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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN18

Prevailing Rate Systems; Redefinition of the Harrisburg, PA and Scranton-Wilkes-Barre, PA, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule that would redefine the geographic boundaries of the Harrisburg, PA, and Scranton-Wilkes-Barre, PA, appropriated fund Federal Wage System (FWS) wage areas. The final rule will redefine Montour County, PA, from the Harrisburg wage area to the Scranton-Wilkes-Barre wage area. This change is based on a consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the county proposed for redefinition to a nearby FWS survey area.

DATES: *Effective date:* This regulation is effective on November 30, 2015. *Applicability date:* This change applies on the first day of the first applicable pay period beginning on or after December 30, 2015.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On July 31, 2015, OPM issued a proposed rule (80 FR 45616) to redefine Montour County, PA, from the Harrisburg, PA, wage area to the Scranton-Wilkes-Barre, PA, wage area.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended this change by consensus.

The proposed rule had a 30-day comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Harrisburg, PA, and Scranton-Wilkes-Barre, PA, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

* * * * *

PENNSYLVANIA

Harrisburg

Survey Area

Pennsylvania:
- Cumberland
- Dauphin
- Lebanon
- York

Area of Application. Survey area plus:

Pennsylvania:
- Adams
- Berks
- Juniata
- Lancaster
- Lycoming (Allenwood Federal Prison Camp portion only)
- Mifflin
- Northumberland
- Perry
- Schuylkill
- Snyder
- Union

* * * * *

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
- Lackawanna
- Luzerne
- Monroe

Area of Application. Survey area plus:

Pennsylvania:
- Bradford
- Columbia
- Lycoming (Excluding Allenwood Federal Prison Camp)
- Montour
- Sullivan
- Susquehanna
- Wayne
- Wyoming

* * * * *

[FR Doc. 2015–30308 Filed 11–27–15; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5819; Directorate Identifier 2015–NM–166–AD; Amendment 39–18336; AD 2015–24–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, CL–600–2D15 (Regional Jet Series 705) airplanes, CL–600–2D24 (Regional Jet Series 900) airplanes, and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD requires repetitive detailed inspections of the cage assembly, window louver panel assemblies (WLPAs), and blowout panels (BOPs), and corrective action if necessary. This AD was prompted by reports of several

cases of damaged or detached decompression WLPAs and BOPs. We are issuing this AD to detect and correct damaged and detached WLPAs and BOPs. A detached WLPA or BOP could delay smoke detection in the cargo compartment, and in the event of a cargo compartment fire, this could lead to an uncontrolled cargo compartment fire.

DATES: This AD becomes effective December 15, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 15, 2015.

We must receive comments on this AD by January 14, 2016.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5819.

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–2015–5819; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–28, dated October 21, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, CL–600–2D15 (Regional Jet Series 705) airplanes, CL–600–2D24 (Regional Jet Series 900) airplanes, and CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> Several cases of damaged decompression window louver panel assemblies (WLPAs) have been reported in-service. Subsequent review of in-service data also showed multiple reports of detached blowout panels (BOPs). Damaged or detached WLPAs or BOPs create openings in the cargo compartment.
>
> The presence of unintended openings on the WLPAs and BOPs could delay smoke detection in the cargo compartment. In addition, the cargo compartment may not be able to maintain Halon concentration required for fire suppression. In the event of a cargo compartment fire, this condition could lead to an uncontrolled cargo compartment fire.
>
> This [Canadian] AD mandates the repetitive inspection of the affected WLPAs and BOPs.

Required actions include repetitive detailed inspections for damaged and detached WLPAs and BOPs. Corrective actions include repair. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5819.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information:

- Bombardier Service Bulletin 601R–25–201, dated July 21, 2015.
- Bombardier Service Bulletin 670BA–25–100, dated July 21, 2015.

The service information describes procedures for repetitive detailed inspections for damage of the cage assembly, WLPAs, and BOPs, and repair and replacement of damaged parts. 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 This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a detached WLPA or BOP could delay smoke detection in the cargo compartment, and in the event of a cargo compartment fire, this could lead to an uncontrolled cargo compartment fire. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

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–2015–5819; Directorate Identifier 2015–NM–166–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 based on 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 affects 986 airplanes of U.S. registry.

We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $167,620, or $170 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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 adding the following new airworthiness directive (AD):

2015–24–04 Bombardier Inc.: Amendment 39–18336. Docket No. FAA–2015–5819; Directorate Identifier 2015–NM–166–AD.

(a) Effective Date

This AD becomes effective December 15, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(5) of this AD, configured with a Class C cargo compartment.

(1) Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers (S/Ns) 7003 and subsequent.

(2) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, S/Ns 10002 and subsequent.

(3) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) airplanes, S/Ns 15001 and subsequent.

(4) Bombardier, Inc. Model CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 and subsequent.

(5) Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, S/Ns 19001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Reason

This AD was prompted by reports of several cases of damaged or detached decompression WLPAs and BOPs. We are issuing this AD to detect and correct damaged and detached WLPAs and BOPs. A detached WLPA or BOP could delay smoke detection in the cargo compartment, and in the event of a cargo compartment fire, this could lead to an uncontrolled cargo compartment fire.

(f) Compliance

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

(g) Repetitive Inspections and Repair

Within 100 flight hours after the effective date of this AD, do the actions in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Do a detailed inspection of the cage assembly for damage (including bent and damaged vertical and horizontal guard rails), do a detailed inspection of the WLPAs to detect discrepancies (including dents, bends, and deformations, and inadequate clearances), and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–25–201, dated July 21, 2015, except as required by paragraph (h) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections thereafter at intervals not to exceed 100 flight hours.

(2) For Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes, CL–600–2D15 (Regional Jet Series 705) airplanes, CL–600–2D24 (Regional Jet Series 900) airplanes, and CL–600–2E25 (Regional Jet Series 1000) airplanes: Do a detailed inspection of the cage assembly to detect damage (including bent or deformed tubing and frame, broken joints), and do a detailed inspection of the WLPAs to detect damage (including bent support pins and louver panels; inadequate clearances; and missing, torn, or unbonded fire blocking fabric and foams), and do a detailed inspection of the BOPs to detect damage (including bends, dents, punctures, and deformations; inadequate sealing tape; and a loose or frayed jumper), and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–25–100, dated July 21, 2015, except as required by paragraph (h) of this AD. All applicable corrective actions must be done before further flight. Repeat the inspections thereafter at intervals not to exceed 100 flight hours.

