laws necessary to carry out the Shared Savings Program, as previously promulgated in the IFC. As explained in greater detail below, these laws restrict financial arrangements between hospitals, physicians, and other parties (including, in some cases, beneficiaries) in a position to generate or receive Medicare referrals, and serve, among other things, to prevent and remediate harms often associated with payments connected to referrals. As development of the Shared Savings Program began, stakeholders expressed concerns that these restrictions potentially impede development of innovative integrated-care arrangements envisioned by the Shared Savings Program, including shared savings arrangements and care coordination arrangements. Congress authorized the Secretary to waive these laws as necessary to carry out the Shared Savings Program.

Section I of this final rule gives an introduction and overview of this rule. Section II provides background on the Shared Savings Program. Section III summarizes public comments received in response to the IFC, responds to those comments, and provides additional clarification of several issues identified through experience with the Shared Savings Program. Section IV sets out the final waivers and applicable requirements.

A. Connection Between Shared Savings Program and Fraud and Abuse Waivers

Section 1899 of the Act (as added by section 3022 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152)) (collectively, the ''Affordable Care Act'') describes the Shared Savings Program as a program to promote accountability for a Medicare patient population, coordinate items and services under Parts A and B, and encourage investment in infrastructure and redesigned care processes for high quality and efficient service delivery. As described in CMS's first Shared Savings Program final rule published in the **Federal Register** on November 2, 2011 (Medicare Program: Medicare Shared Savings Program: Accountable Care Organizations (76 FR 67802)) (hereinafter referred to as the ''2011 Shared Savings Program final rule''), the Shared Savings Program is designed to achieve three goals: Better care for individuals, better health for populations, and lower growth in expenditures. The Shared Savings Program ACOs [1] are a key component of the Medicare delivery system reform initiative designed to reduce fragmented or unnecessary care and excessive costs for health care services furnished to Medicare fee-for-service beneficiaries.

The physician self-referral law at section 1877 of the Act, the Federal anti-kickback statute at section 1128B(b) of the Act, the CMP law addressing inducements to beneficiaries at section 1128A(a)(5) of the Act (the Beneficiary Inducements CMP), and the CMP law provisions at sections 1128A(b)(1) and (2) of the Act (the Gainsharing CMP), as described in greater detail elsewhere in this final rule, are some of the important tools used to protect patients and the Federal health care programs from fraud, improper referral payments, unnecessary utilization, underutilization, and other harms. For purposes of the Shared Savings Program, providers must integrate in ways that potentially implicate fraud and abuse laws addressing financial arrangements between sources of Federal health care program referrals and those seeking such referrals. These fraud and abuse laws require financial separation between such parties or regulate relationships between them. The Shared Savings Program focuses on coordinating care between and among providers, including those who are potential referral sources for one another. Stakeholders have expressed concern that the restrictions these laws place on certain coordinated care arrangements may impede some of the innovative integrated-care models envisioned by the Shared Savings Program. Stakeholders believe these laws would inhibit sharing savings and other incentives that they consider key to the success of an ACO, for example, arrangements involving the provision of EHR systems, IT services, or free care management personnel.

Section 1899(f) of the Act authorizes the Secretary to waive the statutes listed above and certain other laws as necessary to carry out the Shared Savings Program. On the basis of stakeholder input, experience with the Shared Savings Program over the past several years, and other factors, the Secretary has found that it is necessary to continue to waive the physician self-referral law, the Federal anti-kickback statute, and the Beneficiary Inducements CMP in certain circumstances in order to carry out the Shared Savings Program. As explained below, the Secretary has determined that it is no longer necessary to waive the Gainsharing CMP. At the time we published the IFC, hospitals were prohibited from knowingly paying physicians to induce them to reduce or limit services, including medically *unnecessary* services. The statute was recently amended to prohibit hospitals

[1] For purposes of this final rule, the terms ''ACO,'' ''ACO participants,'' and ''ACO providers/suppliers'' have the meanings presently ascribed to them in 42 CFR 425.20.

from knowingly paying physicians to induce them to reduce or limit medically *necessary* services. The amended statute obviates the need to waive this provision to carry out the Shared Savings Program.

In this final rule, we are finalizing the five waivers from the IFC that waived certain provisions of the physician self-referral law, the Federal anti-kickback statute, and the Beneficiary Inducements CMP as necessary to carry out the provisions of section 1899 of the Act. We are waiving application of these fraud and abuse laws to ACOs formed in connection with the Shared Savings Program so that the laws do not unduly impede the development and operation of beneficial ACOs, while also ensuring that ACO arrangements are not misused for fraudulent or abusive purposes that harm patients or Federal health care programs.

The waivers set forth in this final rule are promulgated pursuant to the specific authority at section 1899(f) of the Act. This authority applies only to the Shared Savings Program. The Affordable Care Act includes separate authority for the Secretary to waive certain laws, including certain fraud and abuse laws, for some other demonstrations and pilot programs. Guidance regarding such waivers, if any, is issued separately.

B. Medicare Shared Savings Program: Related Regulatory History

On April 7, 2011, CMS published a proposed rule setting forth proposed requirements for ACOs under the Shared Savings Program (Medicare Shared Savings Program: Accountable Care Organizations (76 FR 19528)) and soliciting public comments. As described above, CMS next published the 2011 Shared Savings Program final rule on November 2, 2011. CMS proposed and finalized changes to the ACO quality measurement reporting methodology and quality performance measures in the Calendar Year (CY) 2014 and CY 2015 Physician Fee Schedules. 78 FR 74230 (Dec. 10, 2013); 79 FR 67548 (Nov. 13, 2014). Additionally, on December 8, 2014, CMS published a proposed rule setting forth new proposed requirements for ACOs, and proposed revisions and clarifications to the 2011 Shared Savings Program final rule (Medicare Shared Savings Program: Accountable Care Organizations (79 FR 72760)). CMS finalized certain of these proposed requirements, revisions, and clarifications in the **Federal Register** on June 9, 2015 (Medicare Shared Savings Program: Accountable Care Organizations (80 FR 32692)) (the ''2015 Shared Savings Program final rule''). On July 15, 2015, CMS proposed further changes to the Shared Savings Program (Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Part B for CY 2016 (80 FR 41686)).

C. Overview of Final Waivers

On April 7, 2011, CMS and OIG jointly published a notice with comment period seeking public comment on certain proposed waivers and other waiver design considerations (Waiver Designs in Connection with the Shared Savings Program and the Innovation Center (76 FR 19655)). On November 2, 2011, CMS and OIG jointly published the IFC, which established waivers of the application of certain provisions of the physician self-referral law, the Federal anti-kickback statute, the Gainsharing CMP, and the Beneficiary Inducements CMP (Medicare Program: Final Waivers in Connection With the Shared Savings Program (76 FR 67992)). Prior to the statutory expiration of the IFC,[2] CMS and OIG jointly published the ''Final Waivers in Connection with the Shared Savings Program; Continuation of Effectiveness and Extension of Timeline for Publication of Final Rule,'' extending the effectiveness of the IFC and the timeline for publication of a final rule through November 2, 2015 (79 FR 62356 (Oct. 17, 2014)). We issued this continuation notice because CMS was developing a proposed rule regarding the Shared Savings Program and we wished to ensure the final waiver regulations aligned with the programmatic requirements. On February 12, 2015, CMS and OIG issued additional guidance on the waivers promulgated in the IFC (the ''Additional Waiver Guidance'').[3] The Additional Waiver Guidance provides guidance on: (1) Public disclosures required under the pre-participation waiver; (2) notification of failure to submit a timely application by parties who used the pre-participation waiver; and (3) requests for an extension of the pre-participation waiver period.

CMS and OIG are jointly finalizing waivers in this final rule to provide stakeholders with a coordinated approach for the application of certain fraud and abuse laws in connection with the Shared Savings Program. Administration of the physician self-referral law is the responsibility of CMS; OIG is responsible for enforcement of the CMP provisions under the physician self-referral law. OIG shares responsibility for the Federal anti-kickback statute with the Department of Justice. The Beneficiary Inducements CMP is enforced by OIG.

For reasons elaborated in more detail elsewhere in this final rule, including the consideration of public input, the Department's own analysis, and CMS's experience over the last four years with the Shared Savings Program, the Secretary has determined that the waivers in this final rule are necessary to carry out the Shared Savings Program. To date, information available to CMS and OIG suggests that the waivers are adequately protecting beneficiaries and Federal health care programs while promoting innovative structures within the Shared Savings Program. We will continue to monitor the development of ACOs and shared savings arrangements and may consider additional rulemaking, if warranted.

This final rule finalizes the waivers as promulgated in the IFC, with the exception of the following changes:

- The waivers no longer waive the Gainsharing CMP;
- In condition 4 of the pre-participation and participation waivers, we have changed ''should'' to ''must'' consistent with our stated intent in the IFC that the ACO governing body's documentation of its authorization must provide the basis for the determination that an arrangement is reasonably related to the purposes of the Shared Savings Program;
- We are clarifying that, for purposes of this final rule, the term ''home health supplier'' means a provider, supplier or other entity that is primarily engaged in furnishing home health services; and
- We have corrected certain technical or scrivener's errors.

Therefore, we are finalizing five waivers as follows:

- An ''ACO pre-participation'' waiver of the physician self-referral law and the Federal anti-kickback statute that applies to ACO-related start-up arrangements in anticipation of participating in the Shared Savings

[2] Pursuant to section 1871(a)(3) of the Act, a Medicare interim final rule shall not continue in effect if the final rule is not published before the expiration of the regular timeline. After consultation with the director of the Office of Management and Budget (OMB), the Department of Health and Human Services (HHS or the Department), through CMS, published a notice in the December 30, 2004, **Federal Register** (69 FR 78442) establishing a general 3-year timeline for publishing Medicare final rules after the publication of an interim final rule. Based on this timeline, the IFC, which is a Medicare interim final rule under Title XVIII, would have expired on November 2, 2014.

[3] The Additional Waiver Guidance, which may be amended from time to time, is available on CMS's Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/sharedsavingsprogram/Downloads/Additional-MSSP-Waiver-Guidance.pdf,* and on OIG's Web site at: *http://oig.hhs.gov/compliance/accountable-care-organizations/index.asp.*

Program, subject to certain limitations, including limits on the duration of the waiver and the types of parties covered;

- An ''ACO participation'' waiver of the physician self-referral law and the Federal anti-kickback statute that applies broadly to ACO-related arrangements during the term of the ACO's participation agreement under the Shared Savings Program and for a specified time thereafter;
- A ''shared savings distributions'' waiver of the physician self-referral law and the Federal anti-kickback statute that applies to distributions and uses of shared savings payments earned under the Shared Savings Program;
- A ''compliance with the physician self-referral law'' waiver of the Federal anti-kickback statute for ACO arrangements that implicate the physician self-referral law and satisfy the requirements of an existing exception; and
- A ''patient incentive'' waiver of the Beneficiary Inducements CMP and the Federal anti-kickback statute for medically related incentives offered by ACOs, ACO participants, or ACO providers/suppliers under the Shared Savings Program to beneficiaries to encourage preventive care and compliance with treatment regimes.

These five waivers provide flexibility for ACOs and their constituent parts to pursue a wide array of activities, including start-up and operating activities that further the purposes of the Shared Savings Program. These waivers incorporate conditions that, in combination with additional safeguards in the Shared Savings Program regulations at 42 CFR part 425, subpart D, are intended to protect Medicare beneficiaries and the Medicare program from fraud and abuse while furthering the quality, economy, and efficiency goals of the Shared Savings Program.

In order to receive waiver protection, an arrangement need only fit in one waiver, although in some cases an arrangement may meet the criteria of more than one waiver. Parties seeking to ensure that an arrangement is covered by a waiver for a particular law may look to any waiver that applies to that law.

II. Shared Savings Program: Background

A. Section 1899 of the Social Security Act

Section 1899 of the Act establishes the Shared Savings Program to foster the development of ACOs in Medicare. Section 1899 of the Act encourages ACOs to promote accountability for individual Medicare beneficiaries and population health management, improve the coordination of patient care under Parts A and B, and stimulate investment in infrastructure and redesigned care processes for high quality and efficient service delivery. CMS's analysis of ACOs has shown improved patient care and savings for the Program.[4]

Under section 1899(b)(2)(B) of the Act and 42 CFR 425.200, ACOs must enter into an agreement with the Secretary to participate in the Shared Savings Program for no less than a three-year period. ACOs in the Shared Savings Program must comply with requirements addressing governance, management, and leadership of the ACO, as well as program integrity, transparency, compliance plan, and certification requirements, among others. Pursuant to 42 CFR 425.204(e), an ACO must select one of three tracks, which allows an ACO to choose whether to assume one- or two-sided performance-based risk as well as the degree of such performance risk. Under Track 1, described at 42 CFR 425.600(a)(1), an ACO has the opportunity to share in savings generated during the term of the participation agreement. A Track 1 ACO has one-sided risk (*i.e.,* no liability for shared losses). As set forth in 42 CFR 425.600(a)(2), an ACO that selects Track 2 operates under a two-sided performance-based risk model in which it is eligible to receive a higher share of savings than a Track 1 ACO, but is required to repay a portion of the losses sustained by the Medicare program if costs for the ACO's assigned beneficiaries exceed certain thresholds. An ACO that selects Track 3, described in 42 CFR 425.600(a)(3), also operates under a two-sided performance-based risk model, but can receive a higher share of savings than a Track 2 ACO, in exchange for accepting accountability for repaying a greater share of losses. For any of the three tracks, in order to share a percentage of achieved savings with the Medicare program, an ACO must successfully meet quality and savings requirements and certain other conditions under the Shared Savings Program. ACO participants and ACO providers/suppliers continue to receive fee-for-service payments, and the ACO may choose how it distributes shared savings or allocates risk among its ACO participants and its ACO providers/suppliers.

[4] A press release describing the improved patient care and savings resulting from ACOs can be found at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2015-Press-releases-items/2015-08-25.html.*

B. Waiver Authority Under Section 1899(f) of the Act

Section 1899(f) of the Act provides that ''[t]he Secretary may waive such requirements of sections 1128A and 1128B and title XVIII of [the] Act as may be necessary to carry out the provisions of [section 1899 of the Act].'' This waiver authority is specific to the Shared Savings Program, and does not apply to other similar integrated-care delivery models. As further described elsewhere in this final rule, the waivers are intended to foster innovative ACO arrangements—including care coordination arrangements—that further the quality and efficiency goals of the Shared Savings Program, while also protecting beneficiaries and the Shared Savings Program from fraud and abuse.

A waiver of a fraud and abuse law is not needed for an arrangement to the extent that the arrangement: (1) Does not implicate the specific fraud and abuse law; or (2) implicates the law, but either fits within an existing exception or safe harbor, as applicable, or does not otherwise violate the law. Where a waiver of a fraud and abuse law exists, failure to fit in the waiver is not, in and of itself, a violation of the law. Arrangements that do not fit in a waiver have no special protection and must be evaluated on a case-by-case basis for compliance with the physician self-referral law, the Federal anti-kickback statute, and the Beneficiary Inducements CMP. Existing exceptions and safe harbors might apply to ACO arrangements, depending on the circumstances.[5] These include exceptions to the physician self-referral law for *bona fide* employment relationships, personal service arrangements, in-office ancillary services, electronic health records (EHR) arrangements, risk-sharing, and indirect compensation arrangements. Potential Federal anti-kickback statute safe harbors include those for employment, personal services and management contracts, EHR arrangements, and managed care arrangements.

The waiver authority under section 1899(f) is limited to sections 1128A and 1128B and title XVIII of the Act, and does not extend to any other laws or regulations, including, without limitation, the Internal Revenue Code (IRC) or State laws and regulations. Accordingly, nothing in this final rule affects the obligations of individuals or entities, including tax-exempt organizations, to comply with the IRC or other Federal or State laws and regulations. Moreover, nothing in this

[5] Section 1128A(i)(6) of the Act; 42 CFR 411.355 through 411.357; 42 CFR 1001.952.

final rule changes any Medicare program payment or coverage rule or alters any obligations parties may have under the Shared Savings Program. Although the waivers described in this final rule are necessary to ensure that the fraud and abuse laws do not unduly impede development and operation of ACOs in connection with the Shared Savings Program, the waivers are not intended to suggest that any particular arrangement between specific parties is necessary to participate in the Shared Savings Program.

C. Fraud and Abuse Laws—Background

1. Physician Self-Referral Law (Section 1877 of the Act)

Section 1877 of the Act (42 U.S.C. 1395nn), the physician self-referral law, is a civil statute that prohibits a physician from making referrals for Medicare ''designated health services,'' including hospital services, to an entity with which the physician or an immediate family member of the physician has a financial relationship, unless an exception applies. An entity may not bill Medicare for designated health services furnished as a result of a prohibited referral, and section 1877(g)(1) of the Act states that no payment may be made for a designated health service that is furnished pursuant to a prohibited referral. CMPs also apply to any person who presents (or causes to be presented) a bill for services for which he or she knows or should know payment may not be made under section 1877(g)(1) of the Act. Violations of the physician self-referral law may also result in liability under the False Claims Act (31 U.S.C. 3729–33). An ACO arrangement involving a physician who makes referrals for designated health services to an entity with which he or she or an immediate family member has a financial relationship is prohibited under the physician self-referral law, unless an exception applies.

2. The Federal Anti-Kickback Statute (Section 1128B(b) of the Act)

Section 1128B(b) of the Act (42 U.S.C. 1320a–7b(b)), the Federal anti-kickback statute, provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration to induce or reward the referral of business reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act. For purposes of the anti-kickback statute, ''remuneration'' includes the transfer of anything of value, directly or indirectly, overtly or covertly, in cash or in kind. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. Violations of the Federal anti-kickback statute may also result in the imposition of CMPs under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729–33). Practices that meet all of the conditions of a safe harbor at 42 CFR 1001.952 are not subject to prosecution or sanctions under the Federal anti-kickback statute. The statute has been interpreted to cover any arrangement where one purpose of the remuneration was to obtain money for the referral of services or to induce further referrals. For example, the distribution of shared savings by ACOs to or among its ACO participants, its ACO providers/suppliers, or individuals and entities that were its ACO participants or its ACO providers/suppliers during the year in which the shared savings were earned by the ACO could implicate the Federal anti-kickback statute and might not comply with an existing safe harbor. Arrangements for the provision of EHR technology or to engage specialists in care coordination might also potentially implicate the Federal anti-kickback statute and might not comply with an existing safe harbor.

3. Prohibition on Inducements to Beneficiaries (Section 1128A(a)(5) of the Act)

Section 1128A(a)(5) of the Act (42 U.S.C. 1320a–7a(a)(5)), the Beneficiary Inducements CMP, prohibits an individual or entity from offering or transferring remuneration to a Medicare or Medicaid beneficiary that the individual or entity knows or should know is likely to influence the beneficiary to order or receive from a particular provider, practitioner, or supplier any item or service payable by Medicare or a State health care program (including Medicaid). Existing exceptions to the Beneficiary Inducements CMP are found at section 1128A(i)(6) of the Act. The CMP defines ''remuneration'' as including transfers of items or services for free or for other than fair market value. OIG has previously taken the position that incentives that are only nominal in value are not prohibited by the statute and has interpreted nominal in value to mean no more than $10 per item, or $50 in the aggregate on an annual basis. See 65 FR 24400.

Stakeholders have indicated that a waiver of this law is needed to promote greater preventive care, to incentivize patients to follow treatment or follow-up care regimes, and to increase participation in ACOs. Without this waiver, the Beneficiary Inducements CMP could prohibit ACOs, ACO providers/suppliers, and ACO participants from using appropriate incentives to help achieve better health and better care for their Medicare patients, two of the goals of the Shared Savings Program. For example, the provision of a blood pressure cuff for a hypertensive patient participating in an ACO's chronic disease management program may, depending on the circumstances, implicate the Beneficiary Inducements CMP.

4. Prohibition on Hospital Payments to Physicians to Induce Reduction or Limitation of Medically Necessary Services (Sections 1128A(b)(1) and (2) of the Act)

Sections 1128A(b)(1) and (2) of the Act (42 U.S.C. 1320a-7a(b)(1) and (2)), the Gainsharing CMP, apply to certain payment arrangements between hospitals and physicians, including arrangements commonly referred to as ''gainsharing'' arrangements. Hospitals that make (and physicians who receive) payments prohibited by the Gainsharing CMP are liable for CMPs of up to $2,000 per patient covered by the payments (sections 1128A(b)(1) and (2) of the Act). When the IFC was published on November 2, 2011, under section 1128A(b)(1) of the Act, a hospital was prohibited from knowingly making a payment, directly or indirectly, to induce a physician to reduce or limit services to Medicare or State health care program beneficiaries under the physician's direct care, including medically unnecessary services. In the IFC, we included a waiver of the Gainsharing CMP in the pre-participation, participation, shared savings distribution, and compliance with the physician self-referral law waivers. *See* 76 FR 68000–68001.

Section 512(a) of the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), Public Law 114–10, revised the Gainsharing CMP so that it prohibits hospitals from knowingly making payments, directly or indirectly, to induce physicians to reduce or limit ''medically necessary'' services provided to Medicare or State health care program beneficiaries under the physician's direct care. In light of the statutory change, payments by hospitals to induce physicians to reduce or limit medically unnecessary services no longer implicate the Gainsharing CMP. In other words, arrangements between hospitals and physicians that incentivize greater efficiency and reduction of waste, which previously may have run afoul of the Gainsharing CMP, would no longer implicate the provision, provided those arrangements do not involve reductions or limitations in medically necessary care. Thus, a waiver of the Gainsharing CMP is no longer necessary to carry out the Shared Savings Program, which, by its terms, promotes quality and patient care goals like fostering efficient medically necessary care, but not stinting on medically necessary care. Accordingly, we are not finalizing the waivers of the Gainsharing CMP that were promulgated in the IFC. *See* 76 FR 68000–68001. This decision will not affect the ability of parties to enter into arrangements that previously fit into a waiver of the Gainsharing CMP in the IFC.

Both the amended Gainsharing CMP and the waivers of the Gainsharing CMP in the IFC permit payments from hospitals to physicians to reduce or limit *medically unnecessary* (*e.g.,* wasteful, inefficient) services. Payments from hospitals to physicians to reduce or limit medically necessary services are not, and never have been, consistent with the purposes of the Shared Savings Program, were not protected by the waivers in the IFC, are not permitted by the amended Gainsharing CMP, and are not protected by the waivers in this final rule. CMS stated in the 2015 Shared Savings Program final rule that it has and will continue to use, among other tools, its monitoring authorities (set forth in 42 CFR 425.316(b)) to ensure that ACOs, ACO participants, and ACO providers/suppliers do not stint on medically necessary care. 80 FR 32781.

By way of example, we explained in the IFC that knowing payments by a hospital to induce a physician to discharge patients without regard to appropriate care transitions or payments to use a drug or device known to be clinically less effective would not qualify for protection under the shared savings distribution waiver. In contrast, we explained in the IFC that we would protect payments from shared savings designed to ''incentivize the provision of *alternate and appropriate* medically necessary care consistent with the purposes of the Shared Savings Program (such as the provision of coordinated outpatient care rather than inpatient services or the use of evidence-based protocols for medically necessary care).'' 76 FR 68006 (emphasis in original).

For clarity and consistency with the amended Gainsharing CMP, and for the reasons noted above, we are modifying the pre-participation waiver, participation waiver, shared savings distribution waiver, and compliance with the physician self-referral law waiver to remove the waiver of the Gainsharing CMP. In the IFC, we excluded from the shared savings distribution waiver of the Gainsharing CMP ''situations in which a payment is made knowingly to reduce or limit *medically necessary* services to patients under the physician's direct care.'' 76 FR 68006 (emphasis in original). Because we are removing the waiver of the Gainsharing CMP, we are also removing this condition from the shared savings distribution waiver.

We emphasize that this modification does not alter the scope of permissible arrangements under the Gainsharing CMP and will not affect the ability of parties to enter into arrangements that qualified for protection under the waivers of the Gainsharing CMP in the IFC. Going forward, ACO arrangements involving payments from hospitals to physicians to reduce or limit services must comply with the Gainsharing CMP, as amended. For purposes of this final rule, we will continue to interpret ''medical necessity'' consistent with Medicare program rules and accepted standards of practice, including the IFC guidance regarding alternate and appropriate medical care.

III. Explanation of Waiver Requirements, Clarifications of Certain Provisions, Summaries of Comments, and Responses to Comments

A. Overview

The entire set of waivers and applicable requirements are set forth in section IV of this final rule, pursuant to the authority granted under section 1899(f) of the Act. The waivers apply uniformly to each ACO, ACO participant, and ACO provider/supplier participating in the Shared Savings Program. The waivers are self-implementing. Apart from meeting applicable waiver conditions (which include some required actions), no special procedures (such as the submission of a separate application for a waiver) are required by parties in order to be covered by a waiver. Parties need not apply for an individualized waiver. As stated below, we will also make the waiver text available via both the CMS and OIG Web sites.

The Department has taken several opportunities to solicit and reply to public comments on the Shared Savings Program.[6] The Department received a total of 15 timely filed comments in response to the IFC from entities and individuals, and section III summarizes and responds to these public comments. Overall, commenters supported the waivers and generally agreed that they provide the flexibility needed to permit innovation in the Shared Savings Program. However, we received some specific comments about various aspects of the waivers. In addition, we received comments that are outside the scope of this rulemaking; those comments are not summarized or responded to here.

In section III, we are adopting, in large part, the guidance from section V of the IFC in order to provide the public with a comprehensive document regarding the Shared Savings Program fraud and abuse waivers. In addition, section III explains the minor clarifications made to the waivers found in section IV of this final rule as well as our position with respect to several of the waiver requirements.

B. Reasonably Related to the Purposes of the Shared Savings Program

Several waivers contain language specifying that an arrangement be ''reasonably related to the purposes of the Shared Savings Program.'' As we stated in the IFC, under this standard, an arrangement ''need only be reasonably related to one enumerated purpose, although we would expect that many arrangements would relate to multiple purposes.'' 76 FR 68002. In the IFC, we defined ''purposes of the Shared Savings Program'' consistent with the purposes set forth in sections 1899(a) and (b) of the Act. In this final rule, we continue to define the purposes of the Shared Savings Program in accordance with the statutory purposes, namely, promoting accountability for the quality, cost, and overall care for a Medicare population as described in the Shared Savings Program; managing and coordinating care for Medicare fee-for-service beneficiaries through an ACO; and encouraging investment in infrastructure and redesigned care processes for high quality and efficient service delivery for patients, including Medicare beneficiaries. In addition, we continue to interpret the purpose of ''efficient service delivery'' to include, among other things, appropriate reduction of costs to, or growth in expenditures of, the Medicare program, consistent with quality of care, physician medical judgment, and patient freedom of choice.

[6] See Request for Information Regarding Accountable Care Organizations and the Shared Savings Program, 75 FR 70165 (Nov. 10, 2010), and ''Workshop Regarding Accountable Care Organizations, and Implications Regarding Antitrust, Physician Self-Referral, Anti-Kickback, and Civil Monetary Penalty (CMP) Laws'' at *http://oig.hhs.gov/compliance/accountable-care-organizations/index.asp.*

In the IFC, we gave the following examples of activities that would be reasonably related to the purposes of the Shared Savings Program, which remain applicable in this final rule: (1) Promoting evidence-based medicine and patient engagement; (2) meeting requirements for reporting on quality and cost measures; (3) coordinating care, such as through the use of telehealth, remote patient monitoring, and other enabling technologies; (4) establishing clinical and administrative systems for the ACO; (5) meeting the clinical integration requirements of the Shared Savings Program; (6) meeting the quality performance standards of the Shared Savings Program; (7) evaluating health needs of the ACO's assigned population; (8) communicating clinical knowledge and evidence-based medicine to beneficiaries; and (9) developing standards for beneficiary access and communication, including beneficiary access to medical records. 76 FR 68002.

Arrangements that are unrelated to the Shared Savings Program, but that may have similar underlying purposes, are not covered by the term ''purposes of the Shared Savings Program.'' 76 FR 68002. We continue to believe that arrangements involving care for ACO beneficiaries, but that also encompass care for non-ACO beneficiaries, may be eligible for waiver protection; such arrangements can further the purposes of the Shared Savings Program. The definition of ''purposes of the Shared Savings Program'' applies uniformly to all waivers in which it appears.

Comment: Some commenters objected to the ''reasonably related'' standard as overly broad, vague, or ambiguous. One commenter suggested that our ''reasonably related'' standard was not sufficiently narrow so as to waive only such requirements of sections 1128A and 1128B and Title XVIII of the Act as may be ''necessary'' to carry out the purposes of the Shared Savings Program.

Response: We disagree with the commenters. We believe the ''reasonably related'' standard best achieves our goal of providing flexibility to ACOs to develop the innovative arrangements envisioned by CMS, while still requiring a verifiable connection with the Shared Savings Program so as to minimize the risk of allowing fraudulent or abusive arrangements.

We underscore that not every arrangement connected to an ACO will be reasonably related to the purposes of the Shared Savings Program. We believe there are a range of arrangements that ACOs, ACO participants, and/or ACO providers/suppliers might enter into that have no connection to the purposes of the Shared Savings Program. In the IFC, we gave the example, which we are adopting here, of a per-referral payment (*e.g.,* expressly paying a specialist $500 for every referral generated by the specialist or paying a nursing facility staff member $100 for every patient transported to the ACO's hospital) as not being reasonably related to the purposes of the Shared Savings Program. 76 FR 68004. Other examples of arrangements that are not reasonably related to the purposes of the Shared Savings Program include the following: (1) An arrangement whereby a physician, a physician practice, or other provider is required to pay a sum to receive ACO-related referrals (*e.g.,* ''pay-to-play'' arrangements); (2) medical directorships or personal service arrangements where referring physicians or other providers receive payments for no actual services performed; (3) payments to induce a physician or other provider to stint on medically necessary care for beneficiaries; or (4) free gifts, such as sporting event tickets, to referring ACO providers/suppliers or ACO participants. These arrangements are suspect and subject to ordinary case-by-case review under all applicable fraud and abuse laws.

Unlike the examples provided above, and as we pointed out in the IFC, arrangements with specialists or other practitioners, such as nursing facility staff members, to engage in care coordination for ACO beneficiaries or implement evidence-based protocols could be reasonably related to the purposes of the Shared Savings Program even if the arrangement resulted in a greater likelihood that the patient might be referred to or within an ACO. 76 FR 68004. Similarly, compensation to a physician for achieving certain quality metrics for patient care set by the ACO could be reasonably related to the purposes of the Shared Savings Program, although this arrangement may result in that physician being more likely to refer to or within the ACO. We remind parties that they must comply with the programmatic safeguard at 42 CFR 425.304(c), which prohibits certain required referrals and cost-shifting.

C. Eligibility for the Waivers

This final rule finalizes four waivers that are available to protect certain arrangements involving an ACO, its ACO participants, and/or its ACO providers/suppliers, if the ACO has a participation agreement and remains in good standing under that agreement. As noted below, some waivers include certain ACO-related arrangements with other parties if all waiver conditions are met. (A fifth waiver, described below, addresses incentives offered to beneficiaries.)

The first of the five waivers that we finalize in this final rule, the ACO pre-participation waiver, is available for start-up arrangements, provided that the ACO is making good faith efforts to form an ACO and to submit an application to participate in the Shared Savings Program, and all other conditions of the waiver are satisfied. As we stated in the IFC:

> [T]o qualify for the pre-participation waiver, the parties to the arrangement must include, at a minimum, the ACO or at least one individual or entity that is eligible to form an ACO (as defined in [42 CFR 425.102]). In the context of the ACO pre-participation waiver, the terms ACO, ACO participant, and ACO provider/supplier refer to individuals or entities that would meet the definitions of those terms set forth in the Shared Savings Program regulations at 42 CFR 425.20, if the ACO had a participation agreement (but for the fact that the required list under the regulations has not yet been submitted to CMS). Individuals or entities that are prospective ACO participants or ACO providers/suppliers should be those that would be on the list if it were to be submitted.

76 FR 68002. Further, in that rulemaking we stated that the pre-participation waiver does not cover arrangements involving drug and device manufacturers, distributors, durable medical equipment (DME) suppliers, or home health suppliers. As we explained in the IFC, drug and device manufacturers and distributors are not Medicare enrolled suppliers and providers. We also explained that DME suppliers and home health suppliers have historically posed a heightened risk of program abuse,[7] and therefore we excluded these entities from the pre-participation waiver.

Comment: Several commenters requested clarification of the term ''home health supplier.'' One commenter asked that we confirm that the pre-participation waiver protects arrangements with Medicare-certified home health agencies or providers. Another commenter questioned whether the exclusion applied to those who furnish home health supplies outside

[7] In addition to the government's enforcement and oversight experience with these suppliers, we note that CMS has designated these entities as high or moderate risk for purposes of provider enrollment screening. See *e.g.* ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers'', 76 FR 5862 (Feb. 2, 2011) at *http://www.gpo.gov/fdsys/pkg/FR-2011-02-02/pdf/2011-1686.pdf.*

the Medicare program. A commenter also noted that the term ''home health supplier'' is not defined in the Medicare program.