(h) Exceptions to Service Information Specifications

Where Bombardier Service Bulletin 601R–25–201, dated July 21, 2015; and Bombardier Service Bulletin 670BA–25–100, dated July 21, 2015, specify to contact Bombardier for disposition of certain conditions, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District

Office, as appropriate. If sending information directly to the Airframe and Mechanical Systems Branch, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–28, dated October 21, 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–2015–5819.

(k) 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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 601R–25–201, dated July 21, 2015.

(ii) Bombardier Service Bulletin 670BA–25–100, dated July 21, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on November 19, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30182 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4514; Airspace Docket No. 15–AEA–9]

Amendment of Class E Airspace for the Following New York Towns: Elmira, NY; Ithaca, NY; Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends Class E Airspace at Elmira/Corning Regional Airport, Elmira, NY; Ithaca Tompkins Regional Airport, Ithaca, NY; and Duchess County Airport, Poughkeepsie, NY, by eliminating the Notice to Airmen (NOTAM) part time status of the Class E surface airspace designated as an extension at each airport. This action also updates the geographic coordinates of each airport to coincide with the FAA's database, and recognizes the airport name for Ithaca Tompkins Regional Airport. This is an administrative change to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, February 4, 2016. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

In a review of the airspace, the FAA found the airspace description for Elmira/Corning Regional Airport, Elmira, NY, Ithaca Tompkins Regional Airport, Ithaca, NY, and Duchess County Airport, Poughkeepsie, NY, as published in FAA Order 7400.9Z, Airspace Designations and Reporting Points, does not match the FAA's charting information. This administrative change coincides with the FAA's aeronautical database for Class E Airspace Designated as an Extension to a Class D Surface Area.

Class E airspace designations are published in paragraphs 6004 of FAA Order 7400.9Z dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by eliminating the NOTAM information that reads ''This Class E airspace area is effective during the specific dates and time established in advance by Notice to

Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.'' from the regulatory text of the Class E airspace designated as an extension to Class D at Elmira/Corning Regional Airport, Elmira, NY; Ithaca Tompkins Regional Airport, Ithaca, NY; and Duchess County Airport, Poughkeepsie, NY. Additionally, the geographic coordinates for each airport are updated to be in concert with the FAA's aeronautical database. Also the FAA recognizes the airport's name change from Tompkins County Airport, Ithaca, NY, to Ithaca Tomkins Regional Airport, Ithaca, NY.

This is an administrative change amending the description for the above New York airports, to be in concert with the FAAs aeronautical database, and does not affect the boundaries, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area

* * * * *

AEA NY E4 Elmira, NY [Amended]

Elmira/Corning Regional Airport, Elmira, NY
(Lat. 42°09′35″ N., long 76°53′30″ W.)
Elmira VOR/DME
(Lat. 42°05′40″ N., long 77°01′29″.)
ERINN OM
(Lat. 42°12′18″ N., long. 76°49′09″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Elmira VOR/DME 057° radial extending from the 4.2-mile radius to the VOR/DME and within 1.8 miles each side of the Elmira/Corning Regional Airport ILS localizer northeast course extending from the 4.2-mile radius to 1.8 miles northeast of the ERINN OM and within 1.8 miles each side of the centerline of Runway 10 extended easterly from the 4.2-mile radius of the airport for 1.1 miles and within 1.8 miles each side of the centerline of Runway 28 extended westerly from the 4.2-mile radius for 3.7 miles.

* * * * *

AEA NY E4 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N., long. 76°27′31″ W.)
Ithaca VOR/DME
(Lat. 42°29′42″ N., long. 76°27′35″ W.)

That airspace extending upward from the surface from the 4-mile radius of the Tompkins Regional Airport to the 5.7-mile radius of the Tompkins Regional Airport clockwise from the 329° bearing to the 081° bearing from the airport, that airspace from the 4-mile radius of Tompkins County Airport to the 8.7-mile radius of the Tompkins Regional Airport extending clockwise from the 081° bearing to the 137° from the airport, that airspace from the 4-mile radius of Tompkins Regional Airport to the 6.6-mile radius of the Tompkins Regional Airport extending clockwise from the 137° bearing to the 170° bearing from the airport, that airspace from the 4-mile radius to the 5.7-mile radius of the Tompkins Regional Airport extending clockwise from the 170° bearing to the 196° bearing from the airport and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of Tompkins Regional Airport to 7.4 miles northwest of the Ithaca VOR/DME.

* * * * *

AEA NY E4 Poughkeepsie, NY [Amended]

Dutchess County Airport, Poughkeepsie, NY
(Lat. 41°37′36″ N., long. 73°53′03″ W.)
Kingston VORTAC
(Lat. 41°39′55″ N., long. 73°49′20″ W.)

That airspace extending upward from the surface within 3.1 miles each side of the Kingston VORTAC 025° radial extending from the VORTAC to 8.3 miles northeast of the VORTAC and within 1.8 miles each side of the Kingston VORTAC 231° radial extending from the 4-mile radius to 9.2 miles southwest of the VORTAC and within 3.1 miles each side of the Kingston VORTAC 050° radial extending from the VORTAC to 9.2 miles northeast of the VORTAC.

Issued in College Park, Georgia, on November 17, 2015.

Ryan W. Almasy,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–30187 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9741]

RIN 1545–BB23; 1545–BC07; 1545–BH48

General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9741) that were published in the **Federal Register** on Tuesday, October 27, 2015 (80 FR 65637). The final regulations provide guidance on allocation and accounting, and certain remedial actions, for purposes of the private activity bond restrictions under section 141of the Internal Revenue Code that apply to tax-exempt bonds issued by State and local governments.

DATES: This correction is effective November 30, 2015 and applicable October 27, 2015.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff or Zoran Stojanovic at (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9741) that are the subject of this correction are under section 141 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9741) contains an error that may prove to be misleading and is 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 amendment:

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 1.141–15 is amended by revising paragraph (l)(1) to read as follows:

§ 1.41–15 Effective/applicability dates.

* * * * *

(l) * * * (1) *In general.* Except as otherwise provided in this section, §§ 1.141–1(e), 1.141–3(g)(2)(v), 1.141–6, 1.141–13(d), and 1.145–2(b)(4), (b)(5), and (c)(2) apply to bonds that are sold on or after January 25, 2016, and to which the 1997 regulations (as defined in paragraph (b)(1) of this section) apply.

* * * * *

Martin V. Franks,

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

[FR Doc. 2015–30322 Filed 11–27–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9741]

RIN 1545–BB23; 1545–BC07; 1545–BH48

General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9741) that were published in the **Federal Register** on Tuesday, October 27, 2015 (80 FR 65637). The final regulations on allocation and accounting, and certain remedial actions, for purposes of the private activity bond restrictions under section 141of the Internal Revenue Code that apply to tax-exempt bonds issued by State and local governments.

DATES: This correction is effective November 30, 2015 and applicable October 27, 2015.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff or Zoran Stojanovic at (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9741) that are the subject of this correction are under sections 141 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9741) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9741), that are subject to FR Doc. 2015–27328, are corrected as follows:

1. On page 65641, in the preamble, third column, the second and third sentences of the first full paragraph, under paragraph heading ''*Anticipatory Redemptions*, ''the language ''This allows targeting of funds other than tax-exempt bond proceeds to finance portions of projects that are expected to be used for private business use in the future. The intent of this proposed rule is to encourage retirement of tax-exempt bonds before the occurrence of nonqualified use.'' is corrected to read ''This would have allowed targeting of funds other than tax-exempt bond proceeds to finance portions of projects that are expected to be used for private business use in the future. The intent of this proposed rule was to encourage retirement of tax-exempt bonds before the occurrence of nonqualified use''.

2. On page 65642, in the preamble, first column, first sentence of the third full paragraph, under paragraph heading ''*Nonqualified Bonds*,'' the language ''Commenters generally agreed with the proposed change that allows any bonds of any issue to be treated as the'' is corrected to read ''Commenters generally agreed with the proposed change that allows any bonds of an issue to be treated as the''.

Martin V. Franks,

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

[FR Doc. 2015–30321 Filed 11–27–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 88

[Docket ID: DOD–2013–OS–0236]

RIN 0790–AJ17

Transition Assistance Program (TAP) for Military Personnel

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Interim final rule.

SUMMARY: This rule establishes policy, assigns responsibilities, and prescribes procedures for administration of the DoD Transition Assistance Program (TAP). The goal of TAP is to prepare all eligible members of the Military Services for a transition to civilian life, including preparing them to meet Career Readiness Standards (CRS). The TAP provides information and training to ensure Service members leaving Active Duty and eligible Reserve Component Service members being released from active duty are prepared for their next step in life whether pursuing additional education, finding a job in the public or private sector, starting their own business or other form of self-employment, or returning to school or an existing job. Service members receive training to meet CRS through the Transition GPS (Goals, Plans, Success) curricula, including a core curricula and individual tracks focused on Accessing Higher Education, Career Technical Training, and Entrepreneurship.

All Service members who are separating, retiring, or being released from a period of 180 days or more of continuous Active Duty must complete all mandatory requirements of the Veterans Opportunity to Work (VOW) Act, which includes pre-separation counseling to develop an Individual Transition Plan (ITP) and identify their career planning needs; attend the Department of Veterans Affairs (VA) Benefits Briefings I and II to understand what VA benefits the Service member earned, how to apply for them, and leverage them for a positive economic outcome; and attend the Department of Labor Employment Workshop (DOLEW), which focuses on the mechanics of resume writing, networking, job search skills, interview skills, and labor market research.

DATES: *Effective date:* This rule is effective February 3, 2016.

Comment date: Comments must be received by January 14, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov;* or
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions for submitting comments:* All submissions received must include the agency name and docket number or RIN for this **Federal Register rule. 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: Ron Horne, 703–614–8641.

SUPPLEMENTARY INFORMATION: The DoD is committed to providing military personnel from across the Services access to the TAP. The TAP prepares all eligible members of the Military Services for a transition to civilian life; enables eligible Service members to meet the CRS as required by this rule; and is the overarching program that provides transition assistance, information, training, and services to eligible transitioning Service members to prepare them to be career ready when they transition back to civilian life.

Spouses of eligible Service members are entitled to the DOLEW, job placement counseling, DoD/VA-administered survivor information, financial planning assistance, transition plan assistance, VA-administered home loan services, housing assistance benefits information, and counseling on responsible borrowing practices. Dependents of eligible Service members are entitled to career change counseling and information on suicide prevention.

These revisions will:

- Institutionalize the implementation of the VOW Act of 2011,
- require mandatory participation in the Department of Labor (DOL) Employment Workshop (EW),
- implement the Transition GPS (Goals, Plans, Success) curriculum,
- require development of an Individual Transition Plan (ITP),
- enhance tracking of attendance at TAP events,
- implement of mandatory Career Readiness Standards (CRS) for separating Service members, and
- incorporate a CAPSTONE event to document transition readiness and reinforce Commanding Officer accountability and support for the needs of individual Service members.

This rule improves the process of conducting transition services for eligible separating Service members across the Military Services and establishes the data collection foundation to build short-, medium-, and long-term program outcomes.

In August 2011, President Obama announced his comprehensive plan to ensure America's Post 9/11 Veterans have the support they need and deserve when they leave the military, look for a job, and enter the civilian workforce. A key part of the President's plan was his call for a ''career-ready military.'' Specifically, he directed DoD and Department of Veterans Affairs (VA) to work closely with other federal agencies and the President's economic and domestic policy teams to lead a Veterans Employment Initiative Task Force to develop a new training and services delivery model to help strengthen the transition readiness of Service members from military to civilian life.Shortly thereafter, Congress passed and the President signed the ''VOW to Hire Heroes Act of 2011,'' Public Law 112–56, 201–265, 125 Stat. 715 (''VOW Act''), which included steps to improve the existing TAP for Service members. Among other things, the ''VOW Act'' made participation in several components of TAP mandatory for all Service members (except in certain limited circumstances).

The task force delivered its initial recommendations to the President in December 2011 which required implementation of procedures to document Service member participation, and to demonstrate Military Service compliance with 10 U.S.C. Chapter 58 requirements. The Veterans Opportunity to Work (VOW) Act of 2011 mandated transitioning Service members participation in receiving counseling and training on VA Benefits. VA developed VA Benefits I and II Briefings to meet this mandate. The VOW Act also mandated transitioning Service members to received counseling and informed of services regarding employment assistance. The Department of Labor revised it's curriculum to meet this mandate with the Department of Labor Employment Workshop. The VOW requirements have been codified in 10 U.S.C. Chapter 58 and attendance to all Transition GPS curricula is now documented.

The redesigned TAP was developed around four core recommendations:

Adopt standards of career readiness for transitioning Service members. Service members should leave the military having met clearly defined standards of career readiness.