Additionally, we received several comments objecting to the exclusion of all home health agencies from the pre-participation waiver. These commenters asked that CMS and OIG clarify whether all home health agencies were excluded intentionally from the pre-participation waiver, regardless of whether they are certified by Medicare. In general, these commenters urged us to consider that home health agencies are in a position to generate savings for the Shared Savings Program through quality, efficient care in a less costly setting. One commenter noted that a *per se* exclusion of home health agencies from the pre-participation waiver unfairly punishes good actors because of isolated issues of program abuse, and other commenters asserted that categorical exclusion of these providers may be detrimental to the purposes of the Shared Savings Program and may have anti-competitive effects. Several commenters requested that we clarify that home health agencies may be parties to arrangements protected by the participation, shared savings distributions, compliance with the physician self-referral law, and patient incentives waivers even if excluded from the pre-participation waiver, and may participate in the Shared Savings Program as post-acute care providers.

One commenter suggested that home health agencies should be permitted to participate in start-up arrangements protected by the pre-participation waiver if they have a compliance program in place that is consistent with OIG's Compliance Program Guidance for Home Health Agencies. Another commenter suggested that CMS and OIG adopt an approach that would exclude a provider from any sector, including home health care, from the pre-participation waiver if it is currently subject to a corporate integrity agreement, does not maintain a compliance program reasonably consistent with OIG guidelines, or is subject to a payment suspension.

Response: This final rule continues to recognize that home health plays an important role in care coordination. Under this final rule, ''home health suppliers'' are permitted to use all waivers offered in this final rule, if the applicable waiver conditions are met, except the pre-participation waiver. Moreover, certain start-up arrangements involving entities that furnish home health services may fit in existing safe harbors to the Federal anti-kickback statute or exceptions to the physician self-referral law.

We continue to be concerned that the pre-participation waiver could be more prone to abuse than other waivers because, among other things, it applies in circumstances that pre-date a prospective ACO's actual commitment to the Shared Savings Program and the attendant regulation and oversight. We remain concerned about potential misuse of the waiver by those who are not acting in good faith to create an ACO for the Shared Savings Program. Because of this risk, we have incorporated a number of targeted safeguards into the pre-participation waiver. For instance, we are requiring notification of failure to submit a timely application, and we are prohibiting use of the waiver by certain types of entities that are not central to forming a Shared Savings Program ACO and have historically posed an elevated risk of fraud, as described above.

One type of entity we excluded from the pre-participation waiver in the IFC was ''home health supplier,'' and we agree that we should clarify the intended meaning of this term in the final rule. As a commenter points out, the term does not have a specific meaning in the Medicare program. We are clarifying that, for purposes of this final rule, the term ''home health supplier'' means a provider, supplier, or other entity that is *primarily engaged* in furnishing ''home health services,'' as that term is defined in section 1861(m) of the Act. The term ''home health supplier'' would include freestanding home health agencies (as that term is commonly used by CMS and industry stakeholders) and their parent entities, which may own one or more freestanding home health agencies, if the parent entity is primarily engaged in the delivery of home health services.

A Medicare-enrolled provider or supplier, such as a hospital, skilled nursing facility, physician practice, or other provider or supplier could be a party to an arrangement protected by the pre-participation waiver, even if such provider or supplier furnishes home health services, so long as the hospital, skilled nursing facility, physician practice, or other provider or supplier is not primarily engaged in providing home health services.

This clarification is consistent with our intent in the IFC. We did not intend there, and do not intend in this final rule, to exclude from the pre-participation waiver hospitals, skilled nursing facilities, physician practices, or other providers and suppliers that may furnish some home health services. To do otherwise would have precluded from the waiver the very types of providers and suppliers the pre-participation waiver was meant to protect to enable them to form ACOs for the Shared Savings Program. To this end, a provider or supplier that furnishes home health services could be a party to an arrangement covered by the pre-participation waiver, so long as that entity is *not* primarily engaged in the furnishing of home health services.

Whether a provider, supplier or other entity is excluded as a home health supplier under this final rule does not turn on whether the supplier is Medicare-certified. Medicare-certified home health agencies are excluded if they meet the definition of a home health supplier, set forth in this final rule. Finally, we appreciate another commenter's suggestions for additional restrictions in the pre-participation waiver. We did not propose these restrictions and believe they would require further study. We plan to continue to monitor the use and impacts of the pre-participation waiver and may consider these suggestions in future rulemaking, if warranted. We are not adopting the suggestion to permit home health agencies that have compliance plans to use the pre-participation waiver.

In summary, we are finalizing the pre-participation waiver to exclude home health suppliers, as defined above, DME suppliers, and pharmaceutical and device manufacturers, because of continuing program integrity risks, the heightened risks inherent in the pre-participation waiver, and an assessment based on four years of program experience that the pre-participation waiver is sufficiently broad for purposes of the Shared Savings Program. We believe this policy is consistent with the goals of the Shared Savings Program and has not created barriers to the participation or development of ACOs.

D. Pre-Participation and Participation Waivers

1. Scope

The pre-participation waiver covers a broad array of start-up arrangements, subject to certain conditions. The participation waiver covers any arrangement that meets its conditions, including start-up arrangements. Because these two waivers may serve to protect a wide variety of arrangements entered into by and among ACOs, ACO participants, and ACO providers/suppliers, and are necessary to carry out the purposes of the Shared Savings Program, we are finalizing these waivers (minus the Gainsharing CMP waiver) with some clarification, as described in more detail below.

When we developed the pre-participation and participation waivers in the IFC, our intent was to establish pathways to protect *bona fide* ACO investment, start-up, operating, and other arrangements that carry out the Shared Savings Program, subject to certain safeguards. The pre-participation and participation waivers rely on the programmatic requirements of the Shared Savings Program to safeguard Medicare beneficiaries and the Medicare program. 76 FR 68003. As explained in the IFC, the waivers reflect our position that risks of fraud and abuse, such as overutilization and inappropriate utilization, are mitigated, in the first instance, by the Shared Savings Program design, the eligibility requirements, the quality of care and accountability provisions, and the program integrity provisions. As described in more detail below, the waivers include additional safeguards in the form of governance responsibility, transparency, and a documented audit trail. *Id.*

2. Start-Up Arrangements Under the Pre-Participation Waiver

Consistent with the IFC, the pre-participation waiver is limited to ''start-up arrangements.'' We are making a technical correction to the waiver text so that the term ''start-up arrangements'' applies to *arrangements for* items, services, facilities, or goods (including non-medical items, services, facilities, or goods) that are used to create or develop an ACO and that are provided by such an ACO, ACO participants, or ACO providers/suppliers. We continue to believe that the provision of a subsidy for these items, services, facilities, or goods can constitute a start-up arrangement. We note that arrangements meeting the definition of a ''start-up arrangement'' can also qualify for the participation waiver if they occur after the ACO's start date in the Shared Savings Program, provided all other waiver conditions are met.

We believe that the following list, taken from the IFC, remains representative of the types of start-up arrangements that ACOs enter into, and that may qualify under the pre-participation waiver:

(1) Infrastructure creation and provision;

(2) Network development and management, including the configuration of a correct ambulatory network and the restructuring of existing providers and suppliers to provide efficient care;

(3) Care coordination mechanisms, including care coordination processes across multiple organizations;

(4) Clinical management systems;

(5) Quality improvement mechanisms including a mechanism to improve patient experience of care;

(6) Creation of governance and management structure;

(7) Care utilization management, including chronic disease management, limiting hospital readmissions, creation of care protocols, and patient education;

(8) Creation of incentives for performance-based payment systems and the transition from fee-for-service payment system to one of shared risk of losses;

(9) Hiring of new staff, including:

a. Care coordinators, including nurses, technicians, physicians, and/or non-physician practitioners;

b. Umbrella organization management;

c. Quality leadership;

d. Analytical team;

e. Liaison team;

f. IT support;

g. Financial management;

h. Contracting;

i. Risk management;

(10) Information Technology, including:

a. EHR systems;

b. Electronic health information exchanges that allow for electronic data exchange across multiple platforms;

c. Data reporting systems, including all payer claims data reporting systems;

d. Data analytics, including staff and systems, such as software tools, to perform such analytic functions;

(11) Consultant and other professional support, including:

a. Market analysis for antitrust review;

b. Legal services;

c. Financial and accounting services;

(12) Organization and staff training costs;

(13) Incentives to attract primary care physicians;

(14) Capital investments including loans, capital contributions, grants and withholds.

76 FR 68003.

We have included the list in this final rule so that ACOs may continue to use these examples as guideposts in determining whether a particular arrangement may qualify for protection under this waiver.

3. Additional Safeguards

One of the key safeguards to mitigate the risk of fraud or abuse from arrangements protected under these waivers is the involvement of the ACO's governing body in the authorization of each arrangement. In the IFC, the pre-participation and the participation waivers require the governing body of the ACO to make a *bona fide* determination that the arrangement for which waiver protection is sought is reasonably related to the purposes of the Shared Savings Program and to duly authorize the arrangement. (For the ACO participation waiver, the governance, as well as the leadership and management of the ACO, must additionally be in compliance with the applicable rules under 42 CFR 425.106 and 425.108, as recently amended, and the governing body must have a meaningful conflicts of interest policy for its members. 76 FR 68003.) As we observed in the IFC:

> The intent of this requirement is to ensure that any arrangement for which waiver protection is sought falls under the auspices of the ACO; is transparent within the ACO to ACO participants and members of the governing body; and is integral to the ACO's mission and plans to effectuate its role in the Shared Savings Program. This approach interposes the ACO's governing body as an intermediary responsible, in the first instance, for ensuring that all protected arrangements are in furtherance of ACO purposes and are not isolated arrangements furthering the individual financial or business interests of ACO participants or ACO providers/suppliers.

Id. We are finalizing this policy regarding the ACO governing body determination and authorization, with the additional clarification provided below.

Comment: Some commenters supported our requirement in the pre-participation and participation waivers that an ACO governing body document its *bona fide* determination that an arrangement reasonably relates to the purposes of the Shared Savings Program. Commenters suggested that we provide additional examples of particular methods by which governing bodies may make a *bona fide* determination regarding an arrangement. The commenters also advocated for requiring governing bodies to make information regarding the authorization of arrangements publicly available. Another commenter suggested that proof that the governing body made a meaningful determination should be reflected in the minutes of the ACO governing body's meeting when the arrangement requiring a waiver is being considered. Others suggested that we provide examples of arrangements that *cannot* be authorized by a governing body as reasonably related to the purposes of the Shared Savings Program.

Response: We appreciate the commenters' support for our requirement that an ACO governing body make a *bona fide* determination that an arrangement reasonably relates to the purposes of the Shared Savings Program. We note that this determination is only one of several requirements that an ACO must meet in order for an arrangement to be protected by these waivers. We refer the commenters to the guidance in the IFC (76 FR 68004), and we are providing additional clarification on three safeguards for these waivers: (1) Methods of the ACO governing body's authorization; (2) documentation requirements; and (3) transparency requirements.

Methods of the ACO Governing Body's Authorization

As we explained above, the pre-participation and participation waivers require the ACO governing body to make a *bona fide* determination that an arrangement is reasonably related to the purposes of the Shared Savings Program. We reiterate that a key role of the ACO governing body is to evaluate and identify clearly whether arrangements are reasonably related to one or more purposes of the Shared Savings Program. We do not believe that an ACO governing body can make and authorize a *bona fide* determination that an arrangement is reasonably related to the purposes of the Shared Savings Program by ''rubber stamping'' its approval of an arrangement. We are not prescribing particular methods for this determination. ACO governing bodies have available to them a variety of methods for making such a determination, provided they meet all of the requirements in this condition of the waiver. We believe and expect that members of the ACO governing body will employ a thoughtful, deliberative process for making a determination that an arrangement is reasonably related to the purposes of the Shared Savings Program, and will articulate clearly the basis for their determinations and authorizations. As we stated in the IFC, a meaningful determination and authorization by the ACO's governing body is essential because it serves to ensure ''that arrangements covered by these waivers are truly furthering the interests of the ACO as a whole in meeting the objectives of the Shared Savings Program.'' 76 FR 68004.

These waivers do not protect sham governing body determinations for arrangements that are not connected to the Shared Savings Program. One factor we would consider when evaluating whether the ACO governing body's determination is *bona fide* would be the proximity in time between the establishment of the arrangement (and any material amendments and modifications to the arrangement) and the ACO governing body's corresponding determination and authorization. For example, a significant passage of time between the establishment of the arrangement and the ACO governing body's determination might indicate that the ACO governing body did not make a *bona fide* determination and was acting for other purposes.

In response to the commenters' request for examples of arrangements that cannot be reasonably related to the purposes of the Shared Savings Program, we provide several examples in section III.B above of arrangements that are not reasonably related to the purposes of the Shared Savings Program.

We reiterate that, in all instances, no waiver protection applies until all requirements of the waiver are met.

Documentation Requirements

As we emphasized in the IFC, the determination and authorization must be contemporaneously documented by the ACO governing body. 76 FR 68003. Among their requirements, the pre-participation and participation waivers mandate that the documentation must identify at least a description of the arrangement and the date and manner of the ACO governing body's authorization of the arrangement; we specified that documentation should include the basis for the ACO governing body's determination that the arrangement is reasonably related to the purposes of the Shared Savings Program. *Id.* at 68000, 68001. In section V of the IFC, we explained that ''documentation *must* include the basis for the determination that the arrangement is reasonably related to the purposes of the Shared Savings Program.'' *Id.* at 68003 (emphasis added). In this final rule, we are correcting the waiver text in condition 4.b. of the pre-participation and participation waivers by replacing ''should'' with ''must'' so that the waivers align with our stated intent for this documentation requirement in section V of the IFC. We stated that the documentation requirement was mandatory, not discretionary, because we believed (and continue to believe) that the determination by the ACO governing body is necessary to trigger protection of the waiver. *Id.* at 68004. The ability to ascertain the ACO governing body's rationale for its determination, as reflected in its documentation, is essential in being able to distinguish between arrangements for which the ACO governing body has made a *bona fide* determination that the arrangement is reasonably related to the purposes of the Shared Savings Program, and those for which the ACO governing body has not made such a determination. Particularly in this decision-making capacity, the ACO governing body serves as a gatekeeper to ensure only arrangements that are integral to the ACO's mission and role in the Shared Savings Program are protected, and that isolated arrangements furthering the individual financial or business interests of ACO participants or ACO providers/suppliers are not. The existence of documentation that corresponds with the actions of the ACO governing body is critical to the functionality of this safeguard.

It is essential that an ACO have sufficient documentation to identify clearly the arrangement its governing body is considering, and to be able to point to the basis or bases for the decision that an arrangement is ''reasonably related'' to the purposes of the Shared Savings Program. We stated in the IFC that the documentation should allow ''the government or another third party reviewing the documentation [to be] able to ascertain the material terms of the arrangement, including the information listed in item 4 of the pre-participation and participation waivers.'' 76 FR 68004. We are more concerned with the level of specificity included in the ACO governing body's records about the arrangement (and any material amendments and modifications to the arrangement), and the corresponding basis or bases for the ACO governing body's determination, than the particular format of that documentation. For example, while it would be a best practice to have a written resolution duly authorized by the ACO governing body evidencing the basis or bases for its determination that a particular arrangement is reasonably related to the purposes of the Shared Savings Program, such a resolution is not required, and the documentation requirements of the waivers can be met in other ways. In addition, we note that the waivers do not require an agreement signed by the parties in order for an arrangement to be protected, although such an agreement is a best documentation practice (and is one way to satisfy the writing requirement included in relevant exceptions to the physician self-referral law if a waiver does not apply).

While we have not specified the form of documentation that will be sufficient, as that will vary depending on the circumstances, the documentation must clearly evidence the nexus between the arrangement and the purposes of the Shared Savings Program. Documentation that lacks an adequate description of the arrangement or of the ACO governing body's basis for its determination will not meet the requirements of condition 4 of the pre-participation and participation waivers in this final rule. Finally, we reiterate that the documentation may be in paper or electronic form.

In this final rule, we are finalizing the document retention policies from the IFC. Specifically, the ACO must have an audit trail of contemporaneous documentation that identifies core characteristics of the arrangement (as listed in the waiver text), maintain such documentation for 10 years, and make the documentation available to the Secretary, upon request. For the pre-participation waiver, documentation of the diligent steps must be retained for at least 10 years following the date that the ACO submits its application or the date the ACO submits its statement of reasons for failing to submit an application.

We decline to adopt the commenters' recommendations to require the ACO to make information about the authorization publicly available. We believe the combination of the documentation requirements in the final waivers, the existing public disclosure requirements for these arrangements, and the Secretary's monitoring authorities appropriately mitigate the risk of fraud or abuse.

Transparency Requirements

We are finalizing the IFC requirement for public disclosure—at a time and in a place and manner established in guidance issued by the Secretary—of arrangements for which waiver protection under the pre-participation or participation waiver is invoked. As we explained in the IFC, the public disclosure must include the description of the arrangement, but shall not include the financial or economic terms of the arrangement because of potential antitrust implications, among other considerations. We reiterate, however, that the financial and economic terms of the arrangement must be documented pursuant to the documentation requirements described in condition 4.a. of the pre-participation and participation waivers and must be made available to the Secretary upon request. 76 FR 68004.

Comment: Most of the commenters supported the public disclosure criterion, and some commenters wanted to impose additional requirements on ACOs. One commenter suggested that we promulgate regulations that set out these additional requirements in greater specificity. According to several commenters, we should require public posting of the use of the waivers on a rolling basis, and one commenter recommended that we require parties to publicize a notice of intent to form an ACO. Another commenter advocated for disclosure of the use of a waiver to CMS, as well as to the public via the media serving the community in which ACO participants are located.

Response: In the IFC, we set out three reasons for developing the transparency requirement:

First, the requirement recognizes that secrecy is necessary for most criminal or fraudulent conduct, and we are declining to protect hidden arrangements. Second, the requirement makes information about waived arrangements more readily available to parties involved with the ACO, regulators, and the public. Third, transparency creates an incentive for ACOs to exercise due diligence when arrangements are being established to ensure that they are waiver compliant and otherwise consistent with the ACO's mission and the duty each member of the governing body owes to make decisions in the interests of the ACO.

76 FR 68004 (footnote omitted).

In the IFC, we stated that, until such time as additional guidance was issued, parties seeking to use the ACO pre-participation or participation waiver would meet the disclosure requirement by posting information identifying the parties to the agreement and the type of item, service, good, or facility provided under the arrangement on a public Web site belonging to the ACO or an individual or entity forming the ACO, clearly labeled as an arrangement for which waiver protection was sought, within 60 days of the date of the arrangement. We subsequently provided further guidance on the method and content of required public disclosures in the Additional Waiver Guidance. Parties seeking to use the pre-participation or participation waiver meet the disclosure requirements only if they post information in accordance with the instructions in the Additional Waiver Guidance, as it may be updated by the Secretary from time to time. (Prior to the Additional Waiver Guidance, parties could meet the disclosure requirement by following the guidance in the IFC cited above.)

We believe the disclosure process detailed in the Additional Waiver Guidance, which was issued after the comment period for the IFC closed, addresses the commenters' suggestion that we set out additional requirements with greater specificity and that we provide for rolling disclosures. The waivers provide that the time, place, and manner of the public disclosure shall be set by the Secretary; we do not believe separate regulations are necessary. Further, requiring publication of a notice of intent to form an ACO for purposes of these waivers would be overly burdensome. With respect to one commenters' suggestions regarding public disclosure of waivers, including to CMS or local media, we believe the public disclosure requirements in the Additional Waiver Guidance are sufficient because they provide for public transparency regarding arrangements for which waiver protection is sought while minimizing the burden on ACOs.

4. Outside Party Arrangements

The IFC included certain ACO-related arrangements with outside providers and suppliers, such as hospitals, specialists, or post-acute care facilities, within the scope of the pre-participation and participation waivers. An outside party arrangement is an arrangement with an individual or entity that does not meet the definition of an ACO, an ACO participant, or an ACO provider/supplier, as those terms are defined in section IV of this final rule, but has a role in coordinating and managing care for ACO patients.

Comment: Some commenters supported our approach to protect certain ACO-related arrangements with outside providers and suppliers. One commenter stated that the arrangements protected by the pre-participation and participation waivers serve a significant role in ensuring patient access to care. Other commenters urged CMS and OIG to limit the waivers to ACOs, ACO participants, and ACO providers/suppliers. One commenter advocated requiring arrangements with outside parties to be fair market value and commercially reasonable, while another commenter believed we should require outside party arrangements to be necessary or directly related to the ACO's operations under the Shared Savings Program. Finally, a commenter suggested that, if the waivers are extended to outside party arrangements, those outside parties should be subject to certification requirements and other similar safeguards.

Response: As we observed in the IFC:

The current design of these waivers applies to arrangements within the ACO (that is, between or among the ACO, its ACO participants, and/or its ACO providers/suppliers), as well as ACO-related arrangements with outside providers and suppliers, such as hospitals, specialists, or post-acute care facilities that might not be part of the ACO but have a role in coordinating and managing care for ACO patients.

76 FR 68005.

We agree with the commenters who advocated that arrangements with outside parties should be protected under these waivers so long as all requirements for the applicable waiver are met. We believe that these arrangements are important in furthering the quality and patient care goals of the Shared Savings Program. We recognize that, for example, some individuals and entities furnishing care to beneficiaries in an ACO will not be an ACO participant or ACO provider/supplier. ACOs may want to enter into arrangements with these outside individuals or entities, however, to promote care coordination for their patients or to encourage quality improvement.

While we understand the benefits of arrangements with outside parties, we recognize the concerns of those commenters who recommended additional safeguards, such as fair market value or commercial reasonableness requirements. We have reviewed the comments and considered the types of arrangements that may be necessary to meet the goals of the Shared Savings Program, the wide variation of arrangements ACOs are undertaking to redesign care, and the challenges of funding ACO infrastructure and operations. Based on these considerations and experience with the Shared Savings Program to date, we are not imposing additional conditions on outside party arrangements at this time. Similarly, we are not adopting the commenter's suggestion that arrangements with outside parties be subject to certification requirements or similar safeguards at this time.

5. Duration of the Pre-Participation and Participation Waivers

For the participation waiver, the waiver period starts on the start date of the participation agreement and ends 6 months following the earlier of the expiration of the participation agreement (including any renewals) or the date on which the ACO has voluntarily terminated the participation agreement. If CMS terminates the participation agreement, the waiver period will end on the date of the termination notice. 76 FR 68001.

As we explained in the IFC, the waiver text sets forth specific duration periods for the pre-participation waiver to account for the varying circumstances of ACOs that submit applications that are accepted, submit applications that are rejected, or are unable to submit an application. Our intent behind these specific duration periods was, and continues to be, to ensure that the pre-participation waiver covers only start-up arrangements that are closely linked to the Shared Savings Program. 76 FR 68005.

Under condition 1 of the pre-participation waiver in the IFC, which we adopt in this final rule, we specify that the waiver covers only arrangements undertaken by a party or parties acting with the good faith intent to develop an ACO that will participate in the Shared Savings Program starting in a particular year (the ''target year''). For target year 2013 or later, the waiver period starts one year preceding an application due date (the ''selected application date''). For example, for ACOs pursuing target year 2016, the application due date was August 7, 2015, which means the ACO pre-participation waiver period would have begun on August 7, 2014. Application due dates for future years will be announced by CMS.

In the IFC, we provided three scenarios that clarify the end of coverage of the pre-participation waiver, which we are finalizing in this final rule. First, for an ACO that submits an application that is ultimately accepted and enters into a Shared Savings Program participation agreement, the pre-participation waiver lasts until the start date of the participation agreement, at which point waiver protection merges seamlessly into the participation waiver. 76 FR 68005. No further governing body approval is required for arrangements that were protected by the pre-participation waiver. Second, for an ACO that submits an application that is ultimately denied by CMS (for any reason), the pre-participation waiver extends for 6 months after the date of the denial notice for arrangements that qualified for the waiver before the date of the denial notice. No newly created arrangements established on or after the date of the denial notice would be protected during the 6-month period immediately following the denial notice. Third, if an ACO fails to submit an application on the final application due date for the target year, the pre-participation waiver ends on the earlier of the application due date for the target year or the date the ACO submits a statement of reasons for failing to submit an application, except that an ACO that has been unable to submit an application but can demonstrate a likelihood of successfully developing an ACO that would be eligible to participate in the Shared Savings Program by the next application due date, may apply for an extension of the waiver. If an ACO seeks protection for an arrangement under the pre-participation waiver but fails to submit a Shared Savings Program application by the final application due date, this final rule requires that the ACO submit a statement describing the reasons it failed to submit a timely application, in a form and manner to be determined by the Secretary. *Id.* The Additional Waiver Guidance,[8] provides instructions on the form and manner of the statement explaining why the ACO failed to submit an application.

ACOs falling under the third scenario provided above may apply for an extension of the waiver period using procedures established by the Secretary. We are continuing to require that an ACO seeking an extension submit documentation of its diligent steps to develop an ACO and show that it is likely to successfully develop an ACO that would be eligible to participate in the Shared Savings Program by the next available application due date. 76 FR 68000. The Additional Waiver Guidance lays out in detail the procedures for submitting a request for an extension of the pre-participation waiver period. The determination whether to grant an extension of the waiver will be at the sole discretion of the Secretary and will not be reviewable. As we stated in the IFC, if an extension is granted, the next available application due date will become the selected application date and the new waiver period will end in accordance with the terms of the pre-participation waiver. An ACO may use the pre-participation waiver only once. If an extension is not granted, the ACO may no longer rely on the pre-participation waiver. *Id.* at 68005.

As we discussed in the IFC and above, under certain circumstances, the pre-participation and participation waivers include a 6-month ''tail'' period applicable to protected arrangements in existence at the time the waiver expires or terminates. We reiterate in this final rule that the ''tail'' periods protect only arrangements that were in place and otherwise qualified for the waiver at the time the waiver expires or terminates.

Comment: One commenter supported our decision to include a 6-month tail period for the pre-participation and participation waivers, but requested that we extend this tail period for the participation waiver in situations where CMS terminates the ACO. The commenter stated that these entities

[8] The Additional Waiver Guidance, which may be amended from time to time, is available on CMS's Web site at: *http://www.cms.gov/Medicare/Medicare-Fee-for-ServicePayment/sharedsavingsprogram/Downloads/Additional-MSSP-Waiver-Guidance.pdf,* and on OIG's Web site at: *http://oig.hhs.gov/compliance/accountable-care-organizations/index.asp.*

should have an ''unwinding period'' to discontinue activities previously protected under this waiver.

Response: We are not adopting the commenter's recommendation to apply the 6-month tail period to the participation waiver for an ACO that CMS terminates. In such circumstances, the Government has determined that an ACO is not acceptable for participation in the Shared Savings Program, and we believe that it is appropriate to terminate waiver protection as well. As such, consistent with the waiver period in the IFC, following the date of the notice of termination of the ACO by CMS, no protection under the applicable waiver would extend to arrangements involving the ACO, its ACO participants, or its ACO providers/suppliers. To the extent the arrangements continued following the date of the notice of termination of the ACO by CMS, such arrangements would be subject to review for compliance with all applicable fraud and abuse laws.

E. Waiver for Shared Savings Distributions

As we explained in the IFC, the purpose of the waiver for shared savings distributions is two-fold. First, the waiver protects arrangements created by the distribution of shared savings within an ACO that qualify for the waiver. As we noted in the IFC, ''this waiver permits shared savings to be distributed or used within the ACO in any form or manner, including 'downstream' distributions or uses of shared savings funds between or among the ACO, its ACO participants, and its ACO providers/suppliers.'' 76 FR 68005. This statement was and continues to be true so long as all waiver conditions are met. We recognize that an award of shared savings necessarily reflects the collective achievement by the ACO and its constituent parts of the quality, efficiency, and cost-reduction goals of the Shared Savings Program. *Id.* We continue to believe that these goals are consistent with interests protected by the fraud and abuse laws.

Second, the waiver protects arrangements that involve the use of shared savings to pay parties outside an ACO, provided all applicable waiver conditions are met. 76 FR 68005. As discussed above, we believe that arrangements with outside parties are important in furthering the quality and patient care goals of the Shared Savings Program. We underscore, however, that to qualify for protection under this waiver, the payments to outside individuals or entities must be used for activities that are reasonably related to the purposes of the Shared Savings Program. *Id.* Although not required by the terms of the waiver, an ACO would be well advised to maintain documentation that explains how payments would be and are being used for activities that are reasonably related to the purposes of the Shared Savings Program. We discuss the meaning of ''reasonably related to the purposes of the Shared Savings Program'' above.

This waiver is limited to distributions of shared savings generated by the ACO through its participation in the Shared Savings Program. As we stated in the IFC:

> Because the payment of shared savings by CMS to an ACO under the Shared Savings Program may not occur until after expiration of the ACO's 3-year [participation] agreement, the waiver applies to distributions and uses of shared savings earned during the term of the agreement, even if distributed subsequently. Similarly, the waiver applies to distributions of shared savings to individuals or entities that were ACO participants [or] ACO providers/suppliers at the time the shared savings were earned, even if they are not part of the ACO at the time of the actual distribution.

76 FR 68005–68006.

If the arrangement does not exclusively involve the distribution of shared savings generated through participation in the Shared Savings Program, the arrangement would need to qualify for another waiver outlined in section IV of this final rule, fit in an existing exception or safe harbor, or otherwise comply with the laws. 76 FR 68006. This waiver does not protect, for example, distributions to physicians, providers, or other parties outside the ACO in return for referring patients to the ACO. The only shared savings distributions to parties outside the ACO that are protected under this waiver would be compensation (using shared savings) for activities that are reasonably related to the purposes of the Shared Savings Program. *Id.* Examples of arrangements that are not reasonably related to the purposes of the Shared Savings Program are addressed above.

Comment: Two commenters requested that we incorporate additional safeguards to prevent stinting of care for Medicare beneficiaries, cherry picking only the healthiest patients, or reducing or limiting medically necessary items or services. One commenter suggested that CMS and OIG incorporate into the final waivers additional safeguards previously identified by the agencies, for example, providing assurance that physicians can still use the same items and services that were available before the establishment of the shared savings arrangements.

Response: We agree with commenters that it is critical to protect patients from cherry picking, stinting on care, and the withholding of medically necessary items or services. As explained above, we are no longer waiving the Gainsharing CMP. As recently amended, the Gainsharing CMP prohibits a hospital from knowingly making payments to physicians to reduce or limit medically necessary services. There is no need to waive the amended Gainsharing CMP in order to carry out the Shared Savings Program and waiving the statute, as amended, would potentially eliminate protection from stinting on care. Our approach in this final rule preserves the protections contained in the Gainsharing CMP and reflects our commitment to the quality and safety of patient care. We also note that the program rules contain extensive quality requirements and CMS has monitoring authorities under 42 CFR 425.316(b) to prevent ACOs from engaging in these prohibited activities. Further, shared savings payments are conditioned on meeting certain quality metrics, which should reduce the risk of ACOs stinting on care. Finally, ACOs annually report on a core set of quality measures that spans prevention, chronic disease, care coordination, patient outcomes, and patient experience of care. These measures are used by CMS in conjunction with other program results and compliance activities to monitor for avoidance of at-risk beneficiaries. As a result, we are not adopting the commenter's suggestion at this time that we incorporate additional safeguards into the waivers, such as ensuring the availability of the same range of items and services.

Commercial Plans

In the IFC, we requested comments on whether we should develop a specific waiver to apply to shared savings derived from programs comparable to the Shared Savings Program that are sponsored by commercial health plans (and, if so, how we should define a comparable program with sufficient precision).

Comment: Several commenters opposed extending the waivers in the IFC to arrangements that involve the distribution of shared savings earned by an ACO under a comparable program sponsored by a commercial plan, noting generally that this may lead to an increase in fraud and abuse concerns. One commenter pointed to OIG's longstanding concern with parties providing favorable terms in non-Federal health care program arrangements in return for Federal health care program business. In addition, the commenter noted that extending the waiver to ACO-type arrangements with commercial plans is not necessary in order to meet the purposes of the Shared Savings Program. Similarly, another commenter stated that the waivers should not apply to activities by an ACO, ACO participants, or ACO providers/suppliers outside of their ACO participation agreement, as these activities do not provide a benefit to the Medicare program or Medicare beneficiaries.

Response: We appreciate the comments on this issue. We will continue to monitor the development of ACOs and shared savings arrangements and may consider addressing shared savings derived from commercial plans in future rulemaking.

As we stated in the IFC:

> Shared savings or similar performance-based payments received from a commercial plan do not necessarily implicate the fraud and abuse laws; however, in some circumstances, funds are calculated or used in downstream arrangements in ways that influence the referring of, or ordering for, Medicare or other Federal health care program patients. Moreover, we are mindful of concerns that some private payer arrangements may be sensitive to the volume of business generated for downstream providers or suppliers and that this characteristic may have implications for the application of the Physician Self-Referral Law.

76 FR 68006.

In the IFC, we laid out four examples of ways in which private payer arrangements might not need a specific waiver, and we believe these examples remain applicable to commercial plan ACO arrangements. First, an arrangement ''downstream'' of commercial plans (for example, arrangements between hospitals and physician groups) might qualify for the participation waiver if there is a sufficient nexus with the Shared Savings Program. Unlike the shared savings distribution waiver, the participation waiver does not turn on the source of the funds for the arrangement. Second, we continue to believe that many commercial shared savings arrangements are, or can be, structured to fit within the physician self-referral law exception for risk-sharing arrangements at 42 CFR 411.357(n). Third, some private payer arrangements may fit in existing Federal anti-kickback statute safe harbors, such as the managed care safe harbors. Finally, as noted previously in this final rule, no waiver or other protection is needed for arrangements that do not implicate the fraud and abuse laws. This statement is equally true for private payer arrangements.