Implement a revamped TAP curriculum. Service members should be provided with a set of value-added, individually tailored training programs and services to equip them with the set of tools they need to pursue their post-military goals successfully.

Implement a ''CAPSTONE''. Service members should be afforded the opportunity, shortly before they depart the military, to review and verify that they have met the CRS and received the services they desire and to be steered to the resources and benefits available to them as Veterans.

Implement a ''Military Life Cycle'' (MLC) transition model. Transition preparation for Service members should occur over the entire span of their military careers—not just in the last few months of their military service.

Implementation of these recommendations transforms a Service member' experience during separating, retiring, demobilizing, or deactivating to make the most informed career decisions by equipping them with the tools they need to make a successful transition.

The rule discusses a redesigned program which implements, the transition-related provisions of the ''VOW Act'' and recommendations of the Task Force to offer a tailored curriculum providing Service members with useful and quality instruction with

connections to the benefits and resources available to them as Veterans. At the heart of the redesign is the new set of CRS. Just as Service members must meet military mission readiness standards while on Active Duty, Service members will meet CRS before their transition to civilian life.

Spouses of eligible Service members are entitled to the DOLEW, job placement counseling, DoD/VA-administered survivor information, financial planning assistance, transition plan assistance, VA-administered home loan services, housing assistance benefits information, and counseling on responsible borrowing practices. Dependents of eligible service members are entitled to career change counseling and information on suicide prevention.

Regulatory Impact Analysis

As part of the regulatory process, DOD is required to develop a regulatory impact analysis (RIA) for rules with costs or benefits exceeding $100 annually. DOD estimates implementation of this interim rule for the Department will have a cost of approximately $100M or more annually starting in 2016. DoD assumes that the annual outlays will continue.

I. Alternatives Analysis

In President Obama's speech in August of 2011 at the Washington Navy Yard, he used the term 'Reverse Boot Camp' to demonstrate his vision for a redesigned TAP to increase the preparedness of Service members to successfully transition from military service to civilian communities. The President's use of language initiated an interagency discussion on an approach to mirror the Military Services' ''basic or initial entry training'' programs. This approach would require the Military Services to devote approximately 9 to 13 weeks, depending on curriculum development, outcome measures, assessments and individual military readiness and cultural differences, to afford Service members the opportunity to use all aspects of a rigorous transition preparation program.

While no cost estimates were conducted, this approach was deemed both expensive and would jeopardize DoD's ability to maintain mission readiness. Approximately 200,000–250,000 Service members leave DOD each year. To concentrate on transition preparation during the last 9 to 13 weeks of an individual's military career would not be workable since mission readiness could not absorb the impact of the void. Additionally, there would be a an increased expense required to activate or mobilize Reserve Component or National Guard personnel for the nine to 13 weeks prior to transition. Finally, logistical challenges could result from Service members dealing with TAP requirements while deployed. For example, units scheduled to mobilize would be delayed because a returning unit could occupy facilities (such as billeting, classrooms, and training areas) that the deploying units needed to train and prepare for mobilization.

A second alternative considered was establishment of regional residential transition centers staffed by personnel from all Military Services, the Departments of VA, Labor (DoL), and Homeland Security (U.S. Coast Guard), the U.S. Small Business Administration (SBA), and the OPM. Transitioning Service members would be sent on temporary duty for a period of four to six weeks, 12 months prior to their separation or retirement date to receive transition services. Eligible Reserve Component Service members would be assigned to the centers as a continuation of their demobilization out-processing. The potential costs to build or modify existing facilities, or rent facilities that would meet regional residential transition center requirements, as well as costs for Service member travel to and from the regional centers, reduced the viability of this approach.

A third, less expensive option would have left the existing TAP program intact without increasing counselor and curriculum facilitation resources. This option would not have accountability systems and procedures to demonstrate compliance with the ''VOW Act'' that mandates preseparation counseling, attendance at the DOL's three day Employment Workshop (DOLEW), and attendance at two VA briefings. Due to increasing Veteran unemployment and homeless percentages at the time of the decision, and the rebalancing of the military force, this cost neutral approach would not have the outcome-based capability intended to develop career ready skills in transitioning Service members. This option, which would not have met the requirements of the law, would cost the Military Services approximately $70M versus the fiscal year 2013 (FY13) $122M for the implementation of the re-designed TAP.

II. Anticipated Costs and Benefits

The ''VOW Act'' mandated preseparation counseling, VA Benefits Briefings I and II, and the DOLEW and these components were implemented in November 2012. On the same day, the ''VOW Act'' requirements became mandatory; DoD published a policy to make CRS and Commanding Officer verification that Service members are meeting CRS, mandatory. ''Vow Act'' compliance and CRS must be met by all Service members after they have served 180 days in active duty status. Service members must attend Transition GPS (Goals, Plans, Success) curriculum modules that build career readiness if they cannot meet the CRS on their own. In cases where Service members receive a punitive or Under Other Than Honorable Conditions discharge, Commanding Officers have the discretion of determining participation in the other than mandatory Transition GPS curricula. By policy, all Service members who do not meet the CRS will receive a warm handover to DOL, VA, or other resources targeted at improving career readiness in the area where the standard was not met.

The entire Transition GPS curriculum is now available online through Joint Knowledge Online (JKO); however, Service members must attend preseparation counseling, VA briefings, and the DOLEW in person. All other curriculum can be accessed through the JKO virtual platform. The virtual curriculum (VC) was launched at the beginning of FY14. DoD expected a cost savings in FY14 due to use of the VC but the cost avoidance cannot be calculated, as VC utilization is appropriate on a Service member-by-Service member basis.

Further, resource requirements for DoD become more predictable when transition assistance is provided at pre-determined points throughout the MLC TAP model, mitigating the impacts of ''surge'' periods when large numbers of Service members separate, demobilize or deactivate. The FY13 cost to DoD to implement the TAP redesign was $122M and in FY14 DoD costs were $85M. The difference is attributed to both implementation costs of the updated program in FY13 and to efficiencies discovered as implementation was completed throughout FY14. These costs represent only the portion of the interagency program that is paid by the DoD. The cost covers Defense civilian and contracted staff (FTEs) salaries and benefits at 206 world-wide locations. Civilian and contract labor account for approximately 88% of total program costs in both fiscal years. The remaining costs include equipment, computers (purchase, maintenance and operations), Information Technology (IT) and architecture, data collection and sharing, Web site development, performance evaluation and assessments, curriculum development and modifications, materials (audio-visual, CDs, eNotebooks, handouts,

interactive brick and mortar classroom sessions, virtual curriculum, etc.), facilitation training, research, studies, and surveys. Within DoD, the re-designed TAP capitalized upon existing resources, *e.g.,* use of certified financial planners housed in the Military Services' family centers to conduct financial planning or military education counselors used to conduct the Accessing Higher Education (AHE) track. Other efficiencies include reuse or upgrades to current facilities and classrooms used to deliver legacy TAP. Implementation costs in FY13 included equipping classrooms to allow individual internet access and train-the-trainer workshops to deliver the DoD portions of the Transition GPS curriculum. Examples of efficiencies discovered in FY14 include providing train-the-trainer courses through webinars and savings associated with Service members using the VC.

The DoD provides military spouses the statutory requirements of TAP as prescribed in Title 10, United States Code. Other elements of TAP, prescribed by DoD policy, are available to spouses if resources and space permits. Military spouses can attend the ''brick and mortar'' Transition GPS curriculum at no cost on a nearby military installation. They can also take the entire Transition GPS curriculum online, virtually, at any time, from anywhere with a computer or laptop for free.

Many of our Veteran and Military Service Organizations, employers and local communities provide transition support services to local installations. Installation Commanders are strongly encouraged to permit access to Veteran Service Organizations (VSOs) and Military Service Organizations (MSOs) to provide transition assistance-related events and activities in the United States and abroad at no cost to the government. Two memos signed by Secretary of Defense Chuck Hagel reinforce such access. The memos are effective within 60 days of the December 23 signing, and will remain in effect until the changes are codified within DoD.[1] Access to installations is for the purpose of assisting Service members with their post-military disability process and transition resources and services. The costs to VSOs and MSOs would be any costs associated with salaries for paid VSO and MSO personnel. These organizations will pay for any costs associated with travel to and from military installations, as well as any materials they provide to separating Service members and their spouses. Costs to employers and community organizations supporting transition-related events and activities would be similar to those for VSOs and MSOs.

The DoD is dependent upon other federal agencies to deliver the redesigned TAP to transitioning Service members. The VA, DOL, SBA, Department of Education (ED), and Office of Personnel Management (OPM) have proven to be invaluable partners in supporting the Transition GPS curriculum development and delivery, and in providing follow-on services required by a warm handover due to unmet CRS. These interagency partners strongly support TAP governance and performance measurement.

Although DoD cannot estimate the costs for its interagency partners, TAP provides the Service members with resources through the contributions of its interagency partners that should be identified as factors of total program cost. Transition assistance is a comprehensive interagency effort with contributions from every partner leveraged to provide support to the All-Volunteer Force as the Service members prepare to become Veterans. The interagency partners deliver the Transition GPS curriculum and one-on-one services across 206 military installations across the globe. DoD can only speak to TAP costs within the Defense fence line, but can discuss the value provided by interagency partners.

The DOL provides skilled facilitators that deliver the DOLEW, a mandatory element of the Transition GPS standardized curriculum. DOL's American Jobs Centers (AJCs) provide integral employment support to transitioning Service members and transitioned Veterans. The AJCs are identified as resources for the Service members during TAP, which may increase visits from the informed Service members. The AJCs also support warm handovers of Service members who have identified employment as a transition goal on their ITP but do not meet the CRS for employment. DOL also provides input to the TAP interagency working groups and governance boards, and is involved in the data collection, performance measurement, and standardization efforts, all of which represent costs to the organization.

The SBA provides the Transition GPS entrepreneurship track, Boots to Business, to educate transitioning Service members interested in starting their own business about the challenges small businesses face. Upon completing the Boots to Business track, the SBA allows Service members to access the SBA on-line entrepreneurship course, free of charge. The SBA then provides Service members the opportunity to be matched to a successful businessperson as a mentor. This is a tremendous commitment that must create additional costs for the SBA. The SBA offices continue to provide support to Veterans as they pursue business plan development or start up loans; provision of this support is in their charter, but the increased awareness provided through the Transition GPS curriculum is likely to increase the patronage and represent a cost to SBA. The SBA also provides input to the TAP interagency working groups and governance boards. The SBA is engaged with data collection and sharing efforts to determine program outcomes.

VA provides facilitators who deliver the mandatory VA Benefits Briefings I and II as part of the Transition GPS standardized curriculum required to meet ''VOW Act'' requirements. The VA facilitators also deliver the two-day track for Career Technical Training that provides instruction to Service members to discern the best choices of career technical training institutions, financial aid, best use of the Post 9/11 GI Bill, etc. Benefits counselors deliver one-on-one benefits counseling on installations, as space permits. As a primary resource for Veterans, VA ensures benefits counselors are able to accept warm handovers of transitioning Service members who do not meet CRS and require VA assistance post separation. The VA hosts a web portal for connectivity between employers and transitioning Service members, Veterans and their families. VA provides input to the TAP interagency working groups and governance boards, and is involved in the data collection and sharing efforts to determine program outcomes, all of which represent costs to the organization.

ED serves a unique and highly valued role in the interagency partnership by ensuring the entire curriculum, both in classroom and virtual platform delivery, is based on adult learning principles. Their consultative role, tapped daily by the interagency partners, is critical to a quality TAP. ED also provides input to the TAP interagency working groups and governance boards and keeps a keen eye toward meaningful TAP outcomes, all of which represent costs to the organization.

The OPM contributes federal employment information and resources to the DOLEW, and enables the connectivity between the VA's Web

[1] DoD Memos signed 12/23/2014. ''Installation Access and Support Services to VA-Recognized Veteran Service Organizations/Military Service Organizations'' and ''Installation Access and Support Services for Nonprofit Non-Federal Entities.''

portal and USA Jobs Web sites. The OPM also provides input to the TAP interagency working groups and governance boards and contributes to performance measures.

The costs to DoD's interagency partners were not calculated; implementation of this rule was mandated by the ''Vow Act'' and costs for all parties are already incurred. The calculated costs to DoD and unmeasured costs to DoD's interagency partners provide significant resources to Service members resulting in benefits to the Nation.

The benefits of the redesigned TAP to the Service members are increased career readiness to obtain employment, start their own business or enter career technical training or an institution of higher learning at the point of separation from military service. The legacy, end-of-career TAP is replaced by pre-determined opportunities across the MLC for many transition-related activities to be completed during the normal course of business. Since a direct economic estimate of the value of TAP is difficult for DoD to demonstrate as it would require collection of information from military personnel after they become private citizens, the value of the TAP can be derived by demonstrating qualitatively how Service members value the program and then displaying some changes in economic variables that can be differentiated between Veterans who have access to TAP and non-Veterans who do not have access to the program.