F. Compliance With the Physician Self-Referral Law Waiver

This waiver, as finalized here, waives the Federal anti-kickback statute for arrangements that qualify under an existing physician self-referral law exception. As we explained in the IFC, we seek to avoid requiring parties to ''undertake a separate legal review under the Federal anti-kickback statute'' for these arrangements. 76 FR 68006.

Comment: Most commenters who provided comments on this waiver strongly supported it. A supporting commenter approved of our decision not to require parties to undertake a separate legal review if an arrangement qualifies for an exception under the physician self-referral law. Another commenter supported this waiver because, in the commenter's view, it is narrowly tailored. One commenter stated that the waiver creates a high risk of abusive relationships, and urged us to eliminate the waiver or, in the alternative, subject ACOs, ACO participants, and ACO providers/suppliers to auditing and monitoring when they use the waiver.

Response: We reiterate our position, first stated in the IFC, that the purposes of this waiver being granted to those arrangements that qualify under an existing physician self-referral law exception are to ''ease the compliance burden on providers'' and to minimize the obligations on entities establishing or operating ACOs under the Shared Savings Program. 76 FR 68006. We appreciate the commenter that supported this waiver. We continue to believe that this waiver offers an efficient means for providers to protect *bona fide* arrangements without having to conduct an exhaustive legal review, while also presenting a low risk of raising fraud and abuse concerns under the Federal anti-kickback statute. Apart from removing the waiver for the Gainsharing CMP, we are not making any changes to the waiver in this final rule.

As we explained in the IFC, this waiver covers arrangements that otherwise implicate the physician self-referral law, meaning arrangements involving entities that furnish designated health services and referring physicians. *See* 42 CFR 411.351. Some arrangements need not (and, thus, do not) qualify for an exception to the physician self-referral law simply because they are not within the ambit of that law. 76 FR 68006. In the IFC, we gave the example, which we adopt here, of arrangements between facilities that do not involve referring physicians and noted that these arrangements might qualify for the other waivers.

Arrangements covered by this waiver remain subject to scrutiny—including monitoring, auditing, or other means—for compliance with the physician self-referral law. Importantly, we remind stakeholders that compliance with an exception to the physician self-referral law does not ordinarily operate to immunize conduct under the Federal anti-kickback statute, and arrangements that comply with the physician self-referral law are still subject to scrutiny under the Federal anti-kickback statute. 76 FR 68006. As we made clear in the IFC, we are departing from this general rule because we believe there are specific safeguards in the Shared Savings Program that minimize some typical fraud and abuse concerns and we desire to reduce the burden on ACOs. Further, section 1899(f) of the Act grants the Secretary the authority to waive the Federal anti-kickback statute, as necessary, to carry out the Shared Savings Program. We believe that exercising our discretion to waive the Federal anti-kickback statute for those arrangements that comply with an existing exception to the physician self-referral law will continue to facilitate the development of arrangements that present a low risk of fraud and abuse through continuing compliance with the requirements of the applicable physician self-referral law exception.

This waiver applies until the participation agreement, including any renewals thereof, expires or terminates. 76 FR 68006. In the IFC, we solicited comments on whether it might be necessary for this waiver to continue for some period of time, such as 3 to 12 months, after expiration or termination of an ACO's participation agreement.

Comment: Certain commenters recommended that we establish a 6-month tail period of protection for arrangements after expiration or termination of an ACO's participation agreement. One commenter stated that this tail period should align with the period established for other waivers. Other commenters urged us not to extend protection to arrangements protected under the compliance with the physician self-referral law waiver after expiration or termination of the ACO's participation agreement, or to provide a shorter window of protection, such as three months.

Response: We appreciate the comments received. We are finalizing our decision not to provide a tail period for the compliance with the physician self-referral law waiver. We are aware of no information suggesting that, in the circumstances of an arrangement that is compliant with the physician self-referral law, a waiver of the Federal anti-kickback statute following termination or expiration of an ACO's participation agreement would be necessary or appropriate. We believe it is more appropriate to subject such arrangements to case-by-case review under the Federal anti-kickback statute.

G. Waiver for Patient Incentives

Like the IFC, this final rule includes a waiver of the Federal anti-kickback statute and Beneficiary Inducements CMP to address arrangements pursuant to which ACOs, ACO participants, and ACO providers/suppliers provide beneficiaries with free or below-fair market value items and services that advance the goals of preventive care, adherence to treatment, drug, or follow-up care regimes, or management of a chronic disease or condition.

One example of an appropriate incentive that could be protected under this waiver is a blood pressure cuff for a hypertensive patient participating in an ACO's chronic disease management program. Depending on the facts and circumstances, such an arrangement potentially implicates the Federal anti-kickback statute and the Beneficiary Inducements CMP, and, again depending on the facts and circumstances, no safe harbor or exception may be available. The waiver would not cover inducements in the form of items such as beauty products or theatre tickets not reasonably related to a beneficiary's medical care. We are finalizing the patient incentives waiver as set forth in the IFC.

Comment: Many commenters supported the waiver for patient incentives, stating that it encourages preventive care and compliance with treatment regimes through patient engagement, which are key to successful patient outcomes. However, several commenters opposed the scope of the waiver, suggesting that it is too broad and will encourage behaviors that the commenters viewed as fraudulent and abusive, such as the provision of free gym memberships, personal training sessions, massages, or skin creams. One commenter advocated that ACOs should have the same flexibility to offer inducements that is permitted under current law, which the commenter believes will allow health care professionals not in an ACO to be on a level playing field with those in ACOs. Finally, some commenters urged us to limit the waiver to incentives provided to beneficiaries assigned to an ACO, while others encouraged us to apply the waiver more broadly.

Response: We continue to believe this waiver helps ACOs foster patient engagement in improving quality and lowering costs for the Medicare program and its beneficiaries by removing any perceived obstacles presented by the Beneficiary Inducements CMP or Federal anti-kickback statute while at the same time protecting beneficiaries from abusive arrangements. 76 FR 68007. Because beneficiary compliance with care management programs is critical to the success of ACOs, we believe ACOs should have more flexibility than what may be allowed under current law to develop incentives to that end, so long as the safeguards in this waiver are in place (*e.g.,* a reasonable connection between the items or services and the medical care of the beneficiary). *Id.* We note that incentives of the type described by the commenter (gym memberships, personal training services, massages, and skin creams) should be carefully scrutinized by the ACO on a case-by-case basis for compliance with waiver conditions.

As we indicated in the IFC, we are interested in promoting broad improvement in care coordination and quality for all beneficiaries, and therefore are not limiting the waiver to incentives provided to beneficiaries assigned to an ACO. We are mindful of the commenters' concerns that this waiver could encourage fraudulent and abusive behavior, and we will continue to monitor ACOs to ensure that the waiver does not lead to fraudulent and abusive arrangements that may harm beneficiaries or the Medicare program. As such, we are finalizing the patient incentives waiver without modification.

Reasonable Connection Between Incentives and Medical Care

Comment: One commenter supported the standard in the IFC that requires a ''reasonable connection'' between the items or services provided to a beneficiary and his or her medical care, while another commenter requested we more specifically define this term and limit its applicability to items and services for preventive care only.

Response: When we established the patient incentives waiver in the IFC, we required that there be a reasonable connection between the incentives and the medical care of the individual ''in order to balance the goal of beneficiary compliance with care management programs against the risk that ACOs could use extravagant incentives to steer beneficiaries . . . .'' 76 FR 68007. We believe that the ''reasonable connection'' standard is appropriate, and we do not agree with the commenter who suggested we limit its applicability. The patient incentives waiver protects in-kind items or services, but does not cover financial incentives, such as waiving or reducing patient cost sharing amounts (*e.g.,* copayment or deductible). 76 FR 68007. In addition, we note that 42 CFR 425.304(a)(1) prohibits ACOs, ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities from providing gifts or other remuneration to beneficiaries as inducements for receiving items or services from, or remaining in, an ACO or with providers/suppliers in a particular ACO. The same prohibition applies to gifts or other remuneration to beneficiaries as inducements for receiving items or services from ACO participants or ACO providers/suppliers. To be clear, such incentives are not covered by this waiver. Further, 42 CFR 425.304(a)(2) permits certain incentives that are consistent with the requirements of 42 CFR 425.304(a)(1) and the terms of this waiver. This waiver applies only to the application of the Federal anti-kickback statute and the Beneficiary Inducements CMP; nothing in this waiver supplants or amends any requirement in the Shared Savings Program final rule or other Medicare payment or coverage rules. 76 FR 68007.

Preventive Care

We solicited comments on whether we should define the term ''preventive care'' for purposes of this waiver. 76 FR 68007.

Comment: Some commenters requested that the agencies refrain from defining the term ''preventive care,'' because a clarification of this term could unnecessarily narrow the scope of the waiver. Several other commenters expressed concern that leaving this term undefined would lead to increased risks of fraud and abuse because it would allow ACOs, ACO participants, and ACO providers/suppliers to contend that any activity qualifies as ''preventive care.'' One commenter advocated that we define the term consistent with other statutory provisions.

Response: We did not define preventive care in the IFC ''in order to provide some flexibility as care models develop in the Shared Savings Program and evidence-based care programs are adopted by ACOs.'' 76 FR 68007. We are mindful of the evolving nature of clinical practice guidelines and recommendations for practices that are categorized as ''preventive care.'' Accordingly, we are finalizing the policy not to define preventive care in order to maintain this flexibility for ACOs that are seeking to develop *bona* *fide* patient engagement programs to maintain effective treatment regimes. That said, we advise parties seeking to use the waiver to exercise caution in ensuring that activities for which they desire waiver protection are reasonably considered preventive care.

Pharmaceutical Manufacturers

Comment: A commenter opposed the exclusion of pharmaceutical manufacturers from protection under the patient incentives waiver, highlighting that these entities are particularly well situated to develop effective programs to educate and support patients.

Response: The patient incentives waiver applies to incentives furnished by an ACO, its ACO participants, or its ACO providers/suppliers. Pharmaceutical manufacturers do not meet the definitions of these terms under the Shared Savings Program regulations at 42 CFR 425.20. We are not extending protection under this waiver to incentives provided by any other parties, including pharmaceutical manufacturers. We reiterate in this final rule our position in the IFC that no waiver protection is offered for ''the provision of free or below fair market value items or services by manufacturers or other vendors to beneficiaries, the ACO, ACO participants, or ACO providers/suppliers'' or ''the discount arrangement (or any arrangement for free items and services) between the manufacturer and the ACO, ACO participant, or ACO provider/supplier.'' 76 FR 68007. Based on CMS's program experience to date, we continue to believe that such waivers are not necessary to carry out the Shared Savings Program. However, the patient incentives waiver would cover ACOs, ACO participants, and ACO providers/suppliers that give beneficiaries items or services that they have received from manufacturers at discounted rates.

Duration of the Waiver

We explained in the IFC that the waiver applies until the earlier of the expiration or termination of the ACO's participation agreement. We recognized that to ensure continuity of care for beneficiaries if an ACO's participation agreement terminates or is not renewed, we needed to allow a beneficiary to keep any items received during the term of the ACO's participation agreement pursuant to the waiver, and to continue to receive any service initiated during the term of the ACO's participation agreement pursuant to the waiver, if the service was in progress when the participation agreement terminated. 76 FR 68007. In the IFC, we gave three representative examples of situations in which it would be appropriate for a beneficiary to continue to receive a service: (1) A post-surgical patient receiving free home visits to coordinate in-home care during the recovery period; (2) a hypertensive patient using home telehealth monitoring of blood pressure; and (3) a beneficiary halfway through a normal course of smoking cessation treatment. We are maintaining this interpretation of the waiver in this final rule. Specifically, the waiver will protect any items or services received by a beneficiary during the term of the ACO's participation agreement pursuant to the waiver, and will allow a beneficiary to keep any items provided and continue to receive any service initiated during the term of the ACO's participation agreement pursuant to the waiver, if the item was received before, or the service was in progress when, the participation agreement terminated. We did not receive any comments regarding the duration of the patient incentives waiver.

As we made clear previously in the IFC, nothing precludes ACOs, ACO participants, or ACO providers/suppliers from offering a patient an incentive to promote his or her clinical care if the incentive fits in an applicable safe harbor or exception or does not otherwise violate the Federal anti-kickback statute and Beneficiary Inducements CMP. For example, many such arrangements may fit in the exception to the Beneficiary Inducements CMP for incentives given to individuals to promote the delivery of preventive care. *See* Section 1128A(i)(6)(D) of the Act; 42 CFR 1003.101.

General Information

In our experience interacting with stakeholders, we have received questions regarding whether local transportation arrangements can qualify as an in-kind item or service under the patient incentives waiver. We did not receive public comments on this issue, but we are taking this opportunity to clarify that nothing would preclude local transportation from being an in-kind item or service under the patient incentives waiver set forth in the IFC and this final rule. Accordingly, transportation provided by an ACO, ACO provider/supplier, or ACO participant to a beneficiary may be protected like other in-kind items and services, provided that all waiver conditions are met. We note that, under the terms of the waiver, transportation provided to a patient for purposes of getting to a medical appointment or to pick up prescriptions could be protected, but transportation to attend entertainment or recreational events, or to run errands unrelated to the medical care of the beneficiary, would not be protected. Moreover, because the waiver protects only in-kind incentives, patients may not be given cash reimbursement for transportation costs (*e.g.,* bus or taxi fare or reimbursement for gasoline). Patients may be given prepaid vouchers redeemable solely for transportation services pursuant to a contractual arrangement between the ACO, the ACO participant, or the ACO provider/supplier and the transportation provider.

H. Additional Policy Considerations

We are finalizing the waivers in this final rule under section 1899(f) of the Act to foster the success of the Shared Savings Program, the purpose of which is to promote accountability for a Medicare patient population, manage and coordinate care for Medicare fee-for-service beneficiaries, and encourage redesigned care processes to improve quality. Our goal is to balance effectively the need for ACO certainty, innovation, and flexibility in the Shared Savings Program with protections for beneficiaries and the Medicare program. As we stated in the IFC:

> The waivers adopted in [the IFC] take into account the specific redesigned care delivery incentives and processes of the Shared Savings Program, as well as the obligation of ACOs, ACO participants, and ACO providers/suppliers to comply with the Shared Savings Program rules, including requirements addressing governance, management, leadership, transparency, data, quality, performance, compliance, patient freedom of choice, and others. Moreover, the Shared Savings Program requires ACOs and their constituent parts to demonstrate a meaningful commitment to the Shared Savings Program.

76 FR 68007.

The waivers in this final rule emanate from our continued expectation that ''ACOs and their constituent parts will [continue to] act in compliance with program rules and in the best interests of patients and the Medicare program, including the Shared Savings Program.'' 76 FR 68007. Further, it is our expectation that the waivers promulgated in this final rule have been and will continue to be used for their intended purposes to carry out the Shared Savings Program. *Id.* at 68008. As we have made clear in the IFC and this final rule, the waivers are designed to promote a high degree of certainty, innovation, and variation in the continuing development and operation of ACOs to improve quality of care, as well as economy and efficiency in the Medicare program.

We recognize that, to varying degrees, all Federal health care programs are susceptible to fraud and abuse. 76 FR 68007–68008. To be clear, the waivers in this final rule ''should not be read to reflect any diminution of our commitment to protect programs and beneficiaries from harms associated with kickbacks and referral payments, including overutilization, increased costs, and substandard or poor quality care.'' *Id.* at 68008. As we made clear in the IFC, we will continue to monitor ACOs and the Shared Savings Program for fraud and abuse, including but not limited to: (1) Billing for medically unnecessary or upcoded services; (2) stinting on medically necessary services; (3) submitting false or fraudulent data; or (4) providing worthless or substandard care. If these or other problematic practices are found, we have a number of tools to address the problem and, where necessary, we will use these tools to protect the interests of beneficiaries and the Medicare program. CMS and OIG are monitoring the Shared Savings Program and will continue to do so. To date, information available to us suggests that the waivers are adequately protecting beneficiaries and Federal health care programs while enabling care coordination arrangements under the Shared Savings Program. In this final rule, we are not narrowing the waivers. We will continue to monitor the development of ACOs and shared savings arrangements and may consider additional rulemaking if warranted.

Comment: Some commenters supported the statement in the IFC that we would narrow the waivers. One commenter requested that CMS, OIG, and other agencies vigilantly monitor ACOs to ensure compliance with all waiver provisions and the objectives of the Shared Savings Program. Some commenters requested that we narrow the waivers if monitoring reveals any undesirable result or makes clear that the waivers are shielding fraudulent or abusive arrangements. One commenter requested that CMS and OIG narrow the waivers to prevent specific abusive conduct, such as arrangements with physician-owned distributorships.

Other commenters strongly opposed any narrowing of the waivers by the agencies, advocating that the waivers in the IFC appropriately recognize the benefits of shared savings arrangements while minimizing fraud and abuse risks. Many of these commenters expressed concern that CMS and OIG called into question the permanency of these waivers by suggesting the waivers could be narrowed, and argued that narrowing the waivers would not align with the agencies' goals to provide flexibility, certainty, and latitude to ACOs, and to allow for innovation in the Shared Savings Program. Many of the commenters who opposed narrowing the waivers urged that any material change to the waivers in the IFC would require formal notice-and-comment rulemaking. If the agencies elect to pursue this notice-and-comment rulemaking, one commenter requested that the narrowed waivers apply only to arrangements that become effective after any final rulemaking.

Response: In the IFC, we stated that ''[w]e plan to narrow the waivers . . . unless information gathered through monitoring or other means suggests that the waivers . . . are adequately protecting the Medicare program and beneficiaries from the types of harms associated with referral payments or payments to reduce or limit services.'' 76 FR 68008. As we explained above and in the IFC, we will continue to gather information through monitoring and other means to assess whether the waivers are having unintended effects, such as shielding abusive arrangements.

It remains our priority to ensure that waivers necessary to carry out the Shared Savings Program protect the Medicare program and beneficiaries from the harms caused by fraudulent or abusive conduct. Should we identify specific areas of fraud or abuse resulting from arrangements covered by the waivers, or if we determine that the risks of fraud and abuse associated with waiving our laws for certain arrangements outweigh the benefits associated with the Shared Savings Program, we may propose to revise these waivers or take other appropriate action to address our concerns. We will continue to monitor whether certain arrangements that may be protected under the waivers raise concerns, such as overutilization, increased costs to Federal health care programs and beneficiaries, and substandard or poor quality of care. Any needed modifications of the waivers in this final rule would be implemented through notice-and-comment rulemaking.

Although we are not narrowing the waivers in this final rule, we underscore that the waivers have never been intended to, and will not, cover arrangements unless all criteria for the applicable waiver are met. By way of example only, an ACO that fails to have its governing body properly make and authorize a *bona fide* determination that an arrangement is reasonably related to the purposes of the Shared Savings Program, which is required for the pre-participation and participation waivers, would not have the protection of the waiver unless and until the ACO meets the requirements in this final rule. The waiver protects an arrangement only when all criteria have been met; there is no retroactive protection. The arrangement described above would be subject to ordinary review for compliance with fraud and abuse laws up until the point of having documentation of the authorization by the ACO's governing body, provided that all other waiver conditions are also met.

Comment: Several commenters suggested that our waivers conflict with existing state laws that would prohibit certain entities from participating in ACOs. These commenters asked us to modify the waivers to preempt conflicting state laws and promote participation in ACOs.

Response: We do not have the authority to preempt state law.

Comment: One commenter requested that we codify the waivers issued in this final rule in the Code of Federal Regulations in order to ensure prospective participants of their permanency and provide a degree of certainty for ACOs developing innovative arrangements.

Response: We intend the waivers in this final rule, as with the waivers in the IFC, to have binding legal effect notwithstanding the absence of codified regulation text. We note that binding waivers are generally not promulgated through rulemaking (*e.g.,* waivers of Medicare and Medicaid program requirements promulgated pursuant to section 402(b), 1115, and 1115A of the Act). Although these fraud and abuse waivers have been promulgated through rulemaking, we are not codifying them in the Code of Federal Regulations (CFR). First, waivers published in the **Federal Register** are typically not codified in the CFR. The Office of the Federal Register recognizes that waivers of agency rules that are generally applicable need not have regulatory text or amend the CFR. Second, we believe that the waivers are more easily accessible to the public when published in a single **Federal Register** document made available online through the Government Printing Office, OIG, and CMS Web sites. Because these waivers cover multiple legal authorities administered by two different agencies, they might be codified in several different places in the CFR. For ease of reference, the entire set of waivers and applicable requirements are set forth in section IV of this final rule, and we will continue to make the waivers available on the CMS and OIG Web sites.

Moreover, publication in a single uncodified document ensures that the waivers, if modified, remain consistent over time and across relevant laws.

Finally, we are making a technical correction to the waiver text from section IV of the IFC by replacing ''Physician Self-Referral Law'' with ''physician self-referral law.''

IV. Provisions of the Final Rule: The Waivers and Applicable Requirements

As used in these waivers, *ACO, ACO participant,* and *ACO provider/supplier* have the meanings set forth in 42 CFR 425.20. In the context of the ACO pre-participation waiver, these terms refer to individuals or entities that would meet the definitions of the terms set forth in 42 CFR 425.20, if the ACO had a participation agreement, but for the fact that the ACO has not yet submitted the list required under 42 CFR 425.204(c)(5) to be provided with the application for the Shared Savings Program.

As used in the pre-participation waiver, *home health supplier* means a provider, supplier, or other entity that is primarily engaged in furnishing ''home health services,'' as that term is defined in section 1861(m) of the Act.

As used in these waivers, *participation agreement* refers to the agreement between an ACO and CMS for the ACO's participation in the Shared Savings Program that is described in 42 CFR 425.208.

As used in these waivers, *purposes of the Shared Savings Program* means one or more of the following purposes consistent with section 1899(a) and (b) of the Act: Promoting accountability for the quality, cost, and overall care for a Medicare patient population as described in the Shared Savings Program, managing and coordinating care for Medicare fee-for-service beneficiaries through an ACO, or encouraging investment in infrastructure and redesigned care processes for high quality and efficient service delivery for patients, including Medicare beneficiaries.

As used in these waivers, *start-up arrangements* means any arrangements for items, services, facilities, or goods (including non-medical items, services, facilities, or goods) used to create or develop an ACO that are provided by such ACO, ACO participants, or ACO providers/suppliers.

1. ACO Pre-Participation Waiver

Pursuant to section 1899(f) of the Act, section 1877(a) of the Act (relating to the physician self-referral law) and sections 1128B(b)(1) and (2) of the Act (relating to the Federal anti-kickback statute) are waived with respect to start-up arrangements that pre-date an ACO's participation agreement, provided all of the following conditions are met:

1. The arrangement is undertaken by a party or parties acting with the good faith intent to develop an ACO that will participate in the Shared Savings Program starting in a particular year (the ''target year'') and to submit a completed application to participate in the Shared Savings Program for that year. The parties to the arrangement must include, at a minimum, the ACO or at least one ACO participant of the type eligible to form an ACO (as set forth at 42 CFR 425.102(a)). The parties to the arrangement may not include drug and device manufacturers, distributors, durable medical equipment (DME) suppliers, or home health suppliers.

2. The parties developing the ACO must be taking diligent steps to develop an ACO that would be eligible for a participation agreement that would become effective during the target year, including taking diligent steps to meet the requirements of 42 CFR 425.106 and 425.108 concerning the ACO's governance, leadership, and management.

3. The ACO's governing body has made and duly authorized a *bona fide* determination, consistent with a duty to the ACO that is equivalent to the duty owed by ACO governing body members under 42 CFR 425.106(b)(3), that the arrangement is reasonably related to the purposes of the Shared Savings Program.

4. The arrangement, its authorization by the governing body, and the diligent steps to develop the ACO are documented. The documentation of the arrangement must be contemporaneous with the establishment of the arrangement, the documentation of the authorization must be contemporaneous with the authorization, and the documentation of the diligent steps must be contemporaneous with the diligent steps. All such documentation must be retained for at least 10 years following completion of the arrangement (or, in the case of the diligent steps, for at least 10 years following the date the ACO submits its application or the date the ACO submits its statement of reasons for failing to submit an application, as described in item 6) and promptly made available to the Secretary upon request. The documentation must identify at least the following:

a. A description of the arrangement, including all parties to the arrangement; the date of the arrangement; the purpose(s) of the arrangement; the items, services, facilities, and/or goods covered by the arrangement (including non-medical items, services, facilities, or goods); and the financial or economic terms of the arrangement.

b. The date and manner of the governing body's authorization of the arrangement. The documentation of the authorization must include the basis for the determination by the ACO's governing body that the arrangement is reasonably related to the purposes of the Shared Savings Program.

c. A description of the diligent steps taken to develop an ACO, including the timing of actions undertaken and the manner in which the actions relate to the development of an ACO that would be eligible for a participation agreement.

5. The description of the arrangement is publicly disclosed at a time and in a place and manner established in guidance issued by the Secretary. Such public disclosure shall not include the financial or economic terms of the arrangement.

6. If an ACO does not submit an application for a participation agreement by the last available application due date for the target year, the ACO must submit a statement on or before the last available application due date for the target year, in a form and manner to be determined by the Secretary, describing the reasons it was unable to submit an application.

For arrangements that meet all of the preceding conditions, the pre-participation waiver applies as follows:

- The waiver period would start on—

++ The date of publication of the IFC for target year 2012; or

++ One year preceding an application due date (the ''selected application date'') for a target year of 2013 or later.

- The waiver period would end—

++ For ACOs that submit an application by the selected application date and enter into a participation agreement for the target year, on the start date for that agreement;

++ For ACOs that submit an application by the selected application date for the target year, but whose application is denied, on the date of the denial notice, except with respect to any arrangement that qualified for the waiver before the date of the denial notice, in which case the waiver period would end on the date that is 6 months after the date of the denial notice; and

++ For ACOs that fail to submit an application by the selected application due date for the target year, on the earlier of the selected application due date or the date the ACO submits a statement of reasons for failing to submit an application, except that an ACO that has been unable to submit an application, but can demonstrate a likelihood of successfully developing an ACO that would be eligible to participate in the Shared Savings Program by the next available application due date, may apply for an extension of the waiver, pursuant to procedures established by the Secretary in guidance. The determination whether to grant a waiver will be in the sole discretion of the Secretary and will not be reviewable.

++ An ACO may use the pre-participation waiver (including any extensions granted) only one time.

2. ACO Participation Waiver

Pursuant to section 1899(f) of the Act, section 1877(a) of the Act (relating to the physician self-referral law) and sections 1128B(b)(1) and (2) of the Act (relating to the Federal anti-kickback statute) are waived with respect to any arrangement of an ACO, one or more of its ACO participants or its ACO providers/suppliers, or a combination thereof, provided all of the following conditions are met:

1. The ACO has entered into a participation agreement and remains in good standing under its participation agreement.
2. The ACO meets the requirements of 42 CFR 425.106 and 425.108 concerning its governance, leadership, and management.
3. The ACO's governing body has made and duly authorized a *bona fide* determination, consistent with the governing body members' duty under 42 CFR 425.106(b)(3), that the arrangement is reasonably related to the purposes of the Shared Savings Program.
4. Both the arrangement and its authorization by the governing body are documented. The documentation of the arrangement must be contemporaneous with the establishment of the arrangement, and the documentation of the authorization must be contemporaneous with the authorization. All such documentation must be retained for at least 10 years following completion of the arrangement and promptly made available to the Secretary upon request. The documentation must identify at least the following:

a. A description of the arrangement, including all parties to the arrangement; date of the arrangement; the purpose of the arrangement; the items, services, facilities, and/or goods covered by the arrangement (including non-medical items, services, facilities, or goods); and the financial or economic terms of the arrangement.

b. The date and manner of the governing body's authorization of the arrangement. The documentation must include the basis for the determination by the ACO's governing body that the arrangement is reasonably related to the purposes of the Shared Savings Program.

5. The description of the arrangement is publicly disclosed at a time and in a place and manner established in guidance issued by the Secretary. Such public disclosure shall not include the financial or economic terms of the arrangement.

For arrangements that meet all of the preceding conditions, the waiver period will start on the start date of the participation agreement and will end 6 months following the earlier of the expiration of the participation agreement, including any renewals thereof, or the date on which the ACO has voluntarily terminated the participation agreement. However, if CMS terminates the participation agreement, the waiver period will end on the date of the termination notice.

3. Shared Savings Distribution Waiver

Pursuant to section 1899(f) of the Act, section 1877(a) of the Act (relating to the physician self-referral law) and sections 1128B(b)(1) and (2) of the Act (relating to the Federal anti-kickback statute) are waived with respect to distributions or use of shared savings earned by an ACO, provided all of the following conditions are met:

1. The ACO has entered into a participation agreement and remains in good standing under its participation agreement;
2. The shared savings are earned by the ACO pursuant to the Shared Savings Program;
3. The shared savings are earned by the ACO during the term of its participation agreement, even if the actual distribution or use of the shared savings occurs after the expiration of that agreement.
4. The shared savings are—

a. Distributed to or among the ACO's ACO participants, its ACO providers/suppliers, or individuals and entities that were its ACO participants or its ACO providers/suppliers during the year in which the shared savings were earned by the ACO; or

b. Used for activities that are reasonably related to the purposes of the Shared Savings Program.

4. Compliance With the Physician Self-Referral Law Waiver

Pursuant to section 1899(f) of the Act, sections 1128B(b)(1) and (2) of the Act (relating to the Federal anti-kickback statute) are waived with respect to any financial relationship between or among the ACO, its ACO participants, and its ACO providers/suppliers that implicates the physician self-referral law, provided all of the following conditions are met:

1. The ACO has entered into a participation agreement and remains in good standing under its participation agreement.
2. The financial relationship is reasonably related to the purposes of the Shared Savings Program.
3. The financial relationship fully complies with an exception at 42 CFR 411.355 through 411.357.

For arrangements that meet all of the preceding conditions, the waiver period will start on the start date of the participation agreement and will end on the earlier of the expiration of the term of the participation agreement, including any renewals thereof, or the date on which the participation agreement has been terminated.

5. Waiver for Patient Incentives

Pursuant to section 1899(f) of the Act, section 1128A(a)(5) of the Act (relating to the Beneficiary Inducements CMP) and sections 1128B(b)(1) and (2) of the Act (relating to the Federal anti-kickback statute) are waived with respect to items or services provided by an ACO, its ACO participants, or its ACO providers/suppliers to beneficiaries for free or below fair market value if all four of the following conditions are met:

1. The ACO has entered into a participation agreement and remains in good standing under its participation agreement.
2. There is a reasonable connection between the items or services and the medical care of the beneficiary.
3. The items or services are in-kind.
4. The items or services—

a. Are preventive care items or services; or

b. Advance one or more of the following clinical goals:

i. Adherence to a treatment regime.

ii. Adherence to a drug regime.

iii. Adherence to a follow-up care plan.

iv. Management of a chronic disease or condition.

For arrangements that meet all of the preceding conditions, this waiver period will start on the start date of the participation agreement and will end on the earlier of the expiration of the term of the participation agreement, including any renewals thereof, or the date on which the participation agreement has been terminated, provided that a beneficiary may keep items received before the participation agreement expired or terminated, and receive the remainder of any service initiated before the participation agreement expired or terminated.

V. Waiver of Delayed Effective Date

Section 1871(e)(1) of the Act generally requires that a final rule become effective at least 30 days after the issuance or publication of the rule. This requirement for a 30-day delayed effective date can be waived, however, if the Secretary finds that waiver of the 30-day period is necessary to comply with statutory requirements or that the requirement for a delayed effective date is contrary to the public interest.

We find that a delayed effective date for this final rule would be contrary to the public interest. The waivers published in the IFC have been in place for approximately four years, and we understand that there may be arrangements in place or under development for which an ACO may be seeking to use these waivers. Delaying the effective date of this final rule would be contrary to the public interest because it would cause a lapse in the waivers between the expiration date of the IFC and the effective date of this final rule, and ACOs have relied, and continue to rely, on these waivers to develop and maintain arrangements that further the quality, economy, and efficiency goals of the Shared Savings Program.

VI. Collection of Information Requirements

While this final rule does include information collection requirements as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 *et seq.,* section 3022 of the Affordable Care Act provides that Chapter 35 of title 44, United States Code, shall not apply to the Shared Savings Program. Consequently, the information-collection requirements contained in this final rule need not be reviewed by OMB.

VII. Regulatory Impact Statement

We have examined the impact of this rule, as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We believe that this final rule does not reach the economic threshold for being considered economically significant and, thus, is not considered a major rule. This final rule would allow ACOs, ACO participants, and ACO providers/suppliers to enter into certain beneficial arrangements. These waivers of certain fraud and abuse laws are critical to providing stakeholders with flexibility necessary for innovative care redesign. ACOs, ACO participants, and ACO providers/suppliers would be allowed to seek to comply with one or more of the five waivers so that they would have assurance that participating in certain arrangements would not subject them to liability under the physician self-referral law, Federal anti-kickback statute, or the Beneficiary Inducements CMP.

CMS reports that there are over 400 ACOs currently participating in the Shared Savings Program. CMS anticipates that the majority of ACOs will renew their participation and the number of ACOs will continue to grow as new organizations apply every year. From the comments received on the IFC, we understand the waivers have numerous important benefits to the operation and success of the Shared Savings Program. Namely, they remove legal and regulatory barriers that can impede care coordination in furtherance of the Shared Savings Program, and they reduce burden on ACOs, ACO participants, and ACO providers/suppliers.