—According to one independent evaluation of the TAP, Service members who had participated in the TAP had, on average, found their first post-military job three weeks sooner than those who did not participate in the TAP.[2]

—An independent survey asked Soldiers who had used the TAP their opinions about the curriculum. The Soldiers reported positive opinions about the usefulness of the TAP. 90% of the Soldiers felt that it was a useful resource in searching for employment and 88% of them would recommend the TAP to a colleague.[3]

According to a curriculum assessment completed at the end of each TAP module, transitioning Service members gave the TAP positive reviews on its usefulness for their job search:

—92% of reported that they found the learning resources useful, including notes, handouts, and audio-visuals.

—83% reported that the modules enhanced their confidence in their own transition planning.

—81% reported that they now know how to access the necessary resources to find answers to transition questions that may arise in the next several months.

—79% said that the TAP was beneficial in helping them gain the information and skills they needed better to plan their transition.

—79% said that they will use what they learned from the TAP in their own transition planning.[4]

—A comparison of unemployment insurance usage suggests that recently separated members of the military (2013 & 2014) were more likely to apply what they learned in the re-designed TAP and were more involved earlier in job training programs than unemployed claimants who did not have military experience (8.5% of UCX claimants versus 5.1% of Military service claimants).[5]

—According to the Bureau of Labor Statistics, the unemployment rate for Veterans of the current conflict declined by 1.8 percentage points from August 2013 to August 2014 coinciding with the time period when all Service members were required to take the re-designed TAP.[6]

The TAP also helps mitigate the adjustment costs associated with labor market transition. Military members must prepare for the adjustments associated with losing military benefits (*e.g.* housing, health care, child care) to the benefits afforded in private sector or nonmilitary public sector jobs. The TAP addresses this very important aspect based on a regulatory mandate that they attend both the DOLEW and the VA's Veterans Benefits Briefings, and complete a 12-month post-separation financial plan to meet CRS.

The early alignment of military skills with civilian workforce demands and deliberate planning for transition throughout a Service member's career sets the stage for a well-timed flow of Service members to our Nation's labor force. Employers state that transitioning Service members have critical job-related skills, competencies, and qualities including the ability to learn new skills, strong leadership qualities, flexibility to work well in teams or independently, ability to set and achieve goals, recognition of problems and implementation of solutions, and ability to persevere in the face of obstacles. However, application of these skills and attributes must be translated into employer friendly language. The TAP addresses these issues. The VA web portal supports providing private and public sector employers with a direct link to profiles and resumes of separating Service members where employers can recruit from this talent pipeline.

The rule benefits communities across the country. Civilian communities receive more educated, better-trained and more prepared citizens when separating Service members return to communities as Veterans. Service members learn to align their military skills with civilian employment opportunities, which enables the pool of highly trained, adaptable, transitioning Service members a more timely integration into the civilian workforce and local economies. Service members also learn through TAP about the rich suite of resources available to them from the interagency partners and have, for the asking, one-on-one appointments with interagency partner staff, who can provide assistance to Service members and their families both before and after the Service member leaves active duty. More specifically, the components of the mandatory CRS target deliberate planning for financial preparedness as well as employment, education, housing and transportation plans and, for those Service members with families, childcare, schools, and spouse employment. The DoD and interagency partners incorporated the warm handover requirement for any transitioning Service member who does not meet the CRS. The warm handover is meant to serve as an immediate bridge from DoD to the federal partners' staffs, which are committed to providing needed support, resources and services to Service members post separation in the communities to which the Service members are returning. The intention is to provide early intervention before Veterans encounter the challenges currently identified by some communities, *e.g.,* financial struggles, unemployment, lack of social supports that can spiral down into homelessness, risk taking behaviors, etc. Families and communities benefit.

The Task Force established expectations for program performance measures and outcomes. The redesigned TAP Interagency Executive Council and Senior Steering Group laid the preliminary groundwork to measure

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[2] Source: Veterans Employment and Training Service (DOL VETS) VETS Fact Sheet 1: Transition Assistance Program.

[3] Source: Faurer, J., Rogers-Brodersen, A. and Bailie, P. (2014). Managing the Re-employment of Military Veterans through the Transition Assistance Program (TAP). Journal of Business and Economics. 12 (1), 55–60.

[4] Source: Statement of Dr. Susan Kelly Before the House Veterans Affairs Committee Subcommittee on Economic Opportunity (September 17, 2014).

[5] Source: Paul Heaton, RAND Corporation, Why is Veteran Unemployment So High?

[6] Source: Bureau of Labor Statistics, Employment Situation of Veterans, 2014. (March 18, 2015).

long-term program outcomes. While DoD is statutorily limited to measure outcomes while Service members are active duty, DoD performance measures are intended to demonstrate outcomes of the TAP redesign within DoD. These include the verified number of Service members separated from active duty who meet ''VOW Act'' mandates and who meet CRS prior to separation. At the end of fiscal year 2014, 76.4% of separated Active Duty members met ''VOW Act'' requirements and 84% met CRS.

These measures set the stage for future long-term measures when transitioning Service members become Veterans. The DoD's TAP Information Technology (IT) architecture and data collection processes enable future data sharing with our Federal partners to show program effectiveness. The DoD requires the interagency support of its partners to further develop and collect data to define a relationship between TAP attendance, ''VOW Act'' compliance and CRS and long-term outcome measures, *e.g.* optimal use of Post 9/11 GI Bill benefits and long-term earnings of Post 9/11 Veterans.

Justification for Interim Final Rule

The provisions of the Administrative Procedure Act (APA) 5 U.S.C. 553 requiring notice and public comment are inapplicable because this rule involves a military function of the United States (5 U.S.C. 553(a)(1)) since it addresses the training and transitioning of military members to civilian life. Nonetheless, DOD is providing the public with an opportunity to review and comment on this rule because it is being published to redesign the two decades-old program and make Post 9/11 transitioning Service members career ready. This redesign requires an unprecedented interagency commitment of staffing, programs, and resources across 206 military installations as well as a culture change within DoD. Timely and full execution of the redesign is of significant Congressional interest with three hearings already conducted and more scheduled in the coming months. In the last of four reports to the White House, *The Military Life Cycle Transition Assistance Program (MLC TAP) Implementation Plan,* the Military Departments stated one of the barriers and risks for implementing the redesigned TAP is the lack of a signed policy from DoD. DoD's interagency partners' budgets and resources are best estimates, pending the issuance of this rule which DOD's partners are required to support. The Military Services are hindered in submitting accurate Program Objective Memorandums (POMs) unless official DoD policy is in place to support their resource and funding requirements.

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD–2011-OS-0036.* As required by Executive Order (EO) 13563, DoD intends to conduct periodic reviews along with its partner agencies to modify, or repeal, aspects, as appropriate, and after public notice and comment. DOD expects to conduct a review no later than five years from the publication of this interim rule. With regard to a number of aspects of this rule, possible modifications will be considered based on public comments and related internal studies. DoD intends to synthesize and review available data on such things including new and historical information on transition assistance milestones once a member becomes a veteran. For example, how many veterans use their Post-9/11 GI Bill, how many complete a degree, how long does it take for a veteran to find employment following separation from the military? Following this, DOD may propose modifications to the current provisions of the existing rule.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim final rule has been designated an ''economically significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Congressional Review Act (5 U.S.C. 801)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This interim final rule is a major rule under the Congressional Review Act.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires 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 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The DoD certifies that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Executive Order 13132, ''Federalism''

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. This interim final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 88

Employment, Military personnel.

Accordingly 32 CFR part 88 is revised to read as follows:

PART 88—TRANSITION ASSISTANCE PROGRAM (TAP) FOR MILITARY PERSONNEL

Sec.
88.1 Purpose.
88.2 Applicability.
88.3 Definitions.
88.4 Policy.
88.5 Responsibilities.
88.6 Procedures.
Appendix A to Part 88—Career Readiness Standards
Appendix B to Part 88—MLC TAP
Appendix C to Part 88—Pre-Separation or Transition Counseling
Appendix D to Part 88—IDP and ITP
Appendix E to Part 88—Transition GPS (Goals, Plans, Success)
Appendix F to Part 88—DOLEW Exemptions
Appendix G to Part 88—Virtual Curricula
Appendix H to Part 88—Capstone
Appendix I to Part 88—Data, Information Collection, Data Sharing, and Management Portfolio

Authority: 10 U.S.C. Chapter 58.

§ 88.1 Purpose.

This part establishes policy, assigns responsibilities, and prescribes procedures for administration of the DoD TAP.

§ 88.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff (JS), the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the ''DoD Components'').

(b) Does not apply to members of the Army and Air National Guard serving under 32 U.S.C. 101.

§ 88.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

Active Component (AC). Defined in 10 U.S.C. 101.

Active Duty. Defined in 10 U.S.C. 101.

Active Service. Defined in 10 U.S.C. 101.

Active Status. Defined in 10 U.S.C. 101.

Brick and mortar classroom. A learning environment where participants attend a Transition Goals, Plans, Success (GPS) module in a traditional classroom facility led by an in-person instructor or facilitator.

Credentialing. The act of obtaining certificates, licensure, or other official verification of competency accepted by civilian industry or federal, State, or local authorities.

Career Readiness Standards (CRS). A set of common and specific activities and associated relevant deliverables (documentation within the last 12 months) that must be achieved to demonstrate Service members are prepared to transition effectively to pursue their personal post-separation higher education, career technical training, and civilian employment goals.

Continuum of Military Service Opportunity Counseling. Counseling that provides information to AC Service members on the procedures for and advantages of affiliating with the Selected Reserve, pursuant to 10 U.S.C. 1142.

Department of Labor (DOL) American Job Centers. American Job Centers (or AJCs) provide free help to job seekers and employers for a variety of career and employment-related needs. More than 2,500 AJCs are located throughout the United States. Priority of service applies to employment and training programs funded by the Department of Labor. Many locations have staff directly assigned to assist veterans in finding employment. Although the AJC makes assistance available to everyone looking for a job, veterans are given priority. Priority of Service for veterans at the AJC is offered to all veterans. This means that veterans are offered services before non-veterans and have priority of access to all DOL-funded employment and training programs offered at the AJC.

DOL Employment Workshop. Mandatory DOL-led workshop, which focuses on the mechanics of resume writing, networking, job search skills, interview skills, and labor market research.

DOL Gold Card. The Gold Card initiative is a joint effort of the Department of Labor's Employment and Training Administration (ETA) and the Veterans' Employment and Training Service (VETS). An eligible veteran can present the Gold Card at his/her local AJC to receive enhanced intensive services including up to six months of follow-up.

Eligible Service member. Defined in 10 U.S.C. 101.

Facilitator. A person trained or qualified as a subject matter expert to deliver appropriate components of Transition GPS. The facilitator's primary duty is presenting instruction, information, and engaging curricula to ensure Service members meet learning objectives.

Individual Development Plan (IDP). A written plan designed to meet particular goals for individual career development that is aligned with the eligible Service member's organizational and operational missions. It outlines developmental objectives with training activities (*e.g.,* professional military education and military certifications). Service members will align the IDP effectively to make use of active duty time, experiences, training, and education towards personal long-term post-transition career goals.

Individual Transition Plan (ITP). An OSD standardized document that is created, evolves and is maintained by the Service member that provides the framework to perform detailed assessments of their personal and professional preparedness to achieve realistic career goals after separation from active duty.

Involuntary separation. A Service member is considered to be involuntarily separated if the member was involuntarily discharged or denied reenlistment under adverse or other-than-adverse conditions (*e.g.,* force shaping) pursuant to 10 U.S.C. 1141.

ITP Checklist. An automated tool to document that Service members have met the CRS.

ITP Review. A module in the transition GPS Core Curricula where TAP staff explains the purpose, use, function, and responsibilities associated with the ITP. Eligible Service members must produce evidence of this deliverable indicating they met this CRS before separation, retirement, or release from active duty.

Job placement counseling. Transition services pursuant to 10 U.S.C. 1142 for one-on-one counseling that refines and guides spouses of eligible Service members on all facets of the job search process, to include writing resumes.

Military Occupation Code (MOC) Crosswalk. A curriculum that translates military skills, training, and experience into identification of required civilian credentialing appropriate for civilian jobs.

National Guard. Defined in 10 U.S.C. 101 and 32 U.S.C. 101.

Personal Financial Planning. A curriculum that provides Service members with skills to develop a post-separation 12-month budget. It also assists Service members in learning how to manage their own finances as civilians, both at home and in the workplace.