Although these waivers are critical, we cannot quantify the number of arrangements among participants and others, making assessing the costs and benefits of these waivers difficult. First, ACOs, ACO participants, and ACO providers/suppliers are not required to apply to CMS or OIG for an individualized waiver, which impedes an accurate calculation of the number of ACOs, ACO participants, and ACO providers/suppliers that use these waivers. In addition, the Department does not routinely collect data regarding the number of arrangements that may qualify for waiver protection. For this reason, we cannot calculate the number of arrangements that are entered into or will be entered into by those ACOs, ACO participants, and ACO providers/suppliers that use these waivers. Further, we did not receive comments from stakeholders regarding the costs associated with using these waivers. Although there could be some burden associated with the conduct covered by these waivers, such as record keeping and other documentation needs, we believe the time, effort, and financial resources necessary to implement and comply with the conditions of the waivers would typically be incurred by ACOs, ACO participants, and ACO providers/suppliers during the normal course of participation in the Shared Savings Program. Moreover, compliance with many of the conditions of the waivers can be achieved by activities ACOs, ACO participants, and ACO providers/suppliers undertake to comply with the Shared Savings Program rules. We therefore believe any incidental costs that may be attributable solely to the waivers would be minimal. Finally, waivers may be used in a variety of contexts for a wide range of arrangements, so we cannot accurately predict the economic impact of any individual waiver or the use of the waivers as a whole. For the above reasons, we cannot monetize the costs of using these waivers.

For all these reasons, we believe that the aggregate economic impact of the waivers would be minimal and we do not expect an effect on the economy or on Federal or State expenditures greater than $100 million.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.5 million to $38.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2015, that threshold is approximately $144 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

For the reasons set forth in this preamble, the Centers for Medicare & Medicaid Services and the Office of the Inspector General are implementing this final rule under the authority of section 1899 of the Act.

Authority: Section 1899(f) of the Act.

Dated: October 7, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: October 7, 2015.

Daniel R. Levinson,

Inspector General, Department of Health and Human Services.

Approved: October 22, 2015.

Sylvia Burwell,

Secretary, Department of Health and Human Services.

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Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 354

User Fees for Agricultural Quarantine and Inspection Services; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. APHIS–2013–0021]

RIN 0579–AD77

User Fees for Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fee regulations by adding new fee categories and adjusting current fees charged for certain agricultural quarantine and inspection services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers arriving at ports in the customs territory of the United States. We are also adjusting or removing the fee caps associated with commercial trucks, commercial vessels, and commercial railcars. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

DATES: Effective December 28, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Diane L. Schuble, AQI User Fee Coordinator, Office of the Executive Director-Policy Management, PPQ, APHIS, 4700 River Road, Unit 131, Riverdale, MD 20737 1231; (301) 851–2338; Email: *AQI.User.Fees@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 2509(a) of the Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (21 U.S.C. 136a) authorizes the Animal and Plant Health Inspection Service (APHIS) to collect user fees for certain agricultural quarantine and inspection (AQI) services. The FACT Act was amended on April 4, 1996, and May 13, 2002.

The FACT Act, as amended, authorizes APHIS to collect user fees for AQI services provided in connection with the arrival, at a port in the customs territory of the United States, of commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international passengers. According to the FACT Act, these user fees should recover the costs of:

- Providing the AQI services for the conveyances and the passengers listed above;
- Providing preclearance or preinspection at a site outside the customs territory of the United States to international passengers, commercial vessels, commercial trucks, commercial railroad cars, and commercial aircraft;
- Administering the user fee program; and
- Maintaining a reasonable balance, also referred to by APHIS as a ''reserve,'' to ensure that funding is available in the event that there are temporary reductions in the demand for AQI services leading to reduced fee collections, as was experienced in 2008 (Pub. L. 101–624, Section 2509). As there are fixed costs related to providing AQI services (*i.e.,* costs that do not fluctuate with demand for AQI services) that the program incurs, a reasonable balance/reserve is needed to ensure continuity of service in times of reduced fee collection. This provides certainty to importers regarding the availability of inspection services. Specifically, the Act states, ''The Secretary shall adjust the amount of the fees to be assessed under this subsection to reflect the cost to the Secretary in administering such subsection, in carrying out the activities at ports in customs territory of the United States and preclearance and preinspection sites outside the customs territory of the United States in connection with the provision of agricultural quarantine inspection services, and in maintaining a reasonable balance in the Account.'' The level of the reserve is determined by the Secretary.

In addition, the FACT Act, as amended contains the following requirements:

- The fees should be commensurate with the costs with respect to the class of persons or entities paying the fees. This is intended to avoid cross-subsidization of AQI services.
- The cost of AQI services with respect to passengers as a class should include the cost of related inspections of the aircraft or other conveyance.

APHIS' regulations regarding overtime services and user fees relating to imports and exports are found in 7 CFR part 354. The user fees for the AQI activities described above are contained in § 354.3, ''User fees for certain international services.''

The AQI program is a Federal program that is designed to identify and address threats to U.S. agriculture and to facilitate safe agricultural trade, such as the accidental or intentional introduction of animal diseases and plant pests. Direct animal agriculture hazards include, but are not limited to, foot and mouth disease, avian influenza, and classical swine fever. Plant pests include foreign noxious weeds such as hogweed and insects such as long-horned beetles related to the Asian long-horned beetle that has caused millions of dollars in losses in numerous communities in the United States. Fruit flies, such as the Mediterranean fruit fly, if introduced, would cause significant direct damage to U.S. fruit crops and have major impacts on export markets. Diseases such as powdery mildews on corn and its relatives, wheat blast on wheat and its related grains, and exotic rice diseases could cause major impacts on staple food supplies and create trade barriers. The fees that pay for the AQI program help protect our country from these threats at a very small cost in relation to the economic harm that would be caused by any new introduction of pests and diseases.

Under the FACT Act, the Secretary of Agriculture has the authority to prescribe and collect user fees sufficient to cover the cost of providing AQI services. By U.S. law, APHIS is designated as the Agency with the authority to establish and collect fees related to work undertaken in the AQI program. Other Federal agencies undertake activities that support the AQI program mission. APHIS followed Federal guidance, including the Office of Management and Budget (OMB) Circular A–25 and Federal Accounting Standards Advisory Board Statement of Accounting Standards Number 4, to appropriately account for these costs in order to determine the appropriate fees. Those costs not recovered through the AQI fees are paid for through appropriated funding. The use of activity based costing (ABC) methodology in establishing fees ensures that no cost is double counted. AQI program costs incurred by APHIS include:

- Program costs directly attributable to the delivery of AQI services;
- Program delivery-related costs (known as distributable costs) at the State level and below, at the regional and headquarters levels, the APHIS Agency level, and the U.S. Department of Agriculture (USDA) Departmental level. These costs are necessary to support the direct delivery of AQI services; and
- Depreciation of various equipment and facilities that directly support, in whole or in part, APHIS' delivery of AQI services and other imputed costs that other Federal agencies incur in providing services to APHIS and the

AQI program. Imputed costs are the costs of goods or services incurred on behalf of an agency that are paid by another Federal entity, such as certain retirement benefits paid to retirees by the Office of Personnel Management.

The AQI fees have not been adjusted since FY 2010 and do not reflect the current cost of providing AQI services. As a result, U.S. Customs and Border Protection (CBP) of the Department of Homeland Security, which collaborates with APHIS in providing the AQI services referred to above, has relied more heavily on its appropriated funds to provide AQI services that are not paid for by AQI revenue or to cover the cost of services for which the current fee revenue is insufficient. The FACT Act provides that USDA may prescribe and collect fees that are sufficient to cover the cost of providing AQI services, and Federal guidance for fee setting states that, where possible, a user fee should recover the full cost to the government.

On April 25, 2014, we published in the **Federal Register** (79 FR 22895–22908, Docket No. APHIS–2013–0021) a proposal [1] to amend the regulations by adjusting existing fees and adding some new ones in order to enable us to recover the costs of providing AQI services and to allow us to maintain the AQI reserve account. Specifically, we proposed to:

- Adjust the fees charged for the following conveyances or persons to whom AQI services are provided: Commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers. (Because commercial truck inspections have separate fees for trucks with and without decals (transponders), we actually proposed to adjust a total of six current fees.)
- Add a new fee to be charged for international commercial vessel (cruise) passengers.
- Add a new fee for conducting and monitoring treatments.
- Remove the caps (limits on the number of times a specific conveyance must pay the AQI fee in a given year) for vessels and railcars.
- Adjust the caps on fees for trucks with transponders. APHIS and CBP determined that there was a benefit to the use of transponders in speeding truck traffic through inspection at the border and thereby reducing the cost to the Federal Government for providing AQI services. The intent of a cap for truck transponders is to create an incentive for trucking firms to use a transponder. The difference between the cost of providing inspections for trucks with transponders and the revenue collected from trucks with transponders will be covered by appropriations. This ensures that there will be no cross-subsidization of AQI services.

There are other AQI program costs for which APHIS did not propose to establish user fees in the April 2014 document and never has done so. The costs of providing these AQI services are paid for through the CBP appropriation. These AQI services are:

- Private vehicle inspections at border crossings,
- Pedestrian inspections at border crossings,
- Bus inspections,
- Private vessel inspections,
- Private aircraft inspections,
- Military inspections, and
- Rail passenger inspections.

APHIS follows Federal guidance in determining the appropriateness of charging AQI user fees, specifically the guidance from OMB's Circular A–25. Factors influencing our decisions not to charge user fees for the above-listed services include lack of authority (*e.g.* to collect fees for bus-passenger inspections); conflict with other Federal regulations (*e.g.* such as those that affect private aircraft); and the potential for the costs of collecting fees for services to exceed the revenues generated by the fees (*e.g.* such as inspecting private vessels and pedestrians); and the costs of putting in place the infrastructure required to collect fees.

We base the fees on cost data from FYs 2010, 2011, and 2012, and use inflationary factors to project our costs through FY 2017.

We solicited comments concerning our proposal for 60 days ending June 24, 2014. We reopened and extended the deadline for comments until July 24, 2014, in a document published in the **Federal Register** on July 1, 2014 (79 FR 37231, Docket No. APHIS–2013–0021). We received 234 comments by that date. They were from trucking companies, maritime shipping companies, commercial cruise lines, airlines, and associations representing all of those industries; producers of flowers, fruits, and vegetables and importers and shippers of those commodities; companies providing fumigation treatments; port officials; Federal, State, and foreign government representatives; and individuals. They are discussed below by topic.

Calculation of Fees

Many commenters requested greater transparency regarding our calculation and/or allocation of the proposed user fee adjustments and new user fees. Commenters sought more documentation and detailed information on how we calculated AQI costs and fees. A more detailed explanation of our ABC methodology was requested by some commenters. Commenters also requested more specific information on, among other topics, how our costs correlated with the AQI services performed, how we determined our support costs, and our justification for including those costs in our calculation of our fees. These issues are discussed individually in the paragraphs that follow.

One commenter asked that we provide all final reports, presentations, or other decisional material from each of the fiscal years (FY) 2010 to the present regarding AQI inspection costs and revenue prepared by APHIS, by contractor Grant Thornton, or by any other contractor or other internal or external party.

AQI User Fee analysis reports used to calculate the new user fees, stakeholder outreach documents, and the proposed rule are available for public review on the APHIS Web site at: *http://www.aphis.usda.gov/plant-health/aqi-userfee-review.* The fee analysis reports were also made available on Regulations.gov along with the proposed rule as part of the rule's supporting documents and will remain posted there when this final rule is published.

Commenters stated that, because the cost data provided by APHIS did not provide specifics regarding the calculation of the individual user class fees, the validity of the cost calculations overall is questionable. The commenter stated further that the lack of transparency unfairly inhibits industry's ability to respond knowledgeably to the proposal.

APHIS provided the rationale, data, and calculations for the preferred alternative fee schedule in the proposed rule. However, to provide additional clarification on how the individual user fees were determined, we are providing a breakdown of the costs that went into calculating each new user fee in Tables 2, 5, 7, 8, 9, 10, and 11 below.

One commenter expressed concern that the proposed rule does not provide sufficient background information on how the burden of the new AQI user fee costs should be shared by all parties concerned or how the new fees will be applied and/or charged to shipments, or batches of agricultural products of different sizes.

As stated in the proposed rule, we used the ABC methodology to determine

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0021.*

the cost of AQI activities and their associated outputs and services. APHIS incorporated ABC methodologies to ensure that the full cost of providing AQI services can be appropriately assigned to AQI user fees. The AQI expenses are captured in the USDA and CBP financial accounting systems. These systems conform to generally accepted accounting principles, and each system is subject to accounting audits to ensure its correctness in support of statements of financial positions. The ABC methodology incorporates industry standards to ensure correctness, transparency, and repeatability in the assignment of costs from the APHIS and CBP financial systems to activities directly related to the delivery of AQI services. The costs of our AQI activities are contingent upon the time and effort required of APHIS and CBP staff to perform those activities. Those activities must be performed regardless of the size or volume of the shipment.

CBP's agricultural inspection and safeguarding activities generate the majority of AQI costs. We used information from the CBP ABC model, which has been in existence for more than 10 years, to determine the safeguarding activities' costs. The CBP activity set includes inspection of shipments, monitoring compliance, and performing many other related activities. The costs ascribed to these activities contain the personnel and related non-personnel costs associated with the performance of them. The CBP model identifies activities by certain programs or operational areas, and we used AQI-related activities from the CBP model and certain activities that support the direct delivery of AQI services to the fee payer. The CBP model also provides some activity cost information by mode, so we were able to associate some costs with specific fee schedule services. For example, the CBP model has separate activities for air passenger inspection, air cargo inspection, truck inspection, etc., so we assigned those activity costs directly to the appropriate fee schedule items. However, some CBP and APHIS activities are performed across multiple modes and fee services. Those activity costs were assigned to the appropriate fee services based on AQI workload data. For example, APHIS performs pest identification for shipments across all modes (air cargo, maritime cargo, truck cargo, etc.), and the pest identification costs were assigned to each mode based on the number of pest identifications performed for each mode.

Once all costs, including support costs that are necessary to support the operation of the centralized AQI system as a whole, were assigned to the appropriate fee services and modes, the fees were calculated based on the projected number of conveyances subject to inspection within each mode, using standard units such as a truck or airplane, as has been done in the past. The analysis did not further break down the conveyance classes into large and small shipments. Because of the volume of conveyances and people crossing the U.S. borders, the Government cannot inspect each piece of baggage, package, or conveyance. To deploy its limited resources most effectively, APHIS uses scientific data to target shipments associated with the highest risks of introducing pests or diseases into the United States. Importers and other parties pay the fees for all conveyances subject to inspection under the AQI program, whether or not we inspect the shipment or vessel. Several factors, including number of conveyances, risk targeting, and other criteria, drive inspection costs, but all conveyances subject to inspection contribute to the cost of, and benefit from, the AQI program.

Whether a fee should be set based on the marginal cost or average cost of the service provided is also a consideration. A fee equal to the marginal cost of providing the service would maximize efficiency. Marginal cost is equal to the cost of providing an additional unit of the good or service. Under perfect competition, the marginal cost and average cost of a product are equal to each other and to its price. Given that AQI services are not provided in a perfectly competitive environment, the fee assessed on each class is based on the average cost of the AQI services for that class. Based on historical data, we projected AQI program costs for the various fee classes (*e.g.,* air passenger, commercial aircraft, commercial cargo vessel, treatment, etc.). We then divided each class' total cost by the projected number of times that are expected to be provided to that class based on historical data.

One commenter stated that ABC is not required by Federal accounting guidance. The commenter stated further that there is no evidence that APHIS considered other methods of cost accounting. One commenter expressed concern that the economic model used to determine the new user fees was based on the findings of a single consultant and expressed doubt regarding the level of scrutiny the model received. The commenter also stated that a review of the AQI program should consider whether the ABC methodology is the most appropriate model for this type of operation as well as whether the data entered into the ABC model is consistent not only with current operations but also with international trade agreements.

While the ABC methodology is not required by Federal accounting guidance, it is a preferred cost accounting methodology within the manufacturing and service sectors, as noted by the Federal Accounting Standards Advisory Board in its Statement of Financial Accounting Standards (SFAS) No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government. SFAS No. 4 specifically directs the Federal Government to use managerial cost accounting identification methods to identify costs. The ABC methodology incorporates industry standards to ensure correctness, transparency, and repeatability in the assignment of costs from the APHIS and CBP financial systems to activities directly related to the delivery of AQI services. Due to the usefulness of ABC analysis in tracing costs through activities, it provides accurate product and service costs, which allows managers to evaluate the efficiency and cost-effectiveness of activities.

In 2009, APHIS set out to determine best practices in the Federal Government for fee setting. We published a statement of work seeking a competitive bid to provide assistance in AQI fee setting. Three major accounting firms proposed approaches to the work. Each firm included ABC as a best practice. The contract allowed a third party to analyze and make recommendations to APHIS and CBP on fee setting using applicable Federal guidance on fee setting. It was determined that managerial accounting was the appropriate approach based on Federal guidance and the use of ABC methods was the best approach to achieve a reasonable, reproducible, and transparent rule for fee setting. One commenter stated that APHIS should provide additional information about the methodology used to calculate the fees because there is reason to question whether costs have been properly calculated or appropriately allocated to specific activities for which user fees are paid. The commenter cited as an example the FY 2011 cost figures cited in the March 2013 Government Accountability Office (GAO) report (GAO–13–268 March 2013), which differs from the FY 2011 costs outlined in the proposed rule.

The commenter also stated that the ABC methodology can result in the over-absorption of overhead costs, and that there is no meaningful method of assigning ''headquarters-level'' overhead costs to services. The commenters further stated that such ''headquarters-level'' costs, among others listed in the proposed rule, are properly considered ''business sustaining'' and should not be considered AQI program costs at all.

A second commenter, representing the trucking industry, echoed the latter point, stating that AQI fees should apply only when related to the direct inspection of incoming conveyances. The commenter opposed charging carriers for activities not directly related to the costs and activities of inspecting commercial conveyances, such as administrative or headquarters-level costs, as well as costs incurred for pest identification, scientific research, and policy development.

The difference in FY 2011 costs between the proposed rule and the GAO report resulted from the fact that the GAO report used preliminary results from the AQI user fee model, *i.e.,* the model developed by Grant Thornton to calculate costs used to run the AQI program.

In addition, the costs in the proposed rule separately show the cost of treatments, whereas the GAO cost numbers include the cost of treatments in each service or pathway. We followed Federal guidance related to fee setting and managerial cost accounting in determining AQI program costs. Specifically, we followed OMB Circular A–25: User Charges, which provides guidance on setting fees in the Federal government, and SFAS No. 4, which includes, among other things, a definition of full cost. OMB Circular A–25, which may be viewed at *http://www.whitehouse.gov/omb/circulars_default,* establishes the requirement that fees be set at full cost to the government, and provides a definition and examples for full cost. OMB Circular A–25 specifically defines full cost to include the support costs referred to by both commenters above, as well as the other costs listed by the second commenter. Certain Agency-level centralized services support APHIS' programs, including the AQI program. Centralizing these services at the Agency level, rather than having each program area maintain these services individually, increases government efficiency while reducing costs through elimination of redundancy. In the paragraphs that follow, we provide a breakdown of the services that support the AQI program and also discuss the included imputed costs. There are fewer support costs than were included in the April 2014 proposed rule.

The Environmental and Risk Analysis Services staff performs environmental assessments for the AQI program. This staff supports APHIS' mission of protecting and promoting American agriculture and natural resources by developing methodologies and providing documentation, training, advice, and technology for environmental compliance and risk-informed decisionmaking. This is accomplished by using the best available science and analytical methods to enable the Agency to make and implement decisions that are compliant with the U.S. environmental laws, other statutory obligations and policies, and international standards. These assessments are resources that are generally applicable to the AQI process. For example, this could include environmental impacts of methods used for the containment of pests introduced through the imports of goods. The AQI portion of these costs is assigned by the ratio of AQI full-time equivalents (FTEs) as a portion of APHIS' FTEs. (An FTE is the equivalent of the number of hours worked by one employee who works on a full-time basis.)

The Human Resources staff provides central services for human resource services for all APHIS employees. Only the AQI portion of these costs is included in the fees, and is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. Human Resources' primary services are to help employees accomplish their AQI work by:

- Recruiting and hiring
- Providing insurance and retirements benefits information
- Processing salaries, promotions, recognition, and benefits
- Providing policy guidance on performance and labor management
- Providing supervisors the training and tools they need to carry out their mission
- Promoting the health, safety, and security of employees
- Planning for workforce and succession needs
- Offering seminars on employee and leadership development
- Providing coaching, mentoring, and leadership transition services for managers
- Supporting employee development through USDA's on-line training system, AgLearn

The Information technology (IT) staff supports and maintains, or manages contracts for the various IT systems that are used by the AQI program. These systems include those that gather and analyze data related to threats from various pathways around the world, those that collect data used to support proper fee setting efforts, and those used to support permitting (especially used by importers). The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

Central and shared services include the costs of utilities and telecommunication. Shared services are used by many programs. The shared services include copy services and machines and printing services. Programs such as AQI use these shared services regularly as part of their mission. These are centralized services which increase efficiency and reduce operational cost. Each program pays a portion of the total cost. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

APHIS depreciation costs are imputed costs and are associated with the square footage of facilities associated with AQI activities, *e.g.,* plant inspection stations. The facilities depreciation is assigned to AQI based upon the square footage of facilities associated with the AQI program. The equipment costs, such as those attributable to equipment used in identification of pests and diseases, are associated with AQI FTEs so that the costs can be distributed to AQI activities.

CBP also captures depreciation expenses, as opposed to the actual purchase price of property, plant and equipment, which is considered a capital expenditure (not an expense). Thus, the purchase is recorded as an asset and is then depreciated. Depreciation expense is the accounting process for capturing the cost of an asset by expensing it periodically throughout its useful life. While CBP frontline personnel/FTEs perform a wide array of activities in addition to agriculture inspections, including border security between the ports, air and marine interdiction, and immigration and customs inspections, CBP distributes depreciation expenses of facilities and equipment across all mission area activities proportionally based on FTEs so that no activity is overcharged.

USDA agencies and CBP also incur a series of costs, as required by law, related to their employees, including those employees who provide services to importers as part of the AQI programs. For example, USDA agencies are responsible for recognizing an imputed cost equal to the difference between the cost of providing retirement, health, and life insurance benefits to foreign employees and the contributions agencies currently remit to the State Department for them. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs.

Office of Personnel Management imputed costs include costs for pensions, Federal employee health benefits, and Federal employee life insurance costs. These costs are directly associated with AQI FTEs. These costs are distributed to the AQI program based upon the ratio of AQI FTEs to Agency FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs within the CBP ABC model.

The Department allocates part of its imputed costs to each Agency. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. These costs can be found in the USDA fiscal year 2015 Budget Explanatory Notes (Departmental Administration, found at *http://www.obpa.usda.gov/04da2015notes.pdf*).

Unemployment compensation is a financial liability that must be accounted for (all organizations that follow generally accepted accounting principles account for this). These are costs that are associated with FTEs, and, as such, the liability is distributed to AQI based upon the ratio of AQI FTEs as a portion of APHIS FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

The Federal Employees' Compensation Act (FECA; 5 U.S.C. Chapter 81) provides compensation benefits to Federal employees for work-related injuries or illness and to their surviving dependents if a work-related injury or illness results in the employee's death. The FECA is administered by the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP). OWCP district offices adjudicate the claims and pay benefits, and the costs of those benefits are charged back to the employing agency. We have two unfunded liability-type costs: FECA unfunded accrual balance and FECA actuarial liability balance.

The FECA unfunded accrual balance is the current year's actual FECA expense paid by the DOL during the current year on APHIS' behalf. The FECA Special Benefits Fund pays benefits on behalf of Federal entities as costs are incurred and bills the Federal entity annually for the costs. The liabilities due to the FECA Special Benefits Fund are considered as unfunded at the time of receipt of the bill. Each Federal entity must record its portion of the FECA unfunded liability based on amounts provided by S. DOL. The entity's unfunded liability balance must equal the amount provided by DOL.

The FECA actuarial liability balance is DOL's estimate of FECA payments that will be made by DOL on behalf of APHIS in the future. The balance is periodically adjusted to reflect the current liability estimate. The actuarial estimate for the FECA unfunded liability is determined by the DOL using a method that utilizes historical benefit payment patterns related to a specific incurred period to predict the ultimate payments related to that period. The projected annual benefit payments are discounted to present value using OMB's economic assumptions for 10-year Treasury notes and bonds, and the amount is further adjusted for inflation. The projected number of years of benefit payments is about 35 years. Each federal entity must record its portion of the FECA actuarial liability based on amounts provided by the DOL. The agencies' actuarial liability balance must equal the amounts provided by DOL. The AQI portion of these costs is assigned by the ratio of AQI FTEs as a portion of APHIS FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

USDA agencies are responsible for recording the unfunded liability for credit hours, annual leave, and compensatory leave. As employees expend credit hours, annual leave, and compensatory leave, these costs are expensed in the account(s) where those employees' salaries are ordinarily charged. Annual expenses of these amounts are thus already included as costs in those accounts. To identify the additional costs we have annually for unfunded leave, APHIS is required to capture the change in the unfunded leave balance from the end of the prior fiscal year. The difference between the 2 years is the amount of leave liability that must be accounted for. APHIS pro-rates this amount based upon the number of AQI FTEs as a portion of the total Agency FTEs. CBP also incurs this expense and distributes this cost across all mission areas proportionally based on FTEs.

Two commenters stated that indirect employee costs, such as workers' compensation expenses, are being incorporated into the new rate structure, but APHIS did not provide sufficient details on those costs. The commenters asked that APHIS provide this information as well as a concise accounting of related expenses associated with any cooperative agreements which utilize other Agency resources to perform AQI functions.

A detailed breakdown of the costs to which the commenters refer has been provided above. OMB Circular A–25, referred to earlier in this document, establishes Federal policy regarding fees assessed for government services. The Circular describes ''full cost'' as including all direct, support, and imputed costs to any part of the Federal Government of providing a good, resource, or service. This includes all direct and imputed personnel costs, such as worker's compensation costs. Indirect personnel costs are listed under imputed costs in Tables 1, 4, 6, 7, 8, 9, and 10 below. Cooperative agreement costs are completely separate from the AQI user fees. No cooperative agreement costs are included in the user fees and no user fee costs are included in cooperative agreement charges.

One commenter asked that APHIS provide additional data to demonstrate that the user fees charged for one user fee category would not be used to subsidize inspections of another type of user fee category. The commenter asked that we provide the dollar amount, if any, under the proposed rule that each user is projected to pay in AQI costs for a different class or classes of user for FYs 2015 through 2020.

User fees charged to one class of users will not be used to subsidize inspections of another class of users. As noted throughout this document, the use of cost accounting principles ensures that costs are aligned with activities that generate those costs and that costs can only be counted once.

One commenter asked that we provide all inputs into the cost base for the proposed AQI user fees that arise from non-AQI activities.

The AQI costs model calculations for the user fees did not include non-AQI costs. The model captured the non-AQI costs, but did not include them in the fee calculations.

Two commenters asked APHIS to provide the dollar amount of costs included in the AQI cost base for any and all types of users that are incurred at locations outside of U.S. customs territory.

Costs for offshore activities, *i.e.,* those performed outside the customs territory of the United States, are not directly related to the AQI program and are not included in the AQI cost base.

APHIS has provided summary tables by fee class (see Tables 1, 4, 6, 7, 8, 9, and 10 below), that identify the costs to the Federal Government of providing AQI services. These costs, including support and imputed costs, are accounted for in the APHIS and CBP financial systems of record. APHIS and CBP use the ABC methodology to align these costs with the activities of each fee class.

ABC is a two-step approach. First, financial costs are associated with program activities by the level of effort employed for each activity as determined by labor surveys, time and attendance data, and other available data. Second, the activity costs are then aligned with the fee classes to determine the fee class costs. A unit cost is calculated by dividing the total cost of the AQI fee class by the number of passengers or conveyances subject to inspection or other action in a given year, based on historical data. This 'raw fee' is rounded up to ensure that revenue is sufficient to maintain the reserve balance. APHIS used data from 3 years of expenditures, FYs 2010 through 2012, to derive the new fee rates.

APHIS and CBP rely on the reserve account in years where program costs are greater than the revenue collected. While these funds can carry over from year to year, they are used for one-time costs associated with the AQI program, such as capital improvements and to cover the program costs when the revenue generated is less than the cost of the program. It is important not to include one-time costs in the calculation of the fees because doing so would overinflate the true cost of providing services. The ABC methodology ensures that the revenue collected will cover program costs and reserve requirements over the period the fees are in effect. While the reserve account is a single fund, the projected reserve amounts that each fee class would contribute to the AQI program reserve are included separately in the summary tables, to transparently show the total revenue generated by each fee class.

In response to concerns expressed by numerous commenters, we have made some changes to our methodology for calculating the AQI reserve amounts. As noted above, in calculating the fees for the April 2014 proposed rule, we relied upon a rounding method for generating the revenue to fund the reserve account. We rounded the fee up to the nearest $1 for fees less than $100 and to the nearest $25 for fees over $100. The use of this rounding method would have enabled us to achieve our reserve funding targets for the AQI program in 3 years. In this final rule, however, the fees by class are based on a 3-year average of the AQI costs, FYs 2010–2012, that have been inflated to FY 2016 dollars. To fund the reserve, these base fees are increased by 3.5 percent. Our use of this method has resulted in the reduction of all the fees contained in the April 2014 proposed rule except the commercial aircraft fee, the commercial cargo vessel fee, and the commercial cargo railcar fee. Under the 3.5 percent funding approach, a greater portion of these fees would have been used for funding the reserve than with the original rounding approach. The 3.5 percent reserve funding approach would have raised these three fees above their proposed levels. In order to ensure sufficient notice for affected entities, however, APHIS has decided not to raise any fees above those contained in the April 2014 proposed rule.

Commercial Air Passenger and Commercial Aircraft User Fees

One commenter asked that APHIS provide data underlying the proposed $4 AQI air passenger user fee.

Using our revised model for calculating the reserve resulted in a reduction of the air passenger fee to $3.96 in this final rule. Further breakdown of the calculations leading to the new air passenger AQI user fee is shown below in Table 1.

TABLE 1—AIR PASSENGER FEE CALCULATION

Air Passenger Fee $3.96	
FY 2010 data:	
APHIS AQI FTEs	223
APHIS Total Cost	$21,711,724
APHIS Imputed Cost	$1,593,447
APHIS and USDA Support Cost	1,910,180
CBP Total Cost	266,497,469
CBP Imputed Cost	21,951,183
CBP and DHS Support Cost	87,468,279
Reserve Amount	$14,527,679
Number of Passengers	76,448,705
Calculated Unit Cost	$3.77
FY 2011 data:	
APHIS AQI FTEs	224
APHIS Total Cost	$20,829,319
APHIS Imputed Cost	$1,566,108
APHIS and USDA Support Cost	391,307
CBP Total Cost	270,317,238
CBP Imputed Cost	20,470,874
CBP and DHS Support Cost	84,458,217
Reserve Amount	$21,082,947
Number of Passengers	78,901,506
Calculated Unit Cost	$3.69
FY 2012 data:	
APHIS AQI FTEs	225
APHIS Total Cost	$22,604,086
APHIS Imputed Cost	$2,051,921
APHIS and USDA Support Cost	1,779,664
CBP Total Cost	287,962,928
CBP Imputed Cost	20,471,708
CBP and DHS Support Cost	85,405,303
Reserve Amount	$ −4,491,747
Number of Passengers	77,255,476

One commenter expressed concern that APHIS may be charging the aircraft fee for passenger flights and suggested working together to secure refunds for those parties who were incorrectly charged.

The international air passenger user fee covers the costs for services related to the inspection of selected passenger baggage and the oversight of the handling of regulated garbage generated on airplanes carrying passengers entering the customs territory of the United States. Our mission is to prevent the entry of foreign agricultural plant pests and diseases into the United States. APHIS can include the cost of inspecting commercial aircraft that carry passengers in the international air passenger user fee if those costs directly relate to passenger baggage or regulated garbage. APHIS does not include the cost of inspecting cargo or the cargo hold area of the plane in the passenger fees.

The commercial aircraft user fee pays the costs of inspecting the aircraft itself, cargo inspection, the cargo hold, and the costs of monitoring aircraft disinfection if: (1) Such services occur during the regular hours of service (8 a.m. to 4:30 p.m. Monday through Friday) or (2) inspection of the cargo is concurrent with inspection of the aircraft.[2] Cargo owners may request inspection outside of regular business hours, but would be subject to reimbursable overtime costs under 7 CFR 354.1 in addition to the applicable AQI user fee. Airlines send their payments to our lockbox quarterly, no more than 31 days after the close of each quarter along with a written statement with required information as detailed in § 354.3(e)(3). The system is based on self-reporting; however, regular audits are conducted to make sure payment is received for all aircraft covered by this fee. If an entity is incorrectly charged a commercial aircraft fee, the entity can direct its refund inquiry to the Supervisor of the Financial Management Division's Debt Management Team. The type of proof or documentation the airline sends to the team to support its refund request depends on the exemption in § 354.3(e)(2) that the airline believes itself entitled to, and the documentation thus varies.

One commenter asked that we provide CBP's costs, from each FY from 2010 to the present, for providing preclearance or pre-inspection services to commercial air passengers at locations outside the customs territory of the United States.

[2] Even if a plane carries no cargo, it is subject to inspection because it could carry insect pests, weed seeds, waste material from garbage, or other waste that is capable of harboring animal disease.

Table 2 below contains CBP's preclearance costs for FY 2012 through FY 2014. CBP charges costs appropriately based on activity whether it is immigration, customs, or agriculture.

TABLE 2—AIR PASSENGER PRECLEARANCE EXPENSES

Data in whole dollars	FY 2012	FY 2013	FY 2014
Preclearance Expenses	$86,600,433	$93,537,883	$105,495,491

Several commenters expressed concern regarding the impact of the rule on express consignment carriers. (As defined in 19 CFR part 128, an express consignment carrier is ''an entity . . . moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised reliable, timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.'') One commenter stated that the commercial aircraft user fee is not commensurate with the cost of providing AQI services to express consignment carriers. Several commenters expressed concern that the costs for use of office space, equipment, and supplies, which express consignment carriers are required to provide to CBP under 19 U.S.C. 58c(b)(9)(B)(ii) and 19 CFR. 128.11(b)(7)(iii) in Express Consignment Clearance Facilities (ECCFs), which are essentially bonded warehouses that are able to handle express high volume parcel flows into the United States, have been included in the calculation for the AQI commercial aircraft fee, resulting in duplicate fee assessments.

The Trade Act of 2002 (Pub. L. 107–210) section 337, codified as 19 U.S.C. 58c (b)(9)(A)(ii) and (b)(9)(B), authorized the establishment of the ECCF fee to reimburse CBP for the customs processing costs incurred at those facilities. The original fee was set at 66 cents per individual airway bill or bill of lading and was later increased to $1 effective July 2008. Congress also mandated that 50 percent of the ECCF fee collection be paid to the Secretary of the Treasury. Because the other half of the ECCF fees are deposited in the Customs User Fee Account, for budgetary purposes, they are reported as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees. Together, the COBRA and ECCF User Fees financially support certain, statutorily-enumerated costs related to customs inspection functions. These user fees support the customs inspection functions performed by CBP and the Customs Broker Program. These user fees support CBP's mission of facilitating legitimate trade and travel while keeping the United States secure. CBP collects Express Consignment Fees to help recover the costs of providing customs cargo processing services to express consignment carriers or centralized hub facilities. The fee is not for agricultural inspection services.

AQI user fees reimburse agriculture inspections in ECCFs because these activities are separate from the customs processing costs incurred at those facilities. The ABC model uses a series of financial and workload data to derive CBP program costs. The ECCF fees under COBRA only support the customs inspections and the AQI user fees only support the agriculture inspections. CBP charges, tracks, and reports this activity using its ABC systems and analyses.

The user fee does not differ based on the class of aircraft inspected because the risks we are seeking to address and nature of the AQI services provided do not differ based on the class of aircraft inspected. The costs associated with the inspection of commercial aircraft are averaged, and all flights pay the same user fee. CBP also does not differentiate between types of commercial aircraft carrying cargo. There is no duplication of costs in the fees. The ABC model gathers costs by activity type and drives those costs to the cost pools by fee type. The costs from the financial systems of APHIS and CBP are entered into the ABC model, and the output of the model must equal those costs entered into the model, thereby ensuring that all costs are accounted for and that no cost was duplicated. Therefore, the costs for use of office space, equipment, and supplies, which express consignment carriers are required to provide to CBP under 19 U.S.C. 58c(b)(9)(B)(ii) and 19 CFR 128.11(b)(7)(iii) in ECCFs, have not been included in the calculation for the AQI commercial aircraft fee.

Several commenters asked APHIS to explain its claimed cost differentials between private and commercial aircraft inspections. The commenters stated that exempting private aircraft from paying user fees creates a competitive distortion because private aircraft compete with commercial aircraft to some extent. The commenters also stated that exempting private aircraft from the user fees is contrary to the FACT Act.

The Airport and Airway Development Act of 1970 limits charges to private aircraft to $25.00. Private aircraft are defined by the Act as not being used to transport passengers or property for compensation. Currently, no AQI fees are collected for the inspection of private aircraft and their passengers. The cost is less than $13 million, and the additional cost of creating and operating fee collections led us to recommend that private aircraft and their passengers continue not to be subject to an AQI user fee. APHIS is not required to charge fees to any specific group of service users. The FACT Act authorizes APHIS to establish fees in a reasonable manner to recover funds spent on safeguarding activities. As stated previously, those costs not recovered through a user fee are paid for through appropriated funding.

One commenter asked that APHIS provide information concerning the penalty collections and how they may offset our AQI costs.

Penalty collections do not offset the costs we incur in administering the AQI program. Penalties are assessed separately under a different authority than the authority under which APHIS conducts its AQI user fee program. Any amounts the Federal Government assesses in fines to individuals or parties whom we catch attempting to smuggle prohibited items, such as fruits, vegetables, plant pests or flower bulbs, into the United States are sent to a general fund at the U.S. Treasury Department. The fines are not deposited into any AQI account or used to pay for AQI services.

The same commenter requested more information on how the Agency projects the pool of users from which it proposes to recover costs. Specifically, the commenter asked that APHIS provide the source of data and any assumptions made regarding the annual number of both international airline passenger arrivals and international aircraft arrivals in the United States that APHIS anticipates will be subject to AQI fees. The commenter also asked for a description of any internal or external review of this data or quality control of this data.

A second commenter also asked that APHIS identify the base numbers used for airline passenger and aircraft arrivals in the Grant Thornton study and the regulatory impact analysis (RIA) that accompanied the proposed rule and compare them to industry-standard sources such as the U.S. Department of Transportation's T–100 data. The commenter also asked that APHIS verify the reliability of data derived from the workload projections listed in Table 6 of the proposed rule and asked for the number of users of AQI services that do not pay AQI fees.

We used data provided by the International Air Transport Association (IATA) regarding the annual number of international aircraft and international airline passenger arrivals in the United States. The T–100 data includes data provided by IATA. The Grant Thornton study used preliminary results from the AQI model in order to provide information for APHIS decisionmaking for the proposed user fee rates. The study had many fee structure options for AQI cost recovery. Once the decisions on fees were made, Grant Thornton finalized the ABC model that provided the figures found in the proposed rule based on the user fee setting guidance provided by GAO. Based on the data we received, APHIS determined that the actual and estimated volumes of passengers and conveyances provided in Table 6 of the proposed rule are accurate and the amount of service users that do not pay user fees can be readily calculated.

One commenter asked for a description and the number of any and all types of aircraft not subject to AQI fees. The commenter also asked what the costs were of inspecting types of aircraft not subject to AQI fees.

Under § 354.3(e)(2)(iv), all passenger aircraft originating in any country that have 64 or fewer seats and that do not carry certain regulated articles are exempt from paying the aircraft AQI user fee. APHIS maintains the 64-seat plane size distinction in harmony with CBP and other U.S. Government agencies with jurisdiction over civil aviation. APHIS does not maintain data on the number of exempted arrivals because the airlines do not report those flights. In FY 2012, the most recent year for which we have data, the cost of inspecting aircraft not subject to AQI fees was $12,361,173.16. Those costs not recovered through a user fee are paid for through appropriated funding.

Commenters requested information regarding the number of penalties and the dollar amount of any and all penalties assessed or paid for AQI violations for: (1) Commercial aircraft carrying only passengers and passenger baggage (no cargo), (2) commercial aircraft engaged solely in the transportation of cargo, (3) commercial aircraft carrying passengers and passenger baggage and cargo, and (4) private aircraft for each year between FY 2010 and the present. It was requested that we provide the number of pest interceptions for each of these types of AQI aircraft inspection for each year between FY 2010 and the present.

The collection of civil penalties and assessments is authorized under 31 U.S.C. 3806. Under this authority, APHIS and CBP assess penalties for AQI violations and remit the funds as miscellaneous receipts in the Treasury of the United States. The dollar amount of penalties assessed for AQI violations between FY 2010 and FY 2013 are shown below in Table 3. Please note that this data is not limited to aircraft. Because APHIS does not track penalties in accordance with the categories the commenters provided (commercial airline, noncommercial airline, etc.), we are not able to provide that level of specificity.

TABLE 3—PENALTIES ASSESSED FOR AQI VIOLATIONS

[Figures in whole dollars]

	Dept. of Agriculture			
	FY 2010	FY 2011	FY 2012	FY 2013
Fines, Fees, and Forfeitures	$3,881,627	$3,466,238	$2,860,793	$2,857,019

All arriving international commercial flights are subject to the commercial airline clearance fee and inspection. APHIS does not collect pest interception data in a manner that allows distinction based upon the airline flight categorization model. For example, we do not distinguish carriers carrying special express items from others. We maintain pest interception data only to make risk decisions using applicable risk data such as country of origin, transit country, host material, etc. Collecting pest interception data for the categories suggested by the commenter would be administratively burdensome to maintain and would not improve our ability to make risk-based decisions.

Two commenters asked for specific information related to commercial aircraft and airline passenger AQI user fees. The commenters asked that APHIS provide, for each FY from 2010 to the present, the total cost of AQI inspections for each type of aircraft operation, the number of AQI inspections performed, broken out by type of inspection if there are different types, and the time spent on AQI inspections performed for each type of aircraft operation. The commenters asked that the aircraft operation types be quantified and broken down into the following categories: Commercial aircraft carrying only passengers and passenger baggage (no cargo), commercial aircraft engaged solely in the transportation of cargo, commercial aircraft carrying passengers and passenger baggage and cargo (''combination'' services), private aircraft, and any other categories of aircraft not included elsewhere.

APHIS designed its AQI user fee structure to be simple and easily understood. This allows our stakeholders to save on effort and cost for determining fee costs and what would be payable to APHIS under a complex fee structure. APHIS and CBP save resources and costs by not having to design a process for administering a complex fee structure. This helps to keep the fee costs to the payer as low as possible. A simple fee structure benefits both the stakeholders and the Federal Government. As mentioned above, it would be administratively burdensome to charge and audit a multitude of fees for the many different types of commercial aircraft and their cargo that enter the United States. Federal guidance states that costs should be estimated from the best available records and that new systems need not be established solely for the purpose of fee setting. Further breakdown of the cost calculations for the commercial aircraft AQI user fee is shown below in Table 4. This fee did not change as a result of the modification in our method of calculating the reserve.

TABLE 4—COMMERCIAL AIRCRAFT FEE CALCULATION

Commercial Aircraft Fee $225.00	
FY 2010 data:	
APHIS AQI FTEs	295.38
APHIS Total Cost	$56,315,442
APHIS Imputed Cost	$4,217,943
APHIS and USDA Support Cost	$5,427,502
CBP Total Cost	$98,929,370
CBP Imputed Cost	$8,089,831
CBP and DHS Support Cost	$32,682,288
Reserve Amount	$ − 7,323,737
Number of Aircraft	657,427
Calculated Unit Cost	$236.14
FY 2011 data:	
APHIS AQI FTEs	290.68
APHIS Total Cost	$55,601,929
APHIS Imputed Cost	$4,203,426
APHIS and USDA Support Cost	$2,266,408
CBP Total Cost	$105,721,353
CBP Imputed Cost	$7,783,047
CBP and DHS Support Cost	$32,007,936
Reserve Amount	$ − 3,678,381
Number of Aircraft	700,644
Calculated Unit Cost	$230.25
FY 2012 data:	
APHIS AQI FTEs	290
APHIS Total Cost	$54,520,540
APHIS Imputed Cost	$4,153,439
APHIS and USDA Support Cost	$2,554,914
CBP Total Cost	$103,225,589
CBP Imputed Cost	$7,340,236
CBP and DHS Support Cost	$30,530,745
Reserve Amount	$4,085,346
Number of Aircraft	719,251
Calculated Unit Cost	$219.32

Several commenters asked for a detailed description of the categories of costs that are covered by the aircraft AQI fee applicable to commercial passenger aircraft (cargo inspections, inspections of cargo hold area, passenger baggage, etc.).

The commercial passenger aircraft AQI fee covers the following categories of costs:

TABLE 5—APHIS AND CBP AQI ACTIVITIES RELATED TO COMMERCIAL AIR PASSENGERS

APHIS AQI Activities Related to Commercial Air Passengers:
- —Asian Gypsy Moth Offshore (AGM) Mitigation Program Coordination and Operations.
- —AQI Outreach.
- —CITES program and enforcement.
- —Containment Facilities.
- —Database Management Operations.
- —Design, present, receive non AQI-related training (Department required training).
- —Develop Quarantine Policy for the Ports of Entry.
- —Develop Regulations, Manuals and Standards.
- —Emergency Action Notifications.
- —Manage Agency Quality Assurance Program.
- —Manage the Import Permitting Process.
- —Manage the Pest Permitting Process.
- —National Clean Plant Network (import).
- —Offshore Pest Information Program (OPIP) operations.
- —Perform pest and disease identification.
- —Perform Trend Analysis.
- —Policy Development and Implementation.
- —Port Environs Survey.
- —Post-entry Quarantine Operations (PEQ).
- —Propagative Plants and Plant Materials Inspection Operations.
- —Provide Investigative Enforcement Services.
- —Safeguarding.
- —Smuggling, Interdiction, & Trade Compliance (SITC) Operations.
- —Support overseas programs.
- —Trade.
- —Verification of Compliance Agreements, Accreditation and Certification Programs.

CBP AQI Activities Related to Commercial Air Passengers:
- —Cargo—Air.
- —Compliance Checks—Air.
- —Non-Intrusive Technology—Passenger—Air.
- —Examine—Compliant Passengers—Air.
- —Interception Process—Air.
- —Individual Mail.
- —Interception Process—Mail.
- —Safeguarding.
- —Antiterrorism—Trade.
- —NTC (National Targeting Center).
- —Courier Mail.
- —Compliance Checks—Misc.
- —Cut Flower Release—Air.
- —Informed Compliance—Air.
- —Antiterrorism—Passenger—Air.
- —Identify—Air.
- —Examine—Noncompliant Passengers—Air.
- —Personnel Management & Development.

Several commenters asked for an explanation and data supporting the manner in which the proposed rule allocates AQI user fees between air passenger and aircraft operators in the case of expenses listed twice (once for each type of user) in the proposed rule, namely monitoring and storage of regulated garbage and removal of regulated garbage from the aircraft and inspection of the aircraft hold, as well as any other AQI cost categories that are attributed to more than one payer.

Both the structure of the official financial accounting system of record, which follows Federal accounting standards, and the ABC analysis software do not allow the counting of costs more than once. The use of the ABC model as well as the software program used ensures that costs are not counted twice. The ABC methodology uses a causal relation between resources (general ledger costs) and activities and activities and user fees. We used workload data associated with each activity, based on a causal relationship, to ''drive'' the costs to the appropriate fee area. In addition, the modeling software ensures that the cost coming into the model (data from the official financial accounting system of record) is equal to the costs that are assigned to each ''layer'' of the model (activities and fees/services).

APHIS does not track the action of removing and disposing of regulated garbage, but rather captures those costs through various activities. There is no need or requirement within the cost model to use such information because the actions relative to regulated garbage are included within the existing activities, and therefore, do not provide information for decisionmaking in fee setting. Compliance checks and verification of compliance agreements are two key activities related to regulated garbage. ABC analysis captures the cost of compliance checks for various conveyance modes in separate activities and assigns the costs to the appropriate fees. Compliance checks performed by CBP cost approximately $15 million, and this activity cost was assigned to the calculation of the fee for passenger aircraft and cargo aircraft based on the number of compliance inspections performed for each type of aircraft. Verification of compliance agreements, performed by APHIS, costs approximately $4.5 million, and is assigned to all cargo outputs (modes) because this cost is not initially captured by mode. Another example of an activity that is not explicitly counted and tracked is pest identification performed by APHIS employees. This activity is performed for all modes, and the cost of the activity is assigned to each mode based on the number of pest identifications performed for each mode using workload data recorded by APHIS.

Several commenters asked for an explanation of the types of aircraft operations subject to the fee variously referred to in the proposed rule, RIA, and supporting documents as ''Commercial Air (Cargo only),'' ''Commercial Aircraft,'' and ''air cargo fee.''

The regulations in 7 CFR 354.3 define a ''commercial aircraft'' as any aircraft used to transport persons or property for compensation or hire. This term may refer to aircraft carrying either passengers or cargo or a mixture of both passengers and cargo. The term ''commercial air (cargo only)'' refers to those commercial aircraft carrying only cargo. The term ''air cargo fee'' may be used interchangeably with ''commercial aircraft user fee,'' and applies to aircraft carrying passengers (and cargo).

Commercial Vessel (Cruise) Passenger and Commercial Vessel User Fees

One commenter asked that APHIS provide data underlying the proposed $2 AQI commercial vessel (cruise) passenger user fee.

As a result of the change in our method for calculating the reserve amount, this fee has been reduced to $1.75 in this final rule, while the vessel fee remains unchanged from that contained in the proposed rule. Further breakdown of the calculations leading to the new sea passenger and commercial vessel AQI user fees are shown below in Tables 6 and 7.

TABLE 6—COMMERCIAL VESSEL (CRUISE) PASSENGER FEE CALCULATION

Commercial Vessel (Cruise) Passenger Fee $1.75	
FY 2010 data:	
APHIS AQI FTEs	7
APHIS Total Cost	$2,011,416
APHIS Imputed Cost	$149,332
APHIS and USDA Support Cost	$175,193
CBP Total Cost	$16,315,113
CBP Imputed Cost	$1,348,650
CBP and DHS Support Cost	$4,892,097
Reserve Amount	$1,971,842
Number of Passengers	11,599,069
Calculated Unit Cost	$1.58
FY 2011 data:	
APHIS AQI FTEs	9
APHIS Total Cost	$2,352,414
APHIS Imputed Cost	$179,034
APHIS and USDA Support Cost	$94,061
CBP Total Cost	$21,322,812
CBP Imputed Cost	$1,405,434
CBP and DHS Support Cost	$5,269,074
Reserve Amount	$ − 1,034,502
Number of Passengers	12,931,271
Calculated Unit Cost	$1.83
FY 2012 data:	
APHIS AQI FTEs	9
APHIS Total Cost	$2,301,838
APHIS Imputed Cost	$171,207
APHIS and USDA Support Cost	$95,235
CBP Total Cost	$19,891,404
CBP Imputed Cost	$1,405,065
CBP and DHS Support Cost	$5,326,912
Reserve Amount	$1,488,571
Number of Passengers	13,532,465
Calculated Unit Cost	$1.64

TABLE 7—COMMERCIAL VESSEL FEE CALCULATION

Commercial Vessel Fee $825.00	
FY 2010 data:	
APHIS AQI FTEs	188
APHIS Total Cost	$34,609,899
APHIS Imputed Cost	$2,552,290
APHIS and USDA Support Cost	$3,502,650
CBP Total Cost	$54,959,507
CBP Imputed Cost	$4,522,814
CBP and DHS Support Cost	$17,740,837
Reserve Amount	$7,171,744
Number of Vessels	117,262
Calculated Unit Cost	$763.84
FY 2011 data:	
APHIS AQI FTEs	183
APHIS Total Cost	$31,795,471
APHIS Imputed Cost	$2,383,368
APHIS and USDA Support Cost	$1,392,632
CBP Total Cost	$62,330,388
CBP Imputed Cost	$4,490,189
CBP and DHS Support Cost	$17,602,759
Reserve Amount	$ − 10,145,808
Number of Vessels	101,794
Calculated Unit Cost	$924.67
FY 2012 data:	
APHIS AQI FTEs	182
APHIS Total Cost	$30,714,122
APHIS Imputed Cost	$2,320,790
APHIS and USDA Support Cost	$1,730,986
CBP Total Cost	$62,745,589
CBP Imputed Cost	$4,440,037
CBP and DHS Support	$17,605,694
Reserve Amount	$365,064
Number of Vessels	113,727
Calculated Unit Cost	$821.79

The current regulations provide an exemption from the payment of user fees for the crew members on duty on an arriving aircraft. In the proposed rule, we proposed to allow the same exemption for crew members on duty aboard an arriving cruise ship. One commenter asked for clarification as to the definition of a crew member on duty, since ships have operations, maintenance and inspection requirements, and schedules that are radically different than the air industry. Therefore, migrating the exemption for airlines to the shipping industry may not be the most precise and effective way to address this matter. The commenter asked that this exemption be reworded or clarified, for example, to apply to ''all persons onboard for purposes related to the operation of the ship.''

We agree with the commenter that clarification is necessary regarding the definition of a crew member on duty. Therefore, we are amending the regulations to exempt from the sea passenger AQI user fee ''all vessel crew members onboard for purposes related to the operation of the vessel.'' Such crew members include those that provide support for dining and entertainment.

Commercial Truck User Fees

APHIS used CBP data associated with truck crossings at the border to determine the appropriate fee. We found that 91 percent of truck crossings at the border use transponders, and the remaining 9 percent of trucks pay the per-crossing commercial truck inspection fee. We are able to associate the total cost of commercial truck inspections with the transponder and per- crossing inspection fee based upon these percentages. Based upon the data CBP provided to Grant Thornton, it was determined that 9 percent of the total cost associated with the per-crossing fee equated to the proposed fee of $8. As a result of the change in our methodology for calculating the reserve, however, the per-crossing fee has been reduced to $7.55 in this final rule. The transponder fee has undergone a corresponding reduction from $320 in the April 2014 proposed rule to $301.67 in this final rule. Approximately 64 percent of the cost of inspecting trucks with transponders will be covered by CBP's annual appropriation. Further breakdown of the calculations leading to the new commercial truck AQI user fee is shown below in Table 8.

TABLE 8—COMMERCIAL TRUCK FEE CALCULATION

Commercial Truck Fee	
FY 2010 data:	
Per crossing @ $7.55:	
APHIS AQI FTEs	8.9
APHIS Total Cost	$1,333,487
APHIS Imputed Cost	$98,765
APHIS and USDA Support Cost	$124,512
CBP Total Cost	$5,075,771
CBP Imputed Cost	$417,721
CBP and DHS Support Cost	$1,258,435
Reserve Amount	$656,425
Number of Trucks	911,701
Calculated Unit Cost	$7.03
Transponder @ $301.67	
APHIS AQI FTEs	80.1
APHIS Total Cost	$13,483,031
APHIS Imputed Cost	$998,620
APHIS and USDA Support Cost	$1.258,950
CBP Total Cost	$51,236,081
CBP Imputed Cost	$4,223,618
CBP and DHS Support Cost	$18,153,846
Amount Paid through Appropriation	$31,838,590
Number of Transponders Sold	108,995
Calculated Unit Cost	N/A

TABLE 8—COMMERCIAL TRUCK FEE CALCULATION—Continued

FY 2011 data:	
Per crossing @ $7.55:	
APHIS AQI FTEs	8.3
APHIS Total Cost	$1,204,362
APHIS Imputed Cost	$91,087
APHIS and USDA Support Cost	$488,231
CBP Total Cost	$5,510,967
CBP Imputed Cost	$398,917
CBP and DHS Support Cost	$1,742,792
Reserve Amount	$276,673
Number of Trucks	931,391
Calculated Unit Cost	$7.21
Transponder @ $301.67	
APHIS AQI FTEs	74.7
APHIS Total Cost	$12,177,737
APHIS Imputed Cost	$920,996
APHIS and USDA Support Cost	$488,231
CBP Total Cost	$55,709,551
CBP Imputed Cost	$4,033,489
CBP and DHS Support Cost	$17,621,560
Amount Paid through Appropriation	$35,006,766
Number of Transponders sold	108,995
Calculated Unit Cost	N/A
FY 2012 data:	
Per crossing @ $7.55:	
APHIS AQI FTEs	8.3
APHIS Total Cost	$1,291,233
APHIS Imputed Cost	$95,921
APHIS and USDA Support Cost	$64,961
CBP Total Cost	$6,029,614
CBP Imputed Cost	$430,024
CBP and DHS Support Cost	$1,891,285
Reserve Amount	$8,051,901
Number of Trucks	1,066,477
Calculated Unit Cost	$7.63
Transponder @ $301.67:	
APHIS AQI FTEs	74.7
APHIS Total Cost	$13,055,804
APHIS Imputed Cost	$969,871
APHIS and USDA Support Cost	$654,099
CBP Total Cost	$60,966,102
CBP Imputed Cost	$4,348,022
CBP and DHS Support Cost	$19,122,988
Amount Paid through Appropriation	$40,684,656
Number of Transponders Sold	110,509
Calculated Unit Cost	N/A

One commenter asked for further clarification of wording in the final rule to make it clear that inspections of commodities that are imported under existing phytosanitary agreements would be considered commercial truck inspections and would be subject to the commercial truck fee rather than the proposed new treatment fee.

Any inspection undertaken after the new AQI user fees become effective would be subject to all applicable fees. Commercial trucks crossing the border are subject to inspection of both the trucks and their contents, and therefore subject to the commercial truck fees. If the contents of the shipment are required to undergo treatment to be eligible for U.S. entry, then the treatment fee would apply as well.

Commercial Rail User Fees

Although we did not receive any comments regarding the new commercial rail AQI user fee, we are providing a further breakdown of the calculations leading to that user fee below in Table 9. That commercial rail fee remains the same as we proposed in the April 2014 proposed rule.

TABLE 9—COMMERCIAL RAIL FEE CALCULATION

Commercial Rail Fee $2.00	
FY 2010 data:	
APHIS AQI FTEs	5
APHIS Total Cost	$2,745,539
APHIS Imputed Cost	$204,796
APHIS and USDA Support Cost	$281,810
CBP Total Cost	$3,860,112
CBP Imputed Cost	$317,174
CBP and DHS Support Cost	$1,380,312
Reserve Amount	$ −1,168,901
Number of Rail Cars	2,718,375
Calculated Unit Cost	$2.43
FY 2011 data:	
APHIS AQI FTEs	5
APHIS Total Cost	$1,122,289
APHIS Imputed Cost	$85,461
APHIS and USDA Support Cost	$45,039
CBP Total Cost	$5,983,503
CBP Imputed Cost	$317,650
CBP and DHS Support Cost	$1,402,576
Reserve Amount	$ −1,281,372
Number of Rail Cars	2,912,210
Calculated Unit Cost	$2.44
FY 2012 data:	
APHIS AQI FTEs	5
APHIS Total Cost	$1,147,199
APHIS Imputed Cost	$85,432
APHIS and USDA Support Cost	$57,455
CBP Total Cost	$5,765,358
CBP Imputed Cost	$412,247
CBP and DHS Support Cost	$1,810,754
Reserve Amount	$ −452,233
Number of Rail Cars	3,230,167
Calculated Unit Cost	$2.14

Treatment User Fees

Many commenters expressed concern regarding a perceived lack of transparency in how APHIS calculated the new cost category for treatments and lack of rationale for establishing the $375 treatment fee level.

As discussed in greater detail below, we have decided to lower the treatment fee from the $375 that we originally proposed to $237 and phase it in over a 5-year period. The fee will be set initially at $47 and then rise to $95 in the second year, $142 in the third, $190 in the fourth, and $237 in the fifth. APHIS recognizes that there are additional costs for providing treatment services during non-business hours. APHIS has determined that an equitable fee would provide a flat fee for services rendered during normal business hours, and the normal fee plus overtime costs for services rendered after hours. A breakdown of the calculations leading to the new treatment AQI user fee is shown below in Table 10.

TABLE 10—TREATMENT FEE CALCULATION

Treatment Fee $47.00 *	
FY 2010 data:	
APHIS AQI FTEs	82
APHIS Total Cost	$8,596,204
APHIS Imputed Cost	$605,763
APHIS and USDA Support Cost	$918,924
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$ −6,815,750
Number of Treatments	37,882
Calculated Unit Cost	$226.92
Treatment Fee $95.00 *	
FY 2011 data:	
APHIS AQI FTEs	80
APHIS Total Cost	$6,657,765
APHIS Imputed Cost	$479,722
APHIS and USDA Support Cost	$306,391
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$ −3,058,975
Number of Treatments	29,713
Calculated Unit Cost	$ 226.92
Treatment Fee $142.00 *	
FY 2012 data:	
APHIS AQI FTEs	79.61
APHIS Total Cost	$5,915,416
APHIS Imputed Cost	$512,688
APHIS and USDA Support Cost	$344,521
CBP Total Cost	N/A
CBP Imputed Cost	N/A
CBP and DHS Support Cost	N/A
Reserve Amount	$ −536,172
Number of Treatments	38,517
Calculated Unit Cost	$285.92

* Table 10 shows how APHIS derived the treatment user fee for the first 3 years of the 5-year implementation period.

APHIS used the actual data to analyze the potential fee rates. We then applied inflationary factors for those years that would be impacted by the fees in order to determine the correct fee amount, initially using the rounding method to ensure proper reserve funding. As noted above, in this final rule, APHIS has used a different method to calculate the reserve amounts, applying a flat 3.5 percent increase above the unit cost of providing AQI services to fund the AQI reserve.

Stakeholders can use the methodology present in these tables by referring the projected total activity cost and projected counts of activities to replicate the data found in this table.

One commenter stated that while APHIS indicates that there are certain activities related to the proposed new treatment fee, the exact components of conducting and monitoring treatments that warrant a $375 fee are unclear. The commenter asked that APHIS clarify specific elements incorporated into the calculation of the treatment fee level and the costs associated with each component.

As we have noted, in this final rule, we are lowering the treatment fee to $237. APHIS will phase this fee in over a 5-year period. APHIS prescribes different types of treatments for pests of quarantine significance when found upon inspection or for commodities that present high risk. There are various approved chemical treatments: Fumigants, dips, and sprays. The fumigants include methyl bromide, phosphine, and sulfuryl fluoride. Non-chemical treatments include cold treatment, hot water immersion, vapor heat treatment, steam sterilization, and irradiation. All the treatment types require specific methods and monitoring by APHIS personnel. APHIS determines the necessary resources (FTEs) put forth toward the treatment fee activity. This enables the ABC model to accurately assign costs to the treatments. This cost is then divided by the number of treatments that the APHIS personnel conduct or monitor.

One commenter stated that some commodities require treatment, such as cold treatment or fumigation, as a condition of entry into the United States. The commenter suggested that, rather than assessing an additional fee for those commodities already treated prior to arrival at the U.S. port of entry, such commodities should only be subject to the treatment fee if a quarantine pest is found at the port of entry necessitating additional treatment and direct supervision by APHIS.

The fee will be charged as the commenter suggests. Entities will be assessed the fee only if treatment is required and is performed in the United States and monitored by an APHIS inspector.

One commenter asked whether the treatment fees also apply to oversight provided by APHIS for fumigations on commodities exported from the United States that require a phytosanitary certificate.

Treatment services provided to facilitate export of U.S. commodities to foreign countries are not part of the calculated fee schedules. Exporters of U.S. commodities are charged a separate fee for export certification.

Stakeholder Input and Peer Review

Several commenters stated that the process to develop the proposed rule was not transparent because APHIS failed to provide and share data and information used in developing the proposed rule with affected stakeholders prior to the proposal's publication. The commenters referred to Executive Order 13563, which requires regulatory agencies to seek out public participation in rulemaking, including affected stakeholders.

Executive Order 13563 requires that regulatory agencies adopt regulations through a process involving public participation. To this end, APHIS held several stakeholder briefings to keep stakeholders informed during the evaluation of our user fee program and the development of the new user fees:

• September 9, 2011—Stakeholder Briefing: APHIS/Grant Thornton presented the preliminary findings from the AQI user fee review;

• May 1, 2013—Stakeholder Briefing: APHIS/Grant Thornton presented costs to deliver AQI services and factors that drive costs;

• April 22, 2014—APHIS announced proposed adjustments to AQI user fees;

• May 29, 2014—Stakeholder Briefing (two webinars): APHIS presented proposed adjustments to AQI user fees; and

• July 9, 2014—Stakeholder Briefing (webinar): APHIS presented proposed adjustments to AQI user fees.

Invitations to all of the 2014 events were distributed via the APHIS stakeholder registry and via direct email. The last email invitation was sent on June 27, 2014, to 11,164 unique subscribers.

In addition, APHIS provided the opportunity for comment on the proposed rule for 60 days, which was then extended another 30 days to allow for additional public comment.

APHIS provided two documents, ''Fee Setting Process Documentation and Recommendation'' (dated October 25, 2011), and ''AQI Fee Schedule Assessments and Alternatives, Revised'' (dated May 21, 2012), along with the proposed rule to help clarify APHIS' costing methodology. Two commenters expressed concern that the documents were not peer reviewed or reviewed by the USDA's Chief Economist and that APHIS failed to seek public comment on either the documents or the models that form the basis of the change in implementation of the AQI user fee program.

The documents provided by Grant Thornton, which were made available along with the proposed rule for public review and comment, were to advise APHIS and CBP on decisionmaking only. These were information-gathering documents used to help inform APHIS' decisionmaking and, as such, were not required to be peer-reviewed. The documents led to detailed policy discussions that took place at the Agency and Department levels with both APHIS and CBP. USDA and the OMB reviewed the proposed rule and the RIA. Several meetings and briefings that included Department and OMB personnel took place on several occasions, and discussions included issues such as fee alternatives, methodologies employed by Grant Thornton, and work the contractor did to support the economic analysis. The final decisions were well-informed, including reviews that included GAO.

Overtime

Several commenters requested that detailed information be provided on how much revenue overtime services generate and how CBP determines which officers fall into the overtime category. The commenters asked why Sundays have a higher overtime rate than other days.

CBP revenue overtime services generated through the end of the month of July (for 2014) totaled $379,506.82 for the Agriculture Reimbursable Overtime and $19,525.50 for the Wood Inspection Reimbursable Overtime. CBP utilizes the National Treasury Employees Union (NTEU)/CBP collective bargaining agreement contract for employees in determining employee eligibility and overtime assignment. In general, overtime assignments are based on the lowest earner and availability of personnel. CBP officers are paid under the authority of the Customs Officer Pay Reform Act (19 U.S.C. 267, as amended). Under that authority, customs officers are entitled to 1.5 times the rate of their base pay for Sunday work if Sunday is one of their regularly scheduled work days. Customs officers whose regular work days are Sundays who work in excess of 8 hours on a Sunday are entitled to 2 times their base pay for that day's work, but are not eligible to receive Sunday premium pay differentials. The Sunday overtime rate is higher for APHIS officers than for other days of the week because our officers are paid a higher rate for their work time on Sundays. Because our fees were developed to cover the full cost of inspections, including employee salaries, the Sunday fees are correspondingly higher. APHIS and CBP do not factor reimbursable overtime fees into the costs of the AQI user fees. Reimbursable costs are charged separately from the user fee.

As stated in the proposed rule, we used the ABC methodology to determine the cost of AQI activities and their associated outputs and services. One commenter expressed concern regarding a perceived lack of clarity regarding the alignment of the proposed fee schedule with the increase in overtime rates that was concurrently proposed. The commenter stated that, before either proposal moves forward, APHIS must document, for public review, the cumulative effect of these increases.

In calculating the flat treatment fee for the proposed rule, we did initially factor in the overtime component to arrive at the figure of $375. We did not anticipate charging overtime fees in addition to that flat fee. Because the required RIA accompanying the proposed rule was based on that original proposed fee of $375, the analysis did examine the full economic impact of the new fee, including the overtime component.

In this final rule, we are removing the overtime component from the flat fee, thus lowering the flat fee to $237. This fee will be phased in over a 5-year period. The difference between the proposed fee and the final $237 fee is $138. This difference represents the costs that are projected to be recovered through charging for reimbursable overtime. When treatment-related AQI services are applied outside of normal business hours, both the flat fee and overtime charges will apply. This manner of assessing these fees is consistent with the way we assess our other AQI user fees. APHIS can identify the amount of reimbursable overtime attributed to AQI treatments based upon the accounting attributes in the financial system. We will also continually review our business practices in relation to our treatment operations with the goal of reducing our costs and thereby reducing the fees.

APHIS/CBP Partnership

One commenter expressed concern regarding how much AQI user fees would go to APHIS compared to the amount kept by CBP.

APHIS and CBP maintain ABC models that accurately assign costs for activities related to each fee area. The basis for distribution of AQI user fees between APHIS and CBP is the cost to each agency of performing the AQI functions covered by a particular fee. Section 421(f) of the Homeland Security Act of 2002 mandates that CBP and USDA agree on a periodic transfer of funds from the latter to the former. In FY 2013, CBP received $366 million from AQI user fees. APHIS collects fees to recover the costs of providing inspection activities for international arrivals of passengers, conveyances, animals, plants, and agricultural goods at ports of entry. AQI fees reimburse the costs of CBP Agriculture Specialists, CBP officers performing agriculture inspection services, and support costs. In FY 2013, the revenues from the current fee levels covered 80 percent of CBP's costs incurred providing inspection activities associated with the passengers and conveyances that are subject to fees.

CBP will receive the collections provided by the rate adjustments for maintaining the existing operations of agricultural inspection functions. A small portion of the collections will fund treatment functions performed by APHIS. In addition, APHIS will maintain a small balance, *i.e.,* ''reserve,'' of user fee funds to cover costs during collection lag periods and for unanticipated changes in volumes and potential bad debt costs. As stated previously, the FACT Act authorizes APHIS to maintain a reasonable balance in the AQI account.

One commenter pointed out that the ''AQI Cost Analysis'' section of the proposed rule lists the National Targeting Center (NTC) as a CBP initiative, implemented since 2011, that is contributing to the necessity to raise user fees. However, the commenter stated that, since the NTC has been in existence for over 10 years, it is not a new initiative and asked why the costs of the NTC have led to the need to raise AQI fees now. The commenter stated that Table 3 of the proposed rule lists over $7 million in 2014 NTC costs that were factored into the AQI Cost Analysis and asked whether this amount represents the entire cost of the NTC or if it is only for some portion related to AQI activities.

To expedite the processing of travelers and cargo, CBP officers deploy pre-departure screening through a variety of programs and activities. The NTC, in particular, screens relevant traveler and cargo information, including the examination of manifest data, prior to their admission into the United States. This approach is a key part of CBP's layered security strategy to protect the homeland by extending U.S. borders outward to identify and mitigate threats, interdict possible terrorists, criminals, and suspect cargo before they can board or be loaded on a conveyance destined for the United States. Through use of targeting, CBP decreases costs, including AQI user fee costs, by identifying low-risk and high-risk travelers and shipments prior to their presentation at a U.S. port of entry for admission.

Since 2009, we have seen growth in both trade and travel leading to an increase in passenger and cargo volumes. Total passenger volume in FY 2013 was 6.4 percent higher than in FY 2011, and non-immigrant arrivals during the same period increased by nearly 9 percent. Total import value in FY 2013 was nearly 5 percent higher than FY 2011. Based on available industry and government data, we expect these trends to continue and estimate that total air passenger volume for FY 2015 will increase 4 percent (approximately 3.7 million air passengers) at the top 10 U.S. airports when compared to FY 2012 data. Because the conveyance fees cover the inspection costs of the cargo during the normal tour of duty of our employees, increases in cargo volumes necessitate increases in the conveyance fees to recover these expanded cargo inspection costs. Note that the costs of inspection of cargo occurring outside the normal tour of duty of our employees are recovered separately through reimbursable overtime collections, costs not included in the AQI fees. The $7 million listed as 2014 NTC costs represent that portion of NTC that relates specifically to AQI activities on imports.

Two commenters stated that APHIS should address several issues identified during review of the AQI program, such as inconsistent data between APHIS and CBP. One commenter stated that it is not acceptable for APHIS to raise user fees without addressing its own internal issues and communication with CBP. A second commenter stated that, with additional funds generated by the user fees, APHIS should have the resources necessary to address these issues.

APHIS and CBP identified the correct data to use in the model and eliminated the identified inconsistencies. Issues such as these in a very large operation are continuous in nature as the activities change, new systems become available, priorities change, or new demands for information arise. The data is relevant and it is part of official government systems. APHIS and CBP are continually working together to enhance data collection. In addition, CBP will continue the implementation of the business transformation initiative of the International Trade Data System (ITDS). CBP will use ITDS to report data for the importation and disposition of arriving and transiting fresh fruits and vegetables cleared at ports of entry. The source-verifiable data provided by the trade prior to arrival will result in increased accuracy and simplified data entry. ITDS will allow for the elimination of duplicative data entry and will significantly reduce the overall amount of time currently spent by CBP agriculture specialists or CBP officers entering data. The agencies will not fund through AQI user fees those activities that are not associated with AQI services.

Cost Savings Measures

One commenter requested that APHIS provide an analysis of the cost savings achieved when one agent, typically a CBP officer, provides inspection services for AQI, customs clearance, and immigration processing. The commenter stated that such a review should be undertaken to ensure that cost savings achieved by sharing employee resources are passed along to the fee-paying users in the form of fee reductions or exemptions.

The ABC analysis relied on actual personnel expenses to identify the staffing cost for border stations of all sizes. CBP costs in support of the AQI mission include training and technical advice to CBP officers and other CBP personnel on regulatory requirements pertaining to compliance with agricultural regulations and the processing of passengers with regard to compliance with agriculture regulations, primarily at low volume ports of entry in the passenger environment. In the absence of a CBP Agriculture Specialist, CBP and APHIS have consistently committed to ensuring that CBP officers have been provided with the knowledge and information needed to identify possible pest risks and to make the appropriate decision to mitigate that pest risk. Therefore, the cost savings realized by lower staffing levels at some border crossings is somewhat offset by the expense of additional training needed by those officers.

One commenter stated that no analysis was made to see if cost savings could be achieved through more efficient operations.

We are constantly working to improve our efficiency and cut costs. For example, we have taken steps to reduce our personnel-related expenditures, thereby reducing the costs of inspection, by using lower-salary-grade employees to perform certain tasks when doing so would not compromise effectiveness, and implementing shift work to reduce our overtime costs. The use of X-ray technology, the Internet, online databases, and specially trained detector dogs has helped make our inspection and clearance processes more efficient. Nevertheless, the costs of providing AQI services do rise from year to year due to inflation and staffing increases. The proposed user fee increases will enable us to recover the full costs of maintaining the AQI program. We welcome the submission of information at any time that would help us contain costs or enhance our efficiency.

One commenter asked to see the computations that show how APHIS initiatives to increase efficiencies and overall effectiveness to save cost and time work to offset any increase in costs as a result of increased AQI expenditures. As an example, the commenter pointed out that the proposed rule states that the development of new treatment techniques will save time and costs, but Table 3 within the proposal appears to show a continued annual increase in costs. The commenter asked for an explanation of this apparent disparity.

APHIS PPQ has recently realigned its core functional areas into three components: Policy Management, Field Operations, and Science and Technology. By realigning this way, we were able to eliminate many redundancies within different units and keep our AQI budget static while doing more AQI work. For example, plant inspection station management is handled by Field Operations. By having Field Operations handle management of what is essentially an operational program, we are better able to collect data via a risk-based sampling method, which will help inform future inspection rates of commodity-country combinations. In Policy Management, we were able to better centralize management structures of AQI policy, enabling us to get information to CBP more quickly than before our reorganization.

As APHIS assesses its user fees, volumes, collections, and ongoing reserve balances, it will initiate rulemaking to increase or decrease the fees as necessary. We review our fees on a biennial basis to ensure that the fees charged are commensurate with the costs of inspection and inspection-related activities and, if necessary, undertake rulemaking to amend them. We will adjust a fee up or down, as appropriate, depending on the actual cost of providing services. In most cases, we propose user fee increases so that the fees will keep up with inflationary costs as well as any new expenses, and propose user fee decreases when efficiencies are implemented.

One commenter stated that APHIS should develop specific accounting processes in order to ensure that the increased fees are properly collected and that such fees remain appropriate related to modifications in agency activity. The commenter further stated that specific details should be provided regarding the anticipated improvements in clearance and efficiency at the borders related to the fee increase so that overall effectiveness can be easily monitored.

APHIS and CBP continue to invest in resources that will improve our customer services and ability to safeguard American agriculture. However, we have determined that revised user fees are necessary to recover the costs of the current level of activity, to account for increases in the cost of doing business, and to improve how fees align with the costs associated with each fee service. In FY 1992, APHIS established accounting procedures to segregate AQI user fee program costs from all other costs. We published a detailed description of these procedures in the **Federal Register** on December 31, 1992 (57 FR 62469–62471, Docket No. 92–148–1), as part of an interim rule amending some of our user fees. APHIS maintains all AQI fees we collect in distinct accounts, carefully monitors the balances in these accounts, and only uses these funds to pay for our actual costs for providing these distinct services. In addition to the ABC analysis to develop the proposed user fee schedule, one of the objectives of the Grant Thornton contract was to create a method that was repeatable. We are currently updating the ABC model annually with cost and activity data so that we can monitor, measure, and model for management and decisionmaking.

Additional Comments

Three commenters asked APHIS to make public its current and historic reserve levels by user class.

The AQI reserve levels by user fee category for FY 2010 through 2012 are provided in Tables 1, 4, 6, 7, 8, 9, and 10. Grant Thornton used the ABC method to develop fees and inform APHIS decisionmaking. Grant Thornton developed the ABC data through time-sensitive surveys to determine current and forecast future program costs and revenue recovery potential of fee schedules. Prior to Grant Thornton's

ABC model, APHIS did not use the fee classes to track historical reserve levels.

The fees established in this final rule will align funds collected through user fees and the AQI reserve with the actual cost of safeguarding activities performed by the agencies.

Two commenters asked for a description of how APHIS ensures that reserve funds collected from commercial aircraft passengers and for commercial aircraft inspections are spent only on inspections of passengers and aircraft, respectively, in subsequent years.

As noted above, Grant Thornton developed the ABC data through time-sensitive surveys to determine current and forecast future program costs and revenue recovery potential of fee schedules. This forecasting will ensure that reserve funds are collected and spent only on inspections related to the relevant class of user. APHIS did not use the fee classes to track historical reserve levels, and the retroactive application of the ABC method analysis is not a valid use of the data.

Several commenters stated that APHIS should justify the timing of apparent salary increases that increase proposed fees. Specifically, one commenter noted that anticipated salary increases for the CBP journeyman officers would add $40 million to baseline costs.

Salary increases are set by law, Department leadership, or collective bargaining agreements. When provided, cost of living increases for government employees take effect at the beginning of each calendar year. The timing of salary increases is in no way related to the proposed rates. APHIS and CBP forecast known increases based upon Federal Government forecast guidance issued by OMB, and by known salary increases that would be in place at the time that the user fee rule was finalized.

Further, APHIS and CBP do not coordinate employee compensation levels and the agencies did not increase salaries to inflate AQI user fee costs. OPM issued a revised GS–1800 Inspections, Investigation, Enforcement and Compliance Standard for CBP officers and Border Patrol agents during April 2011. The new standard provides detailed descriptions based on the audits and interviews that the OPM position classifiers learned from on-site visits to field locations and operational and human resources staffs. CBP also conducted a rigorous review of the work responsibilities and expectations of frontline personnel that have continuously increased since CBP became the principal border control agency. OPM and CBP found that the officer's daily work is consistent with that of individuals working at the GS–12 level. The work factors that merit the salary increase include the wide variety of laws that are enforced, a shift to proactive, intelligence-driven work using sophisticated technology and infrastructure, increased violence at the borders and focus on terrorist activities, and work with other law enforcement agencies and enforcement-related activities.

One commenter asked APHIS to list, by AQI user fee category, any costs paid by AQI user fees that are also paid through appropriations.

No costs that are paid for by user fees are also paid for using APHIS appropriations, nor will they be as a result of this rule.

On May 1, 2013, APHIS held a stakeholder meeting to discuss AQI program costs. Two commenters asked that APHIS describe the data sources underlying the 2010 AQI program study, including defining the following terms referred to in the stakeholder meeting: AQI program costs, APHIS support, cost by activity from the CBP cost model, APHIS workforce labor survey, and workload data for outputs and drivers (Operations Management Recording (OMR), Pest ID, Work Accomplishment Data System (WADS)). The commenters asked that the briefing document discussed during the meeting be included in the docket.

AQI program costs are the costs incurred by APHIS and CBP to provide inspection and other services that prevent the introduction of harmful plant pests and animal diseases.

APHIS support costs encompass both Agency administrative support and program support functions. The ABC model used by CBP has costs by activities tracked by expenditures. APHIS used a workforce labor survey to generate data comparable to the CBP ABC model. A workforce labor survey is a method of collecting information on the level of effort that an organization expends in a set of activities such that labor costs found in a financial system can be allocated to the activities of an organization. The ABC model collects costs into cost pools and uses workload data to drive the costs to the fee classes. Workload data for outputs and cost drivers are data used to establish a cause and effect relationship between an organization's activities and what it produces. The workload data enables an organization to allocate the costs of its activities to what it produces. The document referred to by the commenter was made available alongside the proposed rule and therefore is already included as part of the official docket. It can be viewed by visiting the link listed in footnote 1.

Several commenters noted in the proposed rule that APHIS ''rounds up'' projected costs by user by either $1 or $25 in setting AQI fee levels. The commenters stated that the legal justifications for this rounding-up are not evident and needs to be explained fully.

As previously mentioned, the FACT Act authorizes the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing the AQI services covered in the proposed rule. This authority provides that the funds collected will be available until expended. GAO states in its Federal User Fee Design guide that ''with permanent authority, funds are available until expended, which enables agencies to carry forward unexpended collections to subsequent years and match fee collections to average program costs over more than 1 year.'' This enables agencies to carry forward unexpended collections to subsequent years in a reserve fund and match fee collections to average program costs over more than 1 year. AQI policy is to maintain a 3- to 5-month reserve, but when the AQI fee study was conducted, that reserve had been significantly diminished due to the economic downturn. As a result, one of the requirements of the fee study was to allow for the replenishment of the AQI fund reserve. To do so, we rounded the projected unit cost to collect additional revenue for the reserve. While there is no specific guidance regarding rounding up for fees, it is a common practice when setting fees, especially for programs that maintain a reserve, but also for administrative simplicity.

In this final rule, however, we did not use the rounding method described above to fund the reserve. APHIS has applied a 3.5 percent increase above the unit cost of providing AQI services in order to fund the AQI reserve. The new fees, other than those for commercial aircraft, commercial cargo vessels, and commercial cargo railcars, include a 3.5 percent increase for replenishment of the reserve. For these three fee classes, a 3.5 percent increase would raise the new fees above their proposed levels. In this final rule, these three fees are kept at their proposed levels, and therefore will provide smaller shares of their revenue to the reserve replenishment.

APHIS' analysis of methods of providing sufficient revenue to include a reasonable reserve identified 3.5 percent as a level that provides for funding the reserve while minimizing the impact on the payers of the fees to the greatest extent possible. APHIS further believes that using a flat rate of

3.5 percent without raising any fees above those originally proposed meets the needs and expectations of both the Federal Government and of those who pay the AQI fee.

Several commenters asked for the number of FTEs, for both APHIS and CBP, committed to each class of user for FY 2010 to the present.

The number of APHIS FTEs for FYs 2010 through 2012 can be found in Tables 1, 4, 6, 7, 8, 9, and 10. The numbers of APHIS FTEs dedicated to each class of user for FY 2013 are listed below in Table 11. The number of CBP FTEs dedicated to each class of user for FYs 2010 through 2013 is listed below in Table 12. The number of CBP FTEs dedicated to sea passengers is not available as those user fee classes were not tracked prior to the proposed rule. CBP is not involved in treatment activities that are covered under the treatment fee. CBP does oversee disinfection activities for conveyances or equipment. However, disinfection activity costs are not included in the calculation of the treatment fee.

TABLE 11—APHIS FULL-TIME EQUIVALENT EMPLOYEES (FTE) FOR FY 2013

Commercial Aircraft	289.96
Commercial Rail	5.42
Commercial Truck	83.18
Commercial Vessel	181.76
Commercial Vessel Passenger	9.01
Treatments	79.61

TABLE 12—CBP FULL-TIME EQUIVALENT EMPLOYEES (FTE) FOR FY 2010 THROUGH 2013

User fee class	2010	2011	2012	2013
Air Passenger	1,412	1,403	1,433	1,276
Commercial Aircraft	265	276	267	254
Commercial Rail	21	25	23	19
Commercial Truck	330	314	340	301
Commercial Vessel	304	314	269	284

On September 28, 2009, we published in the **Federal Register** (74 FR 49311–49315, Docket No. APHIS–2009–0048), an interim rule that amended the user fee regulations by adjusting the fees charged for certain AQI services that are provided in connection with certain commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the customs territory of the United States. The rule was published to help recover the costs of inspections and related support services, in response to the economic downturn, as well as to maintain a reasonable reserve balance. On November 4, 2009, we published in the **Federal Register** (74 FR 57057, Docket No. APHIS–2009–0048) a document withdrawing the interim rule prior to its effective date in order to explore other regulatory alternatives. One commenter asked what the results were of that exploration, specifically whether the results were published and whether viable alternatives were available.

The regulatory alternatives we considered for revising the AQI user fees were described in the proposed rule as well as the supporting analysis published along with the proposed rule entitled ‘‘AQI Fee Schedule Assessment and Alternatives (May 21, 2012).’’ These alternatives included several that were rejected because they either would not meet the objective of better ensuring that the fees paid by users in the various fee classes are commensurate with the costs of the AQI services provided for each class or because the transaction costs of creating and operating fee collection systems would be overly burdensome. The proposed rule represented our preferred alternative.

Three commenters stated that APHIS and CBP must provide more timely invoices for all fees. The commenters stated that, when invoices are delayed, there is no guarantee that the local contact, such as a vessel agent, will be able to collect the funds from the carrier, which means these agents can be held liable for those costs. The commenters suggested that the regulations be amended to stipulate that invoices will be provided within 30 days of performing AQI services.

APHIS does not provide invoices. Customers pay at the time of entry into the United States or when they purchase an airline ticket or transponder. CBP provides a CBP Form 368 Collection Receipt at the time of the entrance of the vessel with payment of the AQI user fee. Vessels are required to submit payment receipts covering the current calendar year at each port of call, with the cycle recommencing the next calendar year. We do not provide invoices for aircraft clearance or arriving international air passenger fee collections either. Air carriers remit theses collections on an honor basis in accordance with our current regulations.

Several commenters asked whether APHIS can demonstrate that it is currently collecting all the revenues it is entitled to receive through the AQI program. The commenters stated that, if there are shortcomings in internal processes which result in lost revenues from some sources, other program fees should not be increased to compensate.

As mentioned in the proposed rule, APHIS recently conducted a comprehensive fee review to determine the current cost of specific AQI services supported by user fees. That review determined that the AQI program was not recovering the full cost of its fee services, including costs of administering the user fee program and maintaining a reasonable reserve in the fee accounts. Some of this non-recovery is due to the fact that most of the current fees do not accurately reflect the current full cost of the services related to those fees. However, some of this non-recovery is also due to prior APHIS policy that capped fee collection for certain classes of commercial conveyances within a calendar year and that exempted certain classes of users from fee collection. The adjustments to the current AQI user fees are designed to recover the full cost of providing AQI services, commensurate with the class of persons or entities paying the fees, and are based on an analysis of our costs for providing services in FYs 2010 through 2012, as well as our best projections of what it will cost to provide these services in FYs 2015 through 2017. The adjustments will also allow us to maintain the AQI reserve account. These user fee adjustments are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

Two commenters asked for confirmation that the reserves will be kept within the AQI user fee program and not used for any other APHIS program. One commenter asked for additional information regarding how AQI user fee reserves are dispersed. The commenter noted that the AQI reserve is intended for use during periods of low import flow, but asked for clarification of what specifically constitutes a lower flow of imported products. One commenter asked if there is a way for stakeholders to have input on when and how the reserves are used and asked whether the reserves will be carried over from each fiscal year and be allowed to accumulate.

By law APHIS collects AQI fees to fund the AQI program. These funds may not be used to supplement or pay for any program in APHIS or CBP that is not directly related to the AQI program. Any excess of user fee collections over costs remains available from year to year in a dedicated reserve account to be used only to fund AQI and related program costs. OMB actively monitors AQI reserve levels keeping in mind our goal of maintaining a 90- to 150-day operating reserve. OMB provides oversight of the AQI funds and the funded reserve. Low import flow occurs when the number of imports diminishes enough that we are unable to meet the 3- to 5-month reserve. As we have noted, we have sought stakeholder input throughout this rulemaking process and would do so again in any future rulemaking involving AQI user fees.

Economic Impacts

Numerous commenters stated their opposition to the proposed AQI user fee increases on the grounds that they would create economic burdens on U.S. small businesses.

The increases in AQI user fees have been methodically derived using activity-based costing. With the rule, AQI service recipients will pay fees that more closely match the costs of providing those services. We do not expect the AQI fee increases to create significant economic burdens for a substantial number of U.S. small businesses. The additional burden will vary by user fee class (mode of transportation) because the cost of providing the AQI services varies by class and each user fee class has its own current fee deficit (or in the case of air passengers and cargo railcars, fee surplus). By user fee class, the burden will be proportional to the extent to which an entity is engaged in transporting goods to the United States, that is, the cost to businesses that make fewer entries at ports will be proportionally less than the cost to businesses that make a greater number of entries. Small businesses within each class will not be disproportionately impacted. We discuss the potential impacts of the rule on small businesses later in this document, beneath the heading "Executive Orders 12866 and 13563 and Regulatory Flexibility Act."

A few commenters stated that the imposition of new user fees could set back the maritime industry's slow recovery from the recession, particularly small and medium firms involved in the trade of perishable goods throughout southern Florida. In particular, several of these commenters stated that the fees we proposed could cause economic hardship on flower producers and the cut flower industry.

A few commenters acknowledged that user fee increases were necessary, but opposed the magnitude of the increases we proposed, citing concerns to small businesses involved in importation and transportation.

Also, several commenters stated that the fees we proposed will have a negative effect on trade relations between Peru and the United States. They stated that the proposed fees affect jobs and consumers in the United States as well as in Peru and specifically noted that the Peruvian asparagus industry is connected with American consumers through a large chain of importers, carriers, organizations, and retailers.

In addition, the Government of Chile expressed concern that the compounding effect of our proposed fee increases for overtime services (contained in a separate proposed rule published in the **Federal Register** on April 25, 2014 (79 FR 22887–22895, Docket No. APHIS–2009–0047)), for conveyances and for treatment will have a negative effect on trade between Chile and the United States. Particular concern was expressed about how the new treatment fee proposed in this rulemaking could disproportionately affect Chile's agricultural exports, because shipments of fresh fruits from Chile are subject to fumigation requirements.

As noted above, we are lowering the treatment fee in this final rule from the $375 originally proposed to $237 while we attempt to develop additional cost-cutting measures in our treatment operations. APHIS will phase this fee in over a period of 5 years. This change will reduce the burden caused by the introduction of the treatment fee on affected entities, including Chilean exporters. As we have already noted, overtime fees will only apply to treatments conducted outside normal business hours. Under the FACT Act, the Secretary of Agriculture has the discretionary authority to prescribe and collect user fees sufficient to cover the cost of providing AQI services. As amended, the Act stipulates that the fees be commensurate with the costs of AQI services, with respect to the class of persons or entities paying the fees. With the exception of the treatment fee and cruise passenger fee, the fees in the proposed rule are long-established fees, and, as explained in the rules that established them, the fees are necessary for us to recover the costs of providing AQI services to the conveyances and passengers to which they apply. Similarly, for the reasons explained in the preamble to the April 2014 proposed rule and in this document, we have determined that the new cruise passenger and treatment fees are necessary to recover the costs we incur in connection with providing AQI services to such passengers and cargo.

Several commenters stated that the proposed fee for AQI treatment services and the proposed increases in fees for cargo vessel and aircraft inspections will result in significant trade barriers for importers of perishable products such as cut flowers and fresh produce.

We have statutory obligations under the Animal Health Protection Act and Plant Protection Act to prevent the introduction or dissemination of animal and plant pests and diseases into the United States. When we consider a shipment of plants or plant products to pose an unacceptable plant pest risk, whether because of a pest discovery at the port of arrival or otherwise, phytosanitary treatment can allow the shipment to enter the United States. If the shipment is not considered to pose an unacceptable plant pest risk, no treatment is required and no fee for AQI treatment services will be incurred. AQI services, including those for overseeing treatments, enable trade that would not be able to otherwise take place. The fee for AQI treatment services and the increases in user fees for truck, cargo vessel, and aircraft inspections have been calculated using the ABC methodology to ensure that the fees collected, by class, are commensurate with the costs of the AQI services provided.

One commenter stated that APHIS should quantify benefits of inspections with results and workload projections.

The collection and analysis of data on pest interceptions and workload trends are mainstays of the AQI program. CBP and APHIS use the data in numerous ways to inform operational and staffing decisions and planning. As noted elsewhere in this rule, workload projections were used in setting the AQI user fees. While that data is indispensable for those purposes, our RIA for this rule did not quantify, in an economic sense, the benefits associated with pest detections (as the avoided costs of a pest outbreak would be speculative) or workload projections.

A number of commenters pointed out that, in the preamble of the proposed rule, we cited the impact of the 2010 economic recession on AQI user fees collected. The commenters stated that levels of imports and exports have increased significantly since 2010, and asked whether there was still a basis for the rule given this increase in trade. Similarly, another commenter stated that the proposed fee raises are based on dated information, and that since the time of the study, many inspection costs have gone down.

The 2010 recession decreased our AQI fee reserve account. The account has been used to ensure the AQI program continued to fully operate when there were instances in which the fees we assessed did not provide revenue sufficient to support the AQI services rendered. The recession underscored the inefficiency of using the reserve to recover ongoing AQI-related costs in such a manner, and highlighted the need to charge user fees that ensure full cost recovery for those services, especially in times of economic downturn. It also highlighted the need to ensure that all user fee schedules are set using a methodology that will result in cost recovery for those services. The ABC method used to inform the fee schedules in the proposed rule is such a methodology. It is important to note that AQI services increase when imports increase. We have set our fees based upon the activity cost of the services delivered. Revenue generated from the fees will reflect the change in services delivered. In the economic short run, the reserve may be used to support temporary increased AQI program levels so that fees would not require an emergency adjustment.

In addition, we note that an increase in trade, in and of itself, would not increase our user fee reserve. In fact, insofar as we would have to provide AQI-related services more frequently, an increase in trade could accelerate depletion of the reserve if fees do not recover the costs per service rendered.

A commenter stated that the fee for AQI treatment services will not be neutral, that it will cause importers to alter shipping choices in order to minimize the fee cost rather than maximizing their commercial efficiency.

Phytosanitary treatments and their AQI oversight are integral activities when it is determined that a shipment is considered to pose a plant pest risk. Currently, AQI treatment monitoring is provided to importers at no direct cost. The rule will bring that cost into the importer's decisionmaking process. One outcome of that process may in fact be importers undertaking activities, where possible, to ensure shipments are more likely to be free of actionable pests before arrival at the U.S. port of entry. We would also note that the downward adjustment of the treatment fee in this final rule will make the cost to importers lower and less burdensome.

Some commenters stated that a phase-in period would allow affected entities to adjust to the new fees and prevent disruption of trade. One such commenter noted that the proposed fees for commercial aircraft, maritime vessels, and trucks with and without transponders include adjustments up to three times current fees, which will likely disrupt the movement of agricultural products because many smaller companies that ship agricultural products may have difficulty adjusting to such drastic fee increases. Many of these commenters suggested a phase-in period of 3 to 5 years.

While we recognize that for several of the classes of service users, the percentage increase in fees are sizable, we emphasize that the proposed fee levels have been methodically determined through the ABC methodology to be the amounts needed, by class, to cover the costs of the services provided. The changes in fees are based on projected levels of AQI services required and projected resource costs of providing those services. APHIS will phase in the new treatment fee in order to reduce the impact on those firms that provide the service, and allow those firms receiving the treatment fee to adjust their price structure accordingly. A phase-in of all other proposed changes would delay achieving the rule's objectives: Increased user fee funding of AQI services; reduced reliance upon appropriated funding of AQI services; making AQI fees by class more commensurate with the services provided; and replenishment of the reserve. Moreover, this is the first major adjustment to AQI user fees in nearly 10 years. Other than minor adjustments for inflation from FY 2000–FY 2010, the fee rates have not changed even though the AQI program has hired several hundred additional inspectors and incurred other costs to meet the increasing need caused by a large increase in arriving international passenger and cargo traffic.

Several commenters specifically opposed the proposed treatment fee and cited potentially negative economic impacts, including job losses, increased prices for U.S. consumers, and loss of trade. Several of these commenters stated that because importers would have to pay this fee to individually fumigate small batches of flowers, the fee could increase the total price per-box of flowers by 200 percent, and that the fee would have a severe economic impact on perishables imported through South Florida.

The objective of fumigation and other AQI treatments is to ensure that agricultural goods and commodities entering the United States are free from viable plant pests and noxious weeds that would pose a risk to the health of the U.S. domestic agriculture and natural resources. The AQI treatment fee is designed primarily to recover the costs of APHIS services for monitoring fumigation and other types of treatment for pests to ensure it is conducted properly. As we noted in the proposed rule, no fees are currently collected by APHIS for these services. Importers have been receiving, and benefitting from, these services without paying a fee until now. Further, we have attempted in this final rule to increase the equitability of the fee by charging a flat fee for services rendered during normal business hours, and the flat fee plus an overtime charge for services rendered after normal business hours, thereby adjusting the fee downward from that which we originally proposed. APHIS will phase this new fee in over a period of 5 years.

A commenter suggested that rather than charging a flat fee per treatment, APHIS could assess user fees more equitably based on the number of pallets in a shipment. By charging the flat treatment fee, while charging considerably less for the inspection of trucks and railroad cars, APHIS, according to the commenter, would be making importers and exporters pay a disproportionate amount of APHIS' costs.

We note that user fees based on the quantity or the value of a shipment do not necessarily correspond to the actual cost of providing the AQI service. For example, the cost of monitoring a fumigation treatment for a large number of pallets is about the same as the cost for a few pallets, since an APHIS inspector would be required to be present for most of the treatment and always at the beginning and the end of the procedure regardless of the quantity of pallets being treated.

A few commenters asked whether the same cost should apply to verifying that a treatment occurred as the cost of actually conducting a treatment. The commenters cited treatment verification for Peruvian asparagus, which they stated involves reviewing a set of charts to ensure that the treatment was conducted according to the requirements. The commenters stated that the fee for verifying that a treatment was conducted satisfactorily should not be equal to the fee for conducting a treatment.

We disagree with the commenters' characterization of APHIS' involvement in verifying treatments of Peruvian asparagus. APHIS officials do not simply verify documentation to establish that a treatment, such as a fumigation, took place. APHIS pressure tests the containers, prescribes the amount of gas, and verifies the amount of gas that has been used. APHIS also conducts readings of gas concentrations at set intervals during treatment. These readings are used to determine whether the proper amount of gas is being used during treatment and to certify the treatment once it is adequately completed.

Some commenters stated that the proposed user fee for AQI treatment services will lead foreign exporters to seek markets with easier access and thereby create potential shortages and higher prices for cut flowers and off-season fresh produce. Commenters also stated that many times when there is a pest discovered in a shipment of cut flowers, for example, the number of boxes requiring treatment is minimal. In such instances, given the proposed AQI treatment fee in addition to fumigation costs, importers may decide to return the shipment to the country of origin rather than have it treated for entry.

We expect any diversion of trade away from the United States in response to the fee for AQI treatment services will be minor and not affect the U.S. economy significantly. Possible economic effects will be further diminished by the downward adjustment of the fee in this final rule. The size and breadth of U.S. demand for imported cut flowers and off-season fresh produce are large. The growth in these markets in recent years reflects U.S. consumers' willingness to pay for these commodities. The return of an infested shipment to the country of origin rather than its treatment will be a case-by-case decision of the individual importer based on costs and expected returns. In the case of imported cut flowers and fresh produce, we expect that the fee for AQI treatment services may in fact prompt increased marketing efficiencies if potential plant pest risks can be addressed prior to the U.S. port arrival. These commodities are treated at the port of entry if they are considered to pose a plant pest risk. If not, no treatment is required and the fee for AQI treatment services will not be incurred.

Several commenters stated that the proposed user fees generally run counter to the cross-border initiative between Canada and the United States to facilitate trade. Another commenter stated that increasing AQI fees that directly impact cross-border North American Free Trade Agreement (NAFTA) trade does not support a policy for reducing regulatory and trade burdens. These cooperative initiatives should review whether fees, such as the AQI user fees, should be required among the three NAFTA countries covered.

CBP and APHIS have conducted inspections and collected AQI user fees at the Canadian border since 2007 without any major collection-related issues inhibiting trade at the border. In addition, several initiatives established between the United States and Canada focus on regulatory cooperation and development of a perimeter approach to reduce risks to North America and to facilitate cross-border trade. The goal of these initiatives is to establish mechanisms for ongoing regulatory cooperation for issues of mutual concern. The Regulatory Cooperation Council (RCC) was established to facilitate closer cooperation between our two countries to develop smarter and more effective approaches to regulation. The AQI cost analysis is not counter to the commitments the United States has made to Canada under the RCC initiative, and is consistent with the goals and history of this and other initiatives.

Several commenters from the transportation sector opposed the proposed increases to AQI user fees, citing the increased cost of inspection and shipment of agricultural items across borders. Many of these commenters referred specifically to the proposed increase in the truck transponder fee. A few commenters stated that increasing transponder fees will slow down the flow of traffic at border crossings with Canada by reducing the number of transponders purchased, thereby increasing the number of cash collections at the port of entry. The commenters stated that this is not only time-consuming for border officials, but that other scarce CBP resources must also be assigned to completing reports on these activities and ensuring all financial documentation is completed.

One commenter stated that the biggest barrier to increased use of transponders has been the initial one-time payment, because owners/operators of long-haul trucks that do cross the border are often reluctant to purchase the transponder if they are not certain about their number of border crossings in a given year. The commenter stated that a 205 percent proposed fee increase will only create more difficulties in increasing transponder usage and recommended that APHIS should offer the transponder for sale on a payment program. Similarly, another commenter stated that the proposed fee increases will significantly extend the number of border crossings carriers will need to undertake to justify the use of transponders, thereby discouraging more carriers from using this technology.

Another commenter also noted that the commercial transponder fee would increase from $105 to $320 annually, for a 200 percent increase. The commenter stated that such a large increase may be unaffordable for small carriers to pay on an annual basis. The commenter also stated that it may be more feasible to provide payment options and explore a tiered approach over a time period rather than the entire amount all at once. The commenter stated that similarly, the proposed per-truck fee increase from $5.25 to $8.50 would seem to disproportionally hit small truckers, who tend to operate on a more transactional basis. The commenter stated that, incentives to apply the per-truck fee toward consolidation for securing the transponder might be appropriate.

As noted earlier, due to the change in the methodology we are using to calculate the reserve amounts, both the individual crossing and transponder fees are lower in this final rule than those we originally proposed. With the rule, the cost of the transponder will be equivalent to approximately 40 times the single-crossing fee, as opposed to the current 20 times the single-crossing fee. Despite its higher cost, purchase of a transponder will still provide cost savings for most cross-border trucking firms (the average number of crossings per firm is 97 per year) and will also reduce their paperwork and wait times. Because for most cross-border trucking firms the cost of the transponder will still be more economical than paying the single crossing fee for each crossing, we disagree with commenters that the firms are unlikely to pay the increased transponder fee, and do not anticipate a significant increase in the collection of single-crossing fees at the U.S./Canada border as a result of this rule.

We also note a number of ancillary benefits associated with transponder use that should encourage continued use. Small businesses, as well as large ones, develop their annual business models based on projected levels of revenue and expenditure, for which there is always an element of uncertainty. Use of a transponder not only effectively reduces the AQI fees, but importantly, reduces the time spent crossing the border.

In short, we do not expect the increase in the AQI fees for trucking firms, with or without transponders, to significantly harm a substantial number of small businesses. We believe many if not most small businesses will continue to accrue benefits gained through the use of transponders. A system whereby payment for a transponder could be distributed over the year cannot be efficiently administered at present and would increase the annual cost of a transponder. Moreover, such a system would not reduce the level of uncertainty businesses face when planning for the future, including when deciding whether or not to purchase a transponder.

Commenters stated that the proposed increase in the commercial aircraft user fee would be extraordinarily burdensome for smaller-capacity passenger flights commonly deployed in flights from Mexico, Canada, and the Caribbean, and the new fee is not commensurate with the inspection time required for these flights.

Aircraft with 64 or fewer passenger seats are in fact exempt from the AQI commercial aircraft inspection fee if they serve only beverages and snacks that do not contain fresh fruits; fresh vegetables; or meats from ruminants, swine, or poultry; and carry cargo other than fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats. Arriving aircraft that do not meet these conditions pose a sanitary or phytosanitary risk. We have a statutory obligation under the Animal Health Protection Act and the Plant Protection Act and to prevent the introduction or dissemination of animal and plant pests and diseases into the United States.

One commenter stated that the proposal to introduce a commercial vessel (cruise) passenger fee of $2 could negatively impact Florida's tourist industry if cruise lines see advantages to taking their ships to less expensive foreign ports.

The FACT Act gives APHIS authority to charge a fee for all international passengers. Moreover, we note that the average cost of a cruise ticket is substantially more than the $1.75 passenger fee. Further, the cruise passenger fee will be assessed on a per-ticket basis, as is the case for international air passengers, so that cruise passengers will have to pay it only once per voyage. The commercial vessel (cruise) passenger fee will apply only to tickets purchased on or after the effective date of this final rule. For these reasons, we do not expect that the new fee will require the cruise industry to make significant adjustments to port calls or other business practices.

In addition, several commenters were concerned about the impact of the proposed commercial vessel (cruise) passenger AQI fee for international cruise ships. One commenter suggested that a 3-month time frame for implementing the proposed fees is insufficient for the maritime transport industry and suggested a minimum of 9 months for implementation. The commenter added that costs will be difficult to bear in the short-term when factored against multiple conveyances within a company.

We do not agree with these commenters. As noted above, we do not expect that the increased fee will require the cruise industry to make significant adjustments to port calls or other business practices. Phasing in the new fee, as the commenters recommend, would not allow us to recover the costs we incur for screening cruise ship passengers.

A commenter stated that the new commercial vessel (cruise) passenger fees could mean an overall increase from $7,440 to over $600,000 in fees for a single ship for 1 year. The commenter also asked for confirmation that the per-passenger fee would only be assessed one time per voyage as opposed to each U.S. port call during a voyage.

As there is currently no AQI fee for commercial vessel (cruise) passengers, we are uncertain of how the commenter arrived at the numbers cited. Regarding the question about assessment of the passenger fee, it would only be assessed one time per voyage (*i.e.,* upon arrival in the United States) as opposed to each U.S. port call during a voyage.

A few commenters stated that the proposed treatment user fee adds costs that could derail the cold treatment pilot program in south Florida and negatively impact the economy in other regions where cold treatment programs are established.

As with cold treatment completed in transit on certified vessels, treatment performed at U.S. facilities requires oversight and will be subject to the fee for AQI treatment services. Approval of cold treatment equipment and checking of records helps to ensure that pest risks are kept at an acceptable level. APHIS has been working to automate this process, which is expected to eventually result in lower costs and a corresponding reduction in the fee for AQI cold treatment services. In the near term, the reduction in the treatment fee in this final rule will lessen the burden on entities importing commodities that require cold treatment. Cold treatment programs that operate under a trust fund agreement will be exempt from paying the fee.

Several commenters stated that the proposed fee increases are exorbitant and may not be representative of the service provided. The commenters noted that some services, such as fumigation, are performed almost exclusively during overtime hours, but APHIS gives the impression in **Federal Register** notices and the related documents that the costs for this work are not covered.

As has been described, APHIS employed ABC methodology to ensure that the new AQI user fees are commensurate by class with the costs of providing AQI services. For some classes, such as bus passengers, private vehicles, and pedestrians, transaction costs of creating and operating fee collection systems would be overly burdensome. As we have already noted, in this final rule, we have removed the overtime component from the flat user fee, thus lowering that fee to $237, phased in over 5 years; however, in order to recover our costs, we will need to charge overtime fees as appropriate.

A commenter stated that the treatment user fee will mean organic fruits and vegetables cannot be sold as organic.

Our proposal to recover AQI service fees for treatments against plant pests has no direct effect on whether fruits and vegetables can be sold as organic. While we propose a service fee for such treatments, the proposal makes no changes to existing treatment requirements. Shipments that are free of quarantine pests, or that do not require irradiation, methyl bromide, or other chemical treatments are able to keep their organic designation.

Fairness Issues

Many commenters expressed concerns about what they perceived as inequities in our proposed AQI user fee structure. Commenters representing, among others, pest-treatment providers, cargo and passenger conveyance industries, and importers and exporters, viewed the proposed fee increases and/or the imposition of new fees as unfairly burdensome to the entities on whose behalf they advocated. Some also suggested that the proposed fees were not commensurate with the actual costs of the AQI services provided. These issues are discussed in detail in the sections that follow.

Treatment Fee

Some commenters stated that having to pay not only the new treatment fee but also overtime fees for treatments conducted outside of regular business hours would place an undue financial burden on smaller importers and the fumigators that treat their cargo. In addition, some of these commenters viewed the requirement to pay both fees as unfair because they felt that the fees were duplicative to some extent, *i.e.,* that the affected entities would be charged twice for the same services.

As noted above, overtime fees will only apply when treatments are conducted outside normal business hours. The $237 treatment fee contained in this final rule only covers the costs we incur in providing treatment-related AQI services during normal business hours. This approach is more equitable in that those requesting services after hours are causing the government to incur a greater cost. This cost should not be subsidized by firms that transact business within the normal hours. Since APHIS charges the firm providing the fumigation services, there should be opportunities for the smaller importing firms to work with the fumigator to consolidate several fumigations so that the single AQI charge is divided between the firms accordingly.

Commenters stated that the proposed flat fee of $375 per enclosure or treatment seemed to be disproportionately high for those treatment providers with small enclosures or treatments and disproportionately low for those with large enclosures or treatments. It was suggested that in the latter case, the fee collected by the fumigator from the importer could fall far short of the expenses incurred in providing the treatment. It was stated further that the main and the only direct treatment cost to be captured is the inspectors' time. It was suggested that a better way to charge the user for the actual costs APHIS and CBP incur would be to charge a fee as a dollar per hour of inspector time instead of an arbitrary fee per enclosure or treatment. This method, it was stated, would be more equitable, especially to small business or businesses bringing in small shipments.

Contrary to the commenters' assertion, there is not a significant difference between the time required for the monitoring of smaller enclosures and that required for the monitoring of larger ones. The level of effort required by APHIS personnel is the same regardless of the amount of product that is undergoing a fumigation treatment. Our costs, therefore, are the same, and the fees accurately reflect those costs. The reduction and phasing in of the treatment fee in this final rule will lessen the burden on both large and small entities that are subject to the fee.

A large number of commenters stated that imposing the same flat fee for different types of treatments was inequitable because some types of treatments are more labor-intensive than others and require more personnel and more time. It was recommended that APHIS reevaluate the fees. According to the commenters, such a reevaluation would likely result in our assessing different fees for different treatments, *e.g.,* for cold treatment versus fumigation.

APHIS uses a labor survey to determine the level of effort required by AQI personnel to conduct various AQI activities, including those associated with treatments. Thus, for example, the monitoring of cold treatments requires work by APHIS unseen by the payer of the fee. This includes the analysis of the transmitted data. This is a direct service delivery and should not be confused with support costs, since the cost is incurred for each cold treatment monitored. The data we collected using our ABC methodology did not reveal a significant enough difference in the amount of labor associated with different treatments to warrant a more complex fee structure.

The April 2014 proposed rule contained a provision requiring treatment companies to be responsible for collecting the treatment fees from importers and remitting them to APHIS. Many commenters objected to this provision. It was stated that the requirement would impose substantial financial and administrative burdens on treatment providers, especially smaller entities. Among other things, treatment providers would have to hire additional administrative staff and establish dedicated bank accounts to prevent the remittances from being commingled with other company funds. It was suggested that the billing systems and infrastructure already exist for APHIS to bill treatment companies for the inspectors' time and labor. One commenter stated that a more equitable means of collecting the fee would be for APHIS to bill the shipping line or agent directly.

We do not agree with these comments. A large number of treatment providers do in fact already have mechanisms in place to collect and remit fees. The majority of fumigators are already collecting and remitting fees for overtime services that are currently being incurred. APHIS provides the treatment oversight service directly to the party that provides the fumigation service. While the imported commodity is owned by others, the treatment responsibility lies with the fumigator, who is ultimately responsible for the success or failure of the treatment; therefore, the fumigator should remit the fees. If APHIS were to bill importers for the cost of AQI treatment services, the fumigator would still be responsible for providing APHIS with necessary information on the commodities being fumigated, including the identity of the importers and each one's percentage share of a particular treatment, for APHIS billing purposes.

Aircraft and Air Passenger Fees

Commenters expressed a number of concerns regarding the equity of the proposed air transport and air passenger fees, with many objecting to the magnitude of the increase in the former.

Some commenters recommended that APHIS create a fee schedule for aircraft that would distinguish between categories of users. It was stated that the proposed rise in the commercial aircraft inspection fee was not warranted for smaller aircraft and would besides be extraordinarily burdensome for smaller-capacity passenger flights commonly deployed in flights from Mexico, Canada, and the Caribbean. Some commenters stated that APHIS should expand its small aircraft exemption to include aircraft with 100 or fewer seats. Other commenters stated that the April 2014 proposed rule does not provide reasoned justification for the increase in the commercial aircraft inspection fee specific to small commercial jet aircraft with 20 or fewer seats. According to the commenters, inspecting smaller aircraft, such as commuter planes, imposes less of a cost burden on APHIS than does inspecting larger airliners. Some smaller aircraft may carry only passengers' luggage and not cargo and therefore impose a minimal cost burden on APHIS. Smaller aircraft, it was asserted, should therefore be charged a lower fee, commensurate with that lower cost burden, if not exempted from the fee altogether

We do not agree with these commenters. As noted earlier, aircraft with 64 or fewer passenger seats are, in fact, exempt from the AQI commercial aircraft inspection fee if they are: (1) Not carrying the following cargo: Fresh fruits, fresh vegetables, plants, unprocessed plant products, cotton or covers, sugarcane, or fresh or processed meats; and (2) do not offer meal service other than beverages and prepackaged snacks that do not contain meats derived from ruminants, swine, or poultry or fresh fruits and fresh vegetables. Additionally, because they are usually short in duration, they usually offer only drink service and light, prepackaged snacks such as peanuts. They thus would be exempt from paying the fee. Any arriving aircraft, regardless of size, that do not meet these conditions may pose a sanitary or phytosanitary risk and need to be inspected. We have a statutory obligation under the Animal Health Protection Act and the Plant Protection Act to prevent the introduction or dissemination of animal and plant pests and diseases into the United States. As noted elsewhere, the size of a particular means of conveyance does not necessarily correspond to the amount of time it takes to conduct inspections of the conveyance.

A commenter representing a Canadian airline stated that APHIS' imposition of the aircraft inspection user fee on passenger aircraft operating U.S./Canada trans-border service violates U.S. and international law. According to the commenter, the fee violates the FACT Act by being applied without regard to the class of aircraft, despite the difference in cost burdens associated with the different classes. In relation specifically to Canada, the proposed fees were said by the commenter to violate Article 9 of the 2007 U.S.-Canada Open Skies Agreement, which requires that fees be ''just, reasonable, not unjustly discriminatory, and equally apportioned among categories of users.'' The commenter urged us to reinstate the exemption provided to carriers operating U.S./Canada services that existed prior to 2007, since there has been no evident enhancement of inspection services to justify the removal of that exemption.

We do not agree with these comments. The FACT Act requires that AQI user fees be commensurate with the costs we incur in performing our AQI activities with respect to the class of persons or entities paying the fees. The adjusted fees are necessary for us to better ensure that we recover our costs of providing AQI services, and, as noted above, the costs we incur for inspecting commercial aircraft do not differ significantly due to the size of the aircraft. Further, the fees do not in any way discriminate against Canadian air traffic. Aircraft from any country arriving in the United States are subject to the same fees. We do not agree with the recommendation by the commenter to restore the user fee exemption for air carriers operating between the United States and Canada. When the exemption was in effect, we were not recovering the costs of conducting those inspections, and shortages of funding and personnel hampered our inspection efforts.

Some commenters objected to our levying both commercial aircraft and commercial air passenger user fees. It was stated that, while the FACT Act permits the use of passenger fees to pay for inspections of the aircraft, by charging both passengers and operators inspection fees, we are, in effect, collecting double payments. Such double charging, it was stated, is not permissible under the provisions of the FACT Act and cannot be justified on the basis of cost data. It was noted that in the preamble to the April 2014 proposed rule, we stated that the costs of inspecting cruise ships would be covered by the proposed commercial vessel (cruise) passenger fee alone. One commenter asked the following question: If the international air passenger user fee must by law fully cover the AQI costs associated with inspecting the aircraft on which the passenger arrived, what costs, then, does an aircraft fee applicable to commercial passenger aircraft cover? Other commenters recommended that we exclude commercial passenger aircraft from aircraft inspection fees, since the costs of conducting such inspections is paid for by the passenger fees.

We do not agree with the suggestion by the commenters that we are double charging or violating the FACT Act by imposing both an aircraft fee and an air passenger fee, since the respective fees cover different costs. As noted in the preamble to the April 2014 proposed rule, the air passenger fee covers our costs for, among other related things, screening passengers upon arrival for agricultural products by CBP Agriculture Specialists and CBP officers; inspecting baggage using CBP agriculture canines and specialized non-intrusive inspection equipment; inspecting the interior of the passenger aircraft; monitoring the storage and removal of regulated international garbage from the aircraft; safeguarding and disposing of any seized or abandoned prohibited agricultural products; and identifying pests found on prohibited agricultural products brought into the country by air passengers. The commercial aircraft fee covers, among other related things, costs we incur in reviewing manifests and documentation accompanying incoming cargo; targeting higher-risk cargo for inspection or clearance; inspecting agricultural and agricultural-related commodities, international mail, expedited courier packages, containers, wood packaging and other packing materials and determining entry status; inspecting the aircraft hold or exterior for contaminants, pests, or invasive species; identifying pests found during those inspections; and safeguarding shipments pending PPQ determination for treatment or final disposition. Based on our ABC analysis, we determined that the air passenger fee is not adequate to recover all the costs we incur in inspecting both passengers and aircraft, while the sea passenger fee is adequate to recover the costs we incur in inspecting both passengers and cruise ships.

In the April 2014 proposed rule, we proposed to reduce the air passenger inspection fee from $5 to $4. One commenter objected to lowering that fee on the grounds that most quarantine material is seized from air passengers and that, therefore, the lower fee would not be commensurate with the labor required for inspection of such passengers.

We do not agree with this comment. As we noted in the preamble to the April 2014 proposed rule, our ABC data indicated that, if not adjusted, the air passenger fee was going to generate revenues in excess of that required to support anticipated costs. As a result, we proposed a 20 percent decrease in this fee (from $5 to $4) to better align the fee with the cost of activities related to air passengers. We have since lowered this fee further, to $3.96, due to the change in our methodology for calculating the reserve. The commenter did not present data that would support the position that the adjusted fee was too low.

Commercial Truck Fees

Some commenters stated that the proposed fee increase for commercial trucks, from $5.25 to $8 ($7.55 in this final rule), could put Canadian and Mexican products at a competitive disadvantage in comparison with products from other foreign countries that are subject to the same international trade obligations. It was claimed that the fees for commercial truck shipments are effectively higher than the fees for the other transportation modes by means of which most other countries ship their goods to the United States.

We do not agree that fees for commercial truck shipments are effectively higher than the fees for other transportation modes. As we have noted, our AQI user fees are intended to recover the costs we incur in providing AQI services and are set on that basis. These fees are based on the cost of services provided, using the ABC methodology referred to above. Fees for various conveyances are calculated based on the projected number of conveyances subject to inspection within each transportation mode, using standard units such as a truck or airplane. Inspection costs are driven by a number of factors, including number of conveyances, risk targeting, and other criteria, but costs are spread among all conveyances subject to inspection.

Other commenters expressed the view that the proposed commercial truck fee was inequitable because while the majority of trucks crossing the bridges between the United States and Canada do not carry food or agricultural items, the fee would be applied to all trucks. Commenters stated that the universal application of the truck fees contradicts the premise of the ABC approach and results in an unfair application of the user fee to those trucks that do not use the service because they do not carry agricultural products.

We do not agree with this comment. Any cargo, whether agricultural or non-agricultural, or conveyance could potentially carry hitchhiking pests, seeds, or contaminants. For example, wood packaging material, such as wooden pallets, which are used to ship such nonagricultural products as electronic items, can carry wood-boring insects, noxious weed seeds, gypsy moths, and other hitchhiking pests that can attach themselves not only to nonagricultural items but also to the vehicles conveying them, thus posing an additional concern. In addition, prohibited soil may be attached to the articles in a shipment or to the conveyance itself. To allow us to mitigate these risks adequately, any commodities and the conveyances that carry them may be subject to inspection. Additionally, we note that, under the scenario proposed by the commenters, we would still need to inspect commercial trucks in order to determine that they were not carrying agricultural products.

Commenters stated that commercial conveyances operating under CBP's Customs-Trade Partnership Against Terrorism (C–TPAT) program pose a much smaller threat of importing items of concern to APHIS than do buses or private vehicles, which are exempt from AQI user fees. It was suggested that, at a minimum, therefore, APHIS, in coordination with CBP, should consider a reduced AQI fee for C–TPAT-certified motor carriers.

The C–TPAT program seeks to prevent the disruption of international trade via terrorism. While C–TPAT members may be considered low-risk in terms of terrorism, this program does not have an agricultural phytosanitary component and does not eliminate the need for conducting agricultural inspections.

Some commenters stated that the commercial truck fees violated Executive Order 13563, which requires Federal agencies to integrate their regulatory efforts when there are overlapping regulatory requirements. Charging a separate AQI fee for inspecting commercial vehicles when CBP is already performing and charging for those services is redundant and unnecessary, according to the commenters.

We do not agree with this comment. APHIS and CBP do not have overlapping authorities that would result in charging for the same services. CBP collects Customs user fees to defray certain costs related to the provision of services that ensure that carriers, passengers, crew members and their personal effects comply with customs laws. CBP also collects immigration user fees to defray certain costs related to the provision of services that ensure compliance with immigration laws. APHIS charges AQI user fees for work conducted by CBP under APHIS' statutory and regulatory authority.

Commercial Vessel and Commercial Vessel (Cruise) Passenger Fees

Many commenters representing the commercial vessel industry viewed our proposed fee increases and the proposed imposition of a commercial vessel (cruise) passenger fee as disproportionate, claiming that they unfairly targeted the maritime industry. Commenters stated that the fees were excessively burdensome for the industry and did not in all cases correspond with the cost of the AQI services provided.

As we explained in the preamble to the April 2014 proposed rule, we employed the ABC methodology to determine the costs of AQI services, and this information, along with other factors, was used to define an appropriate fee structure and set fee rates. Entities that are assessed AQI fees are paying to cover the costs that we incur in performing the services that we are required to perform for those entities.

Commenters noted that vessels that transit exclusively on the Great Lakes move mostly dry bulk cargos and not agricultural commodities. Such vessels, the commenters stated, do not pose a risk of spreading agricultural pests or diseases, and often, there is no boarding or AQI inspection of the vessels and their cargo by APHIS personnel. Therefore, according to the commenters, there is no basis in such cases for APHIS to levy AQI fees, since APHIS or CBP personnel are not providing AQI services. It was recommended that the fees for vessels transporting goods exclusively on the Great Lakes not be raised and, further, that such fees be collected only from vessels carrying agricultural commodities.

We do not agree with this comment. As we noted above, any cargo or conveyance may carry hitchhiking pests, seeds, or contaminants. In addition, there could be risk associated with storage of regulated international garbage, plant pest concerns associated with the origin of the vessel (*e.g.,* Asian gypsy moth or khapra beetle), a previous history of carrier contamination, or compliance-related wood packaging material concerns. Therefore, such vessels are subject to AQI inspection conducted by CBP officers. We would also note that the vessel fees cover not only the costs of the AQI inspections themselves, but those we incur in performing, among other things, targeting activities, manifest review, and general oversight.

Prior to this rulemaking, the regulations in 7 CFR 354.3(b)(1) capped the number of payments of AQI fees for individual vessels at 15 per calendar year. In order to recover the costs of administering AQI services to commercial maritime vessels, we proposed to eliminate that cap. Some commenters recommended that we reinstate that cap in the final rule. It was suggested that the elimination of the cap would be burdensome for the commercial maritime industry and extremely so for international flag vessels operating on the Great Lakes. Such vessels, commenters stated, make several port calls per single voyage into the Great Lakes, while other commercial vessels in the same fee class tend to make single voyages with often only one port call and a complete discharge of cargo at that port. Vessels operating on the Great Lakes would therefore be subject to the fees much more often per calendar year than those making less frequent port calls.

We do not agree with the commenters. As we noted in the preamble to the April 2014 proposed rule, our ABC data indicated that by retaining the cap, we would not be able to recover fully the costs of providing AQI services to maritime vessels. Further, the tasks of collecting and administering user fees are less personnel-intensive, and therefore more cost-effective and efficient when the fees are uniform, rather than when there are different fee structures for conveyances or geographic locations that fall within the same general categories. It is true, as the commenters pointed out, that because vessels that make several port calls per voyage into the Great Lakes would be subject to the applicable AQI fees at each port of call, they would be charged more per year than vessels making less frequent port calls. Vessels in the former category, however, would also be making more frequent use of AQI services; therefore, the cost of providing those services to such vessels would be higher for APHIS and CBP.

A commenter stated that the proposed new treatment fee was unfair to the commercial maritime industry because customers of the industry would be heavily impacted while those in other sectors would not. According to the commenter, bus passengers, privately owned vehicle passengers, and pedestrians, all of whom are exempted from the fees, require more of APHIS' resources than do customers shipping or receiving cargo via private maritime vessels. The commenter stated that imposing a new fee structure on a use activity that is currently paying its share through hourly charges, while charging no fees for multiple use activities that are collectively responsible for $223 million in costs to APHIS, goes against the directives of the FACT Act in regard to cross-subsidizing AQI services.

As we noted in the preamble to the April 2014 proposed rule, we are retaining the previously established exemptions for bus passengers, privately owned vehicle passengers, and pedestrians because the collection of such fees would not be cost-effective for APHIS and CBP and could cause backups at ports of entry that could affect international trade. Regarding the cross-subsidization issue, the proposed rule was reviewed for consistency in adhering to the FACT Act. Additionally, GAO has reviewed APHIS' work in AQI fee setting. Based on the findings of those reviews, and our own internal review and assessment, we confirmed that there is no cross-subsidization of AQI programs through user fees occurring.

A commenter expressed the view that the proposed maritime vessel fee increase was unfair to carriers operating in the short-sea-shipping dry bulk markets. Such carriers do not own the cargo they carry, and compensation for its carriage is not directly dependent on the value of the commodity delivered. The carriers operate with very small profit margins to ensure competitiveness, and the proposed fee increase would have an inordinate impact on them. It was claimed that the methodology we used in setting the proposed fees led us to underestimate the impact of the fee increase on such entities. Further, it was stated that the fee increase is not justified where the vessels are not shipping agricultural products and there is no risk of spreading pests or diseases.

In accordance with the FACT Act, which states that the Secretary may prescribe and collect fees sufficient to cover the cost of providing AQI services, and policy of the Executive Branch of the Federal Government, we set our fees at levels that enable us to recover the costs of providing AQI services for each person or entity receiving those services. Regarding the assertion that the increased fees are not justified when vessels are not carrying agricultural products, as noted above, any cargo or conveyance may harbor hitchhiking pests or contaminants.

A commenter stated that the proposed $2 commercial vessel (cruise) passenger fee is a one-size-fits-all mechanism that contradicts APHIS' stated principle of reducing risk by targeting inspections. According to the commenter, by applying the fee uniformly to all passengers, APHIS recognizes neither the principle of risk analysis and reduction nor the extensive differences among cruise operations in general and between individual cruise ship operations that are careful to mitigate the risk of pest or contaminant transmission and those that are not.

We do recognize that risk levels differ among pathways, and the nature of our AQI activities for all commercial vessels, including cruise vessels reflect those differences. To that end, we do employ and will continue to employ targeting of commercial cruise vessels that we consider to pose a higher-than-average pest risk.

However, the pest risk associated with a particular vessel or class of vessels is not static and can change significantly over time. For example, a port of call visited by the vessel may be higher risk for pest introductions during certain months of the year than others. For this reason, it would be untenable for us to attempt to establish and administer a fee system for cruise passengers that was based on levels of risk when we know those levels of risk will fluctuate.

Additional Comments on Fairness Issues

Some commenters stated that the proposed fee adjustments and new fees would disproportionately punish importers with smaller volumes. Others expressed the view that importers and exporters were already paying a disproportionate share of APHIS' costs and should not be subject to additional burdens.

In collecting the fees, APHIS is recovering the costs incurred from both APHIS' and CBP's AQI-related activities. Entities paying the fees are those that use the AQI services that the two agencies provide. The ABC methodology that we employ in calculating our costs and setting our fees associates the cost we incur with the level of staff effort applied. APHIS and CBP staff have to be present at the ports and conduct AQI activities regardless of the size and volume of the cargo or conveyance requiring inspection. Importers and exporters pay only those costs that they incur by using APHIS services.

A commenter stated that the proposed rule favored break bulk shipments over container and air shipments, subjecting the latter two to disproportionate charges because of lot sizes. The commenter further stated that the disparity in charges relative to shipment size would be crippling to smaller companies and those that ship by container. It was suggested that the final rule be revised to prorate the cost of the inspections across all exporters in a way that affects each exporter uniformly and offsets the real costs to perform the necessary inspections, perhaps on a per pound basis. The commenter stated that such revisions were necessary to ensure that each exporter and importer is treated the same, regardless of the size of the shipment.

As noted above, the methodology used to determine the costs of our AQI activities is based upon the time required of APHIS and CBP staff to perform those activities. Those activities must be performed regardless of the size or volume of the shipment or whether or not it is in a container.

Some commenters representing various sectors of the transport industry expressed the view that rather than charging user fees to carriers, APHIS should charge shippers or receivers only for agricultural cargo that requires inspection or certification.

As we have noted above, the cost of inspecting and clearing the carrier itself is considered an AQI activity. Such inspection and clearance are needed even when a conveyance may not be carrying agricultural products because of the possible presence of hitchhiking pests and contaminants.

In contrast to some of the commenters referred to above, who favored exemptions for certain classes of conveyances, other commenters objected to our allowing any such exemptions. It was stated that AQI user fees should be applied equally to all modes of transportation inspected, without complete waivers for select classes.

As we noted above, this rulemaking leaves intact previously established exemptions from user fees for certain categories of conveyances and individuals, including some relatively small commercial aircraft that are not carrying certain regulated cargo, bus passengers, privately owned vehicle passengers, and pedestrians. We determined that collecting user fees for these categories of conveyances and passengers would not be cost-effective for APHIS and CBP. As stated previously, any cost not recovered through a fee is paid through appropriated funding. When the Federal Government cannot fully recover the costs of providing a service, the excess costs are ultimately borne by U.S. taxpayers rather than by the direct beneficiaries of that service. The rationale for collecting user fees is to have those who benefit from a service cover its costs rather than have the general public cover them.

One commenter representing the seed industry stated that industry would prefer to have a system whereby seed cleaning and treatment facilities in the private sector are accredited by APHIS to perform those services without the need for direct supervision or oversight from APHIS or the State designee(s). It was stated that most seed shipments are much smaller and more manageable than bulk commodities and therefore should be treated differently in regard to fees and inspections.

This is comment is outside the scope of the present rulemaking. APHIS will consider the comment, however, as it continues to explore alternate ways to safeguard American agriculture while facilitating international trade.

Commenters suggested that some of the costs of the AQI program should be borne by the general public rather than the users of the AQI services. It was claimed that because, in addition to AQI services, a significant part of the CBP mission is security, the public benefits from services provided at ports of entry. The commenter further stated that APHIS and CBP need to determine how much of their inspection activity is directed toward the public good and how much toward providing services for industry. It was recommended that once that determination was made, the agencies should re-evaluate their proposed fees and adjust them accordingly. Services that benefit the general public, according to the commenter, should be funded by Congressional appropriations or means other than charging user fees to industry.

We do not agree with the comments. While U.S. producers and consumers are indirect beneficiaries of AQI treatment services, importers and operators of the means of conveyance used to import a commodity benefit directly by being able to engage in their respective businesses. AQI user fees charged to commercial trucks, rail, aircraft, and cargo vessels cover the costs of ensuring that sanitary and phytosanitary risks posed by the means of conveyance and the commodities they carry are at an acceptable level. Industry organization and market structure largely determine how the fees or some portions thereof may be passed forwards or backwards. Lastly, we note that the general public does directly pay in part for AQI services from which they benefit indirectly to the degree that appropriated funds are used to support those services not covered by the fees.

Miscellaneous Comments

One commenter stated that the fees were based on the assumption that AQI-related services would be rendered by personnel at the general schedule (GS) grade 10, step 1 level. The commenter stated that AQI services provided by APHIS and CBP tend to be rendered by personnel at the GS grade 11 or 12 levels, and that APHIS may have therefore underestimated the direct cost of services rendered when computing the fees that we proposed.

We agree with the commenter that AQI services are often rendered by personnel at higher GS levels than grade 10, step 1. However, in order to compute the fees, we took into consideration the actual GS grade level of the personnel currently performing the services. We also took into consideration the possibility that personnel rendering the services will be promoted to a higher GS grade level before the fee schedule is revised.

Several commenters stated that any changes to user fees assessed for overtime services provided at ports of arrival would have significant negative effects on the economy, including job loss and increased prices for agricultural products. Several other commenters suggested we include revisions to the overtime user fee schedules in this final rule.

We did not propose to adjust the overtime services fees in this proposed rule. However, in a proposed rule published in the **Federal Register** on April 25, 2014 [3] (79 FR 22887–22895, Docket No. APHIS–2009–0047), we proposed to revise those schedules.

One commenter suggested that we eliminate overtime fees entirely and consider those overtime costs in setting AQI user fee schedules.

If we were to eliminate overtime fees, importers who operate during normal business hours would substantially subsidize importers who use these overtime services. We do not consider that to be equitable.

Several commenters suggested that, in lieu of user fees, APHIS should request Congressional appropriations for the AQI services we provide. Other commenters pointed out that APHIS has discretionary authority under the FACT Act to charge AQI user fees, but that the Act does not mandate that we do so.

We believe the intent of the FACT Act was for APHIS to charge user fees, commensurate with the costs of services, for certain AQI-related services that were, up to that point, funded through Congressional appropriations. The amendments to the Act clarified that this was to ensure that APHIS recovers the actual costs associated with AQI-related services that we provide; annual appropriations do not guarantee such cost recovery. Making the services contingent on Congressional appropriations once more would be inconsistent with what we understand to be the intent of the FACT Act, and could result in instances in which we do not recover the costs for services rendered. This could, in turn, result in us decreasing the nature or scope of AQI-related services we provide.

One commenter asked that we develop a concrete plan and methodology for setting user fee levels and evaluating their appropriateness.

As documented in the proposed rule and its supporting documents, we have developed such a methodology: The ABC accounting methodology.

One commenter pointed out that we proposed a number of new user fees in the proposed rule. The commenter assumed that this meant that we were also proposing new AQI-related services and initiatives, and proposing a user fee for these new services and initiatives in order to recover costs. The commenter questioned the appropriateness of a proposed rule as a vehicle for expanding the scope of Agency actions in such a manner.

We did not propose to conduct any new AQI-related services. Rather, we proposed to charge an AQI user fee for services that to that point had been provided without a fee. Proposing a new fee schedule through rulemaking is authorized by § 136a(a)(1) of the FACT Act, and is consistent with our obligation under the Administrative Procedure Act to conduct rulemaking for any requirements of general applicability and future effect.

One commenter, an importer, stated that his products are always infested

[3] To view the proposed rule, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0047.*

with plant pests, and thus subject to treatment at the port of arrival. He requested that, if he can demonstrate pest freedom for his products at least once, we waive the treatment user fee, contingent on the continual pest-freedom of the products.

The treatment referenced by the commenter is for commodities determined to be infested with a plant pest. If, in the future, the commenter's shipments are determined to be free of plant pests, they will not be treated, and he will not incur the user fee.

Several commenters recommended that we consider certifying third parties to provide AQI-related services.

In recent years, we contemplated initiating rulemaking to establish such an accreditation system for inspection and clearance services of imported commodities. However, we identified several issues that precluded us from issuing such a rule. First, there could in certain instances be a significant financial incentive for the third party to clear products for entry, even if they are infested or present a known plant pest risk. Under this scenario, those under accreditation could realize a financial benefit by clearing products that do not meet U.S. phytosanitary requirements. Second, in order for this not to occur, APHIS would need to exercise ongoing oversight of the third party's services. This would, in turn, minimize the benefits of such third party accreditation. That being said, consistent with OMB Circular A–76, we continue to explore ways to use third parties in order to provide AQI-related services.[4]

One commenter stated that, if the rule were finalized, APHIS should coordinate with CBP in order to ensure that they receive cost recovery for the AQI services they render.

APHIS agrees with the commenter. We have worked closely with CBP to ensure that costs are recovered for AQI services and will continue to do so.

One commenter stated that, because fumigators currently charge importers for their services, the proposed treatment fee was redundant and should not be finalized.

We disagree that the fee is redundant. Fumigators charge for the fumigant used and their services in applying the treatment. The treatment fee that we proposed was for our oversight of the treatment to ensure that it was applied accurately and the treated commodities do not present a plant pest risk. The fumigation fee is charged to the fumigator, since APHIS is providing oversight of the process to ensure efficacy. It is a business decision of the fumigator to pass this cost on to its customers.

Several commenters stated that, instead of revising the fee schedules to ensure full cost recovery for AQI services that we provide, APHIS and CBP should explore cost-cutting measures for those services.

APHIS and CBP are committed to the Federal Cost Cutting Campaign and the principles of Executive Order 13589, ''Promoting Efficient Spending.'' To that end, we continually evaluate our AQI program in order to reduce costs and identify more efficient means to deliver our services. For example, APHIS is establishing a new Analysis and Information Management Program. The goal of this program will be to coordinate analyses that will inform program delivery in the areas of AQI targeting, domestic surveys, and phytosanitary and trade management. APHIS has also committed resources to expand the Agency's involvement with CBP's Commercial Targeting and Analysis Center (CTAC), a facility designed to streamline and enhance Federal efforts to address import safety issues. The CTAC combines the resources and manpower of CBP and other government agencies to protect the American public from harm caused by unsafe imported products by improving communication and information-sharing and reducing redundant inspection activities.

The fee schedule increases that we proposed do not supplant these efforts. However, under Federal policy, when we charge AQI user fees, we do so in a manner to recover the cost of the services rendered. The fee schedules that we proposed would move us closer to such full cost recovery.

If, at a future time, our ongoing efforts to promote efficiencies and reduce costs in our AQI program result in significant cost savings, we will revise the fee schedules accordingly.

One commenter stated that GAO had instructed us to reduce the fee reserve, and we should implement this recommendation.

The commenter is mistaken. Reduction of the fee reserve was not among GAO's recommendations.

Several commenters stated that the rule contradicted the policies set forth in Executive Order 13659, ''Streamlining the Export/Import Process for America's Businesses.''

That Executive Order directs Federal agencies to develop and implement the International Trade Data System (ITDS). ITDS would provide a single portal for businesses to enter data in order to comply with the regulatory and policy requirements of multiple Federal agencies regarding imports and exports. The Order also instructs agencies to ''improve the broader trade development of innovative policies and operational processes that promote effective application of regulatory controls, collaborative arrangements with stakeholders, and a reduction of unnecessary procedural requirements.''

APHIS is committed to expeditious deployment of ITDS. Additionally, as noted above, we are engaged in several initiatives to identify more efficient means of delivering AQI services. However, we disagree with the commenters that the proposed rule contradicts the policies set forth in the Order. Nothing in the Order explicitly or implicitly prohibits agencies from charging user fees for import or export-related services. Additionally, Section 8 of the Order specifically states that it does not affect the authority granted by law to an agency. As noted above, discretionary authority has been granted to APHIS under the FACT Act to charge user fees for AQI-related services, and to set fees at a level that leads to full cost recovery for those services.

The same commenters stated that full deployment of ITDS would eliminate the need for user fees.

We disagree. While full deployment of ITDS will facilitate certain AQI-related services and could, over time, reduce costs, certain of the services for which we charge fees, such as inspection of regulated articles and means of conveyance and oversight of treatments, cannot be fully automated and must be performed by authorized personnel.

One commenter stated that the rule appeared to target the commercial aircraft industry. The commenter stated that the industry is subject to frequent ''holds'' in which inspectors detain and inspect commodities destined for inland hubs, and questioned the manner in which APHIS or CBP determines to select a commodity for inspection. As evidence, the commenter cited an audit in which an express consignment carrier was subject to 1,879 inspections during a 1-week period in 2013, with only 12 shipments being determined to be infested with plant pests. The commenter stated that this indicates inefficiencies in the manner in which APHIS and CBP conduct AQI-related inspections, and that a thorough reevaluation of our criteria for selecting a commodity for inspection could reduce Agency costs and reduce or eliminate the need to increase AQI user

[4] To view the circular, go to *http://www.whitehouse.gov/omb/Circulars_a076_a76_incl_tech_correction.*

fees for the commercial aircraft industry.

The number of times that the express consignment carrier was subject to inspection and the relatively low number of pest detections is not necessarily indicative of inefficiencies in our inspection processes. The commenter is using CBP enforcement metrics to determine efficiencies, that is, seizures resulting in shipments being removed from the shipping continuum. However, these metrics are not appropriate for assessing the effectiveness of AQI inspections. Furthermore, AQI strategies allow for shipments to be reconditioned, *e.g.,* by means of fumigation and cleaning to mitigate risk of infestation and contamination. Such strategies ensure that most shipments are allowed to continue to the consignee. Both APHIS and CBP employ risk-based modeling to determine which shipments to target for inspection. Factors that may lead to an inspection include: The nature of the commodity; the region from which it is imported; the compliance history of the importer; and incomplete, vague, erroneous, or illegible information on accompanying documentation. That being said, we are evaluating the manner in which we conduct inspections of shipments destined to ECCFs in order to determine whether we can make our processes simpler and more efficient, and have engaged the Express Association of America in this evaluation.

One commenter stated that we should have reduced the airline passenger fee via an interim rule, rather than a proposed rule.

We did not do so because we believe that it is important for affected parties to be afforded an opportunity to comment on significant proposed revisions to user fee schedules before they are finalized, even if these revisions would reduce burden on affected entities.

Some commenters stated that an argument could be made that the imposition of the APHIS fees may contravene Article 310 of the North American Free Trade Agreement (NAFTA), which prohibits the adoption of any customs user fees, and Article VIII:1(a) of the General Agreement on Tariffs and Trade 1994 (the GATT), which says that all fees and charges shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes. Another commenter stated that APHIS fees may also contravene Article 3.12 of the United States-Chile Free Trade Agreement (FTA), which requires that, in accordance with Article VIII:1 of the GATT, all fees and charges shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

We disagree with the commenters' assertion that the AQI user fees contravene NAFTA, the GATT, or the United States-Chile FTA. Article 310 of NAFTA states that ''No Party may adopt any customs user fee of the type referred to in Annex 310.1 for originating goods,'' and Annex 310.1 refers to a specific fee—the merchandise processing fee—that has since been eliminated for goods of Canada and Mexico. Thus, Article 310 of NAFTA does not speak to, let alone preclude, APHIS' AQI user fees.

Similarly, Article VIII:1(a) of the GATT states, in its entirety, that ''All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.'' Article 3.12(a) of the United States-Chile FTA uses language directly from Article VIII:1(a) of the GATT. Because the AQI user fees are charged in connection with services rendered by CBP and APHIS personnel and reflect the approximate costs to the agencies of providing those services, they are entirely permissible under Article VIII:1(a) of the GATT and Article 3.12(a) of the United States-Chile FTA.

Several commenters stated that APHIS should make more use of risk assessments in conducting AQI-related services.

We agree with the commenters that risk assessments are valuable tools that can enhance targeting, effectiveness, and efficiency when conducting AQI-related activities. APHIS routinely analyzes pest risk posed by numerous potential pest pathways to the United States to update and increase the effectiveness of its inspection targeting and quarantine action policies. For example, APHIS recently worked with South American and New Zealand cut flower exporters to characterize the risk of immature, unidentifiable life stages of *Tetranychus* mites which are often intercepted on certain flowers. APHIS analyzed results from comprehensive surveys of export growing areas and determined that the common two-spotted spider mite was the only *Tetranychus* mite likely to be found on those flowers. As a result of that risk analysis, APHIS ceased requiring fumigation on import shipments of those specific flowers from the surveyed areas when unidentifiable *Tetranychus* life stages are intercepted.

The same commenters stated that we should consider implementing ''trusted trader'' practices into our AQI-related services. They stated that this could allow us to devote personnel and resources to those shipments most likely to present a plant pest risk.

Many exporters broker products from numerous growers. Even very large exporters who grow their export product may periodically augment shipments with auxiliary growers' material to make expected volumes on deadline. These exporters cannot control conditions in various growers' fields that may raise or lower pest risk associated with the export crop (*e.g.* if pesticides were applied properly, weeds are controlled, or crops are rotated to reduce pest and disease occurrence). This means that an exporter's currently low risk commodity could pose a considerably higher pest risk next month. And, consequently, exporters cannot ensure that all pests are adequately excluded from their shipments.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This final rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also provides a final regulatory flexibility analysis that examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

APHIS was given authority by the FACT Act, as amended, to prescribe and collect cost-based fees for providing AQI services for inbound passengers, conveyances, and cargo at U.S. ports of entry. AQI activities include inspection of incoming conveyances, passengers, and cargo; pest identification; monitoring and, at times, conducting of treatments; and administering the program's finances, scientific research, and policy development. In addition to such activities, the FACT Act, as amended, allows for the maintenance of a reasonable balance (reserve) in the AQI user fee account.

APHIS is amending the user fee regulations by adding new fee categories and adjusting current fees charged for certain AQI services. We are also altering or removing certain fee caps. We have determined that revised user fee categories and revised user fees are necessary to recover the costs of the current level of activity, to account for actual and projected increases in the cost of doing business, and to more accurately align fees with the costs associated with each fee service.

AQI fees are mandated to be cost-based and paid by the users of the AQI services. In the RIA, benefits and costs of the changes to the AQI user fee schedule are evaluated in accordance with Executive Orders 12866 and 13563. Expected effects for small entities are evaluated as required by the Regulatory Flexibility Act.

AQI services protect U.S. agricultural and natural resources from the inadvertent introduction of foreign pests and diseases that may enter the country and the threat of intentional introduction of pests or pathogens. The changes in user fees will more closely align, by class, the cost of AQI services provided and user fee revenue received. The new fee schedule will better reflect the costs of AQI services provided to commercial cargo vessels, commercial trucks, commercial cargo railcars, commercial aircraft, and international air passengers arriving at U.S. ports; newly include fees for additional classes of recipients of AQI services; remove user fee caps for commercial cargo vessels and commercial cargo railcars; and increase the fee cap for commercial trucks. Fee caps refer to limits on the number of times a fee must be paid for a specific truck (with transponder), cargo vessel, or cargo railcar in a calendar year. The current and new AQI user fee rates are shown in Table 13.

TABLE 13—CURRENT AND NEW AQI USER FEE RATES

[Dollars]

User fee class	Current	New
Air passenger	$5.00	$3.96
Commercial aircraft	70.75	225.00
Commercial cargo vessel	496.00	825.00
Commercial truck	5.25	7.55
Commercial truck with transponder (one annual payment)	105.00	301.67
Commercial cargo railcar	7.75	2.00
Commercial vessel (cruise) passenger	no fee	1.75
Treatment [1]	no fee	237.00

[1] The fee for AQI treatment services will be phased in over 5 years: First year, $47, second year, $95, third year, $142, fourth year, $190, and fifth year, $237.

APHIS used the ABC methodology to determine the rate adjustments for classes that currently pay user fees and the rates for newly charged classes. The two classes that will be newly charged user fees under the rule are commercial vessel (cruise) passengers and recipients of AQI treatment services. Currently, the cost of AQI services received by these entities is borne by other user fee classes and/or taxpayers through appropriated funding. Elimination of the user fee caps for commercial cargo railcars and commercial cargo vessels will more closely align the user fee revenue received with the cost of providing AQI services for these conveyances and rail and vessel cargo. We retain the cap for commercial trucks with transponders because of the increased efficiency gained through the use of transponders at border inspections. The cap for commercial trucks will be increased, however, and these businesses will pay in fees a larger share of the cost of the AQI services they receive.

Changes under the new user fee schedule to AQI revenue and the AQI reserve and modeled economic effects of the rule are illustrated for 3 years, FYs 2015–2017.[5] Under the new fee structure, it is estimated that AQI user fee revenue for FY 2015 would have been about $701.4 million, as compared to about $593.1 million under the current fee schedule, an increase of $108.3 million (Table 14). Given the effective date of the final rule, USDA will not collect revenues in FY 2015 under the new fee schedule, but this comparison is included to show the difference in the most recent year. If USDA collected revenues in FY 2015 under the new fee schedule, reliance on appropriated funds to finance certain AQI services in FY 2015 would have been reduced by $31.7 million, assuming that the cost of AQI services, $957.6 million, would be the same with or without adoption of the new fee schedule since the level of AQI services provided would not change. An estimated AQI program deficit of $54.2 million under the current fee schedule would not be incurred.

The reserve fund ensures that AQI program operations can continue without interruption when service volumes fluctuate due to economic conditions or other circumstances, and APHIS and CBP can adjust their activities to account for the changed economic conditions. As there are fixed costs related to providing AQI services that the program incurs, a reasonable reserve is needed to ensure continuity of service.

[5] The 3-year period, FYs 2015–2017, is used to show the likely magnitude of the changes to AQI user fee and appropriated funding revenues.

TABLE 14—ILLUSTRATIVE EXAMPLE OF AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING UNDER THE CURRENT AND NEW USER FEE SCHEDULES, AND COST OF AQI SERVICES, FY 2015, MILLION DOLLARS

	Current fee schedule	New fee schedule	Change
AQI revenue:			
User fees	$593.1	$701.4	$108.3
Appropriated funding	310.3	278.6	−31.7
AQI total revenue	903.4	980.1	76.7
AQI costs	957.6	957.6	0.0
AQI revenue minus costs	−54.2	22.5	76.7

Note: The AQI user fee revenue and costs shown exclude overtime charges incurred in conjunction with AQI treatment services that are paid for separately. The AQI user fee revenue and costs shown for the current fee schedule are reduced from what were reported in the preliminary RIA for the proposed rule by $6.2 million, the estimated reimbursable overtime costs of AQI treatment services in FY 2015. Given the effective date of the final rule, USDA will not collect revenues in FY 2015 under the new fee schedule, but this comparison is included to show the difference in the most recent year.

Respectively for FYs 2016 and 2017, in comparison to current fee schedule projections, AQI user fee revenue is expected to be larger by $113.3 million and $118.6 million, and appropriated funding of AQI services is expected to be smaller by $68.3 million and $65.3 million. Net revenue of $27.9 million in FY 2016 and $53.9 million in FY 2017 is expected to be available to maintain the AQI reserve fund.[6] Estimated AQI revenue and costs summed over the 3 years are shown in Table 15.

TABLE 15—ESTIMATED AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING UNDER THE CURRENT AND NEW USER FEE SCHEDULES, AND COST OF AQI SERVICES, FY 2015–17, MILLION DOLLARS

	Current fee schedule	New fee schedule	Change
AQI revenue:			
User fees	$1,842.3	$2,182.5	$340.2
Appropriated funding	1,039.7	874.4	−165.3
AQI total revenue	2,881.9	3,057.1	175.2
AQI costs	2,952.8	2,952.8	0.0
AQI revenue minus costs	−70.9	104.3	175.2

Note: The AQI user fee revenue and costs shown exclude overtime charges incurred in conjunction with AQI treatment services that are paid for separately. USDA will not collect revenues in FY 2015 under the new fee schedule.

We considered a number of alternatives for revising the AQI user fees. Some of the alternatives, such as increasing all current fees by the same percentage, were rejected because they clearly would not meet the objective of better ensuring that the fees paid by users in the various fee classes are commensurate with the costs of the AQI services provided for each class. Other alternatives were rejected because the transaction costs of creating and operating fee collection systems for certain classes, such as bus passengers, private vehicles, and pedestrians, would be overly burdensome.

We then focused on three remaining alternatives composed of different combinations of paying classes. The first or preferred alternative is the rule, with user fee classes as shown in Table 13. The second alternative differs from the first by not including user fees for recipients of AQI treatment services. Under the third alternative, recipients of commodity import permits and pest import permits would pay user fees, in addition to the classes that will pay fees under the rule.

Under all three alternatives, commercial vessel (cruise) passengers pay a user fee for services they receive that are currently funded by other AQI service recipients and/or through appropriated funding. In addition, the preferred alternative newly includes payment of fees by users of AQI treatment services. Under alternative 2, there would be no fee for AQI treatment services and the cost of providing these services would continue to be covered by user fees paid by other classes. For this reason, alternative 2 was rejected because AQI costs and revenues would be less commensurate by class than under the preferred alternative.

Alternative 3 would include user fees for recipients of commodity import permits and pest import permits, classes not charged fees under the preferred alternative. In these instances, APHIS found that there are overriding concerns. Charging a user fee for commodity import permits would be difficult to administer, at this time as our system is not designed to allow for this. Pest import permits are normally requested for research purposes. Charging a fee for pest import permits, which ABC analysis indicates would need to be set at more than $2,000, could have the unintended consequence of discouraging research that directly benefits U.S. agriculture. For these reasons, APHIS decided against the selection of alternative 3.

In Table 16, we compare the cumulative estimated revenue changes over the 3 years for the alternatives. Differences among the alternatives in user fee and appropriated funding revenue are attributable to variations in the user fee rates. In all cases, the baseline for comparison is continuation of the current AQI user fee schedule. AQI services performed and the total cost of providing those services are the same under each alternative. All three alternatives ensure that the costs of providing AQI services are covered and the reserve fund is maintained.

[6] All values in this RIA are nominal, that is, they include projected inflation.

TABLE 16—CHANGES IN ESTIMATED AQI USER FEE REVENUE, APPROPRIATED AQI FUNDING, AND NET REVENUE UNDER THE 3 ALTERNATIVE USER FEE SCHEDULES, SUMMED OVER FYs 2015–2017, MILLION DOLLARS

	Preferred alternative (rule)	Alternative 2	Alternative 3
AQI revenue	—Million dollars—		
User fees	$340.2	$208.1	$175.0
Appropriated funding	−165.3	−84.9	−152.4
AQI total revenue	175.2	123.2	22.7
AQI costs	0.0	0.0	0.0
AQI revenue minus costs	175.2	123.2	22.7

Note: Columns may not sum due to rounding.

Economic effects under each of the three alternatives derive from the increase or reduction in costs borne by affected importers and international passengers because of the changes in AQI user fees and concurrent reduced reliance on appropriated funding of AQI services. Impacts depend on the magnitude of the changes, and for importers, on the ability of suppliers to pass along or absorb the costs, and for inbound international passengers, on the ability of airlines and vessels to do likewise. In theory, higher user fees increase the cost of imports and the supplier may have incentive to send fewer goods to the United States or international passengers may have less incentive to travel to the United States. Lower user fees, in theory, create the opposite incentives.

The changes in user fees are very small in comparison to the overall value of the commodities imported or the price of an international ticket, and therefore are expected to have negligible impact on imports or on the number of international passengers. Estimated changes in user fee revenue relative to the output of the affected sectors represent, in total, a decline of about two-hundredths of one percent, and range from a decline of about six-thousandths of one percent in the trucking industry to a decline of about one-tenth of one percent in the airline industry.[7] We cannot determine what will be the effect of the projected reductions in appropriated funding of AQI services, but observe that the reductions may counterbalance the negligible impacts of the user fee increases to some extent.

Illustrative output and employment impacts for FY 2015 under the three alternatives, shown in Table 17, were modeled for APHIS by a contracted consultancy.[8] The impacts shown can be considered estimated upper-bound effects because the AQI fees for air passengers, commercial trucks (with and without transponders), commercial vessel (cruise) passengers, and treatment services are lower than those that were set forth in the proposed rule and used to model the output and employment effects. In addition, the AQI treatment fee will be phased in over 5 years.

The model results indicate that U.S. output and employment would have declined under all three alternatives, with the smallest declines occurring under the preferred alternative. Modeled output and employment effects for FYs 2015–2017 are shown in the body of the RIA. We expect the economic effects of the user fee revisions for several of the classes, if they occur at all, to be extremely small.

TABLE 17—MODELED ILLUSTRATIVE SHORT-RUN EFFECTS FOR U.S. OUTPUT AND EMPLOYMENT OF THE 3 AQI USER FEE ALTERNATIVES, FY 2015

	Change in output (million dollars)	Change in employment (jobs)
Preferred alternative (rule)	−$113	−1,312
Alternative 2	−119	−1,337
Alternative 3	−127	−1,419

The fee increases themselves and the newly charged fees for commercial vessel passengers and treatment services are not costs to the economy as a whole, but rather transfer payments. Transfer payments are monetary payments from one group to another that do not affect total resources available to society.

The increase in user fee funding of AQI services, reduced reliance on appropriated funding, and closer alignment, by class, of user fee revenues and costs will be the principal outcomes of the rule. For the 3 years, FYs 2015–2017, user fee funding of AQI services under the rule is estimated to be $340.2 million more and appropriated funding of AQI services is estimated to be $165.3 million less than would occur with continuation of the current fee schedule.

Increased reliance on user fee funding means that APHIS will more fully prescribe and collect cost-based fees for providing AQI services, including maintaining a reasonable reserve, as provided for under the statute. It also means that a portion of appropriated funds that would be used to pay for AQI services under the existing user fee schedule will no longer be needed for that purpose, resulting in a reduced demand for directly appropriately funding or the availability of additional funds for other Federal uses. In the latter case, we are unable to determine

[7] Short-run impacts of the proposed fee changes are estimated to represent the following percentage changes from current output, by affected industry: Trucking industry, −0.006 percent; rail industry, 0.035 percent; vessel cargo industry, −0.005 percent; cruise ship industry, 0.003 percent; and air cargo and passenger industry, −0.102 percent.

[8] ABS Consulting, ABS Group Consulting, Inc., ABS Plaza, 16855 Northchase Drive, Houston, TX 77060. Appendix A of the RIA explains the methodology and data sources used by ABS Consulting in modeling expected economic effects of the rule and alternatives. Appendix B reports updated modeling results prepared by ABS Consulting in July 2013 that are used in the RIA.

how those appropriated funds that will no longer be needed to pay for AQI services under the rule may otherwise be used. We are, however, fully confident in our application of the ABC methodology in deriving the new AQI user fees; this methodology has enabled us to better ensure the fees are commensurate with the costs of the AQI services provided, as provided in the FACT Act.

Firms most likely to be impacted by this rule are transportation businesses within the truck, rail, sea, and air cargo sectors that import goods into the United States and providers of treatment services. While the Small Business Administration has set small-entity standards for the transportation sectors, the size data do not distinguish between transportation firms that operate internationally and those firms that only operate within the United States. Most businesses that will be affected by the rule are likely to be small. We respond in the RIA and final regulatory flexibility analysis to comments received from small-entity stakeholders and other businesses on possible effects of the rule on their operations.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. APHIS has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. If a Tribe requests consultation, APHIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Animal diseases, Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.3 is amended as follows:
■ a. In paragraph (b)(1), by removing the words '', not to exceed 15 payments in a calendar year (*i.e.,* no additional fee will be charged for a 16th or subsequent arrival in a calendar year),''.
■ b. By revising the tables in paragraphs (b)(1) and (c)(1).
■ c. In paragraph (c)(3)(i) introductory text, by removing the words ''20 times'' and adding the words ''40 times'' in their place.
■ d. By revising the tables in paragraphs (d)(1) and (e)(1).
■ e. By revising paragraph (f)(1), including the table.
■ f. By adding paragraph (f)(2)(i).
■ g. By revising paragraph (f)(8).
■ h. By adding paragraph (h).

The revisions and addition read as follows:

§ 354.3 User fees for certain international services.

* * * * *

(b) * * * (1) * * *

Effective date	Amount
Beginning December 28, 2015	$825

* * * * *

(c) * * * (1) * * *

Effective date	Amount
Beginning December 28, 2015	$7.55

* * * * *

(d) * * * (1) * * *

Effective date	Amount
Beginning December 28, 2015	$2

* * * * *

(e) * * * (1) * * *

Effective date	Amount
Beginning December 28, 2015	$225

* * * * *

(f) *Fee for inspection of international passengers.* (1) Except as specified in paragraph (f)(2) of this section, each passenger aboard a commercial aircraft or cruise ship who is subject to inspection under part 330 of this chapter or 9 CFR, chapter I, subchapter D, upon arrival from a place outside of the customs territory of the United States, must pay an AQI user fee. The AQI user fee will apply to tickets purchased beginning December 28, 2015. The fees are shown in the following table:

Effective dates [1]	Passenger type	Amount
Beginning December 28, 2015.	Commercial aircraft.	$3.96
Beginning December 28, 2015.	Cruise ship	1.75

[1] Persons who issue international airline and cruise line tickets or travel documents are responsible for collecting the AQI international airline passenger user fee and the international cruise ship passenger user fee from ticket purchasers. Issuers must collect the fee applicable at the time tickets are sold. In the event that ticket sellers do not collect the AQI user fee when tickets are sold, the air carrier or cruise line must collect the user fee that is applicable at the time of departure from the passenger upon departure.

(2) * * *

(i) Crew members onboard for purposes related to the operation of the vessel;

* * * * *

(8) *Limitation on charges.* Airlines and cruise lines will not be charged reimbursable overtime for passenger inspection services required for any aircraft or cruise ship on which a passenger arrived who has paid the international passenger AQI user fee for that flight or cruise.

* * * * *

(h) *Fee for conducting and monitoring treatments.* (1) Each importer of a consignment of articles that require treatment upon arrival from a place outside of the customs territory of the United States, either as a preassigned condition of entry or as a remedial measure ordered following the inspection of the consignment, must pay an AQI user fee. The AQI user fee is charged on a per-treatment basis, *i.e.,* if two or more consignments are treated together, only a single fee will be charged, and if a single consignment is split or must be retreated, a fee will be charged for each separate treatment conducted. The AQI user fee for each treatment is shown in the following table:

Effective dates	Amount
Beginning December 28, 2015	$47
Beginning December 28, 2016	95
Beginning December 28, 2017	142
Beginning December 28, 2018	190
Beginning December 28, 2019	237

(2) *Treatment provider.* (i) Private entities that provide AQI treatment services to importers are responsible for collecting the AQI treatment user fee from the importer for whom the service is provided. Treatment providers must collect the AQI treatment fee applicable at the time the treatment is applied.

(ii) When AQI treatment services are provided by APHIS, APHIS will collect the AQI treatment fee applicable at the time the treatment is applied from the person receiving the services. Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

(3) *Collection of fees.* (i) In cases where APHIS is not providing the AQI treatment and collecting the associated fee, AQI user fees collected from importers pursuant to this paragraph shall be held in trust for the United States by the person collecting such fees, by any person holding such fees, or by the person who is ultimately responsible for remittance of such fees to APHIS. AQI user fees collected from importers shall be accounted for separately and shall be regarded as trust funds held by the person possessing such fees as agents, for the beneficial interest of the United States. All such user fees held by any person shall be property in which the person holds only a possessory interest and not an equitable interest. As compensation for collecting, handling, and remitting the AQI treatment user fees, the person holding such user fees shall be entitled to any interest or other investment return earned on the user fees between the time of collection and the time the user fees are due to be remitted to APHIS under this section. Nothing in this section shall affect APHIS' right to collect interest from the person holding such user fees for late remittance.

(4) *Remittance and statement procedures.* (i) The treatment provider that collects the AQI treatment user fee must remit the fee to USDA, APHIS, AQI, PO Box 979044, St. Louis, MO 63197–9000.

(ii) AQI treatment user fees must be remitted to [address to be added in final rule] for receipt no later than 31 days after the close of the calendar quarter in which the AQI user fees were collected. Late payments will be subject to interest, penalty, and handling charges as provided in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3717).

(iii) The remitter must mail with the remittance a written statement to USDA, APHIS, AQI, PO Box 979044, St. Louis, MO 63197–9000. The statement must include the following information:

(A) Name and address of the person remitting payment;

(B) Taxpayer identification number of the person remitting payment;

(C) Calendar quarter covered by the payment; and

(D) Amount collected and remitted.

(iv) Remittances must be made by check or money order, payable in United States dollars, through a United States bank, to ''The Animal and Plant Health Inspection Service.''

* * * * *

Done in Washington, DC, this 21st day of October 2015.

Gary Woodward,

Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2015–27363 Filed 10–28–15; 8:45 am]

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