Recovering Service member. Defined in Department of Defense/Department of Veterans Affairs, Wounded, Ill, and Injured Senior Oversight Committee Memorandum, ''Implementation of Wounded, Ill and Injured Related Standard Definitions,'' December 10, 2008.

Relocation assistance. Information about the benefits and services provided by the Military Departments related to transport of household goods for transitioning Service members and their dependents and any entitlements for storage.

Reserve Component (RC). Defined in 10 U.S.C. 101 and 37 U.S.C. 101. The Reserve Corps of the Public Health Service is not eligible for TAP services.

Resilient Transitions. A module in the Transition GPS Core Curriculum that introduces participants to resources on transition-related issues, including stress management, considerations for families, support systems, value of a mentor, and special issues, that eligible Service members and their families may encounter as they prepare for a post-military life. These issues may have a significant negative impact on the transition process if overlooked. The focus of the curriculum is to connect the Service member with agencies and organizations based on the individual Service member's need for support and guidance.

Short notice separation. An unanticipated separation with 30 days or fewer before separation, retirement, or release from active duty.

TAP Coordinating Council. Individuals designated in this part to participate in updating and improving the TAP. The TAP Coordinating Council meets at least quarterly.

TAP Governance Body. A structure, established in October 2013, comprised of interagency senior leadership from the DoD, VA, DOL, Department of Homeland Security (DHS), Department of Education (ED), Small Business Administration (SBA), and the Office of Personnel Management (OPM), that steers and monitors implementation of the TAP redesign and modifies TAP, as needed, to meet the changing environment consisting of the TAP Executive Council (EC) and the Senior Steering Group (SSG). See Interagency Statement of Intent, ''Transition Assistance for Separating Service Members'' (available at *http://prhome.defense.gov/RFM/TVPO*) for a description of the TAP governance structure.

TAP interagency parties. By law, Federal agencies are required to deliver TAP services to transitioning Service members. See § 88.6 for a list of the TAP interagency parties.

TAP Staff. Subject matter experts hired by OSD and the Military Services, to provide services and programs that prepare Service members for transition from active duty to civilian life.

Targeted population. A population of eligible Service members consisting of those who are:

(1) 18 to 24 years old;

(2) Completing first-term enlistments;

(3) Involuntarily separating due to force shaping; and/or

(4) Separating on short notice from military service.

Transition. The preparation and process for moving from active duty service to the civilian sector.

Transition GPS. A package of activities and curricula specifically designed to provide eligible Service members with the targeted set of knowledge, skills, documentation, and assistance required to meet the CRS before transition and enable a successful transition from active duty to civilian life.

Transition GPS Core Curricula and Tracks. Components of Transition GPS based on value-added learning objectives that enable Service members to become career ready. The Core Curricula builds the CRS common to all Service members. Transition GPS tracks are chosen by Service members to meet Accessing Higher Education and Career Technical Training CRS or to pursue business ownership or other self-employment.

Transition GPS Participant Assessment. A web-based evaluation completed by the Service member about the Transition GPS modules, tracks, and virtual curricula. It includes curriculum and instruction materials, learning outcomes, facilitator performance, facilities, and logistics. Participant feedback from the assessment ensures that Transition GPS meets the needs and expectations of transitioning Service members and is outcome based. Information collected in the assessment will support the performance monitoring, evaluation, and reoccurring modifications to Transition GPS.

Transition overview. The Transition GPS module that explains the transition process in terms of who, what, where, when, and why. It is intended to gain the participant's attention and emphasize the importance of preparing for transition and making the most of the information provided. It is also intended to provide an overview of the Transition GPS Core Curricula program and the benefits of preparation for active involvement in each session. A skilled trainer well versed in the overall TAP should facilitate the transition assistance overview session.

Unanticipated Separation. Service members released from active duty before completion of enlistment, contract, or orders.

VA Benefits Briefings I and II. VA-led mandatory briefings that provide eligible Service members with hands-on training and information on available veterans' benefits and services.

Virtual Transition GPS Curricula. A web-based version of the Transition GPS curricula that provides an alternative delivery method for Service members who cannot attend installation-based training to access Transition GPS classes.

Warm Handover. A Capstone process between respective Military Departments and appropriate interagency parties resulting in the person-to-person connection of Service members to services and follow-up resources as needed. The Warm Handover provides a confirmed introduction and assurance that the appropriate interagency party/parties acknowledge(s) that an eligible Service member requires post-military assistance and the interagency party/parties is/are willing to follow through on providing assistance to meet the needs of Service members and assist them in attaining the CRS and making a successful transition.

§ 88.4 Policy.

It is DoD policy that:

(a) The TAP:

(1) Prepares all eligible members of the Military Services for a transition from Active Duty back to civilian life.

(2) Enables eligible Service members to fulfill the requirements of the VOW to Hire Heroes Act and meet CRS as required by this part.

(3) Is the overarching program that provides transition assistance, information, training, and services to eligible transitioning Service members to prepare them to be career ready when they separate, retire, or are released from active duty back to civilian life. The TAP consists of multiple elements, including: The Transition GPS curricula, the components of which are outlined in appendix E to part 88; policy and procedures; information technology (IT) infrastructure; research, studies and survey data; performance measures and outcomes; assessments; curricula development in both brick and mortar and virtual settings and modifications; CRS; accountability data; and resources required to implement transition assistance.

(b) Components are integrated throughout the eligible Service member's Military Life Cycle (MLC) TAP at key touch points. The Transition GPS component of TAP consists of curriculum, counseling, information, referral, and deliverables to enable

eligible Service members to meet the CRS.

(c) This policy establishes a TAP interagency governance structure according to DoD Instruction 5105.18, ''DoD Intergovernmental and Intragovernmental Committee Management Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/510518p.pdf*), referred to in this part as the TAP EC and SSG. DoD will support and carry out the DoD mission of the governance structure as set out in the Interagency Statement of Intent, dated August 15, 2013, ''Transition Assistance for Separating Service Members.'' The EC will designate working groups as appropriate. DoD representation to working groups will be in accordance with § 88.5 of this part.

§ 88.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)), the Assistant Secretary of Defense for Manpower and Reserve Affairs Readiness and Force Management (ASD(M&RA)):

(1) Provides policy, direction, and oversight to the Transition to Veterans Program Office (TVPO);

(2) Provides oversight and governance for the TAP and serves as the DoD lead chair of the TAP EC on a rotational basis with DOL and the VA;

(3) Oversees TAP policy and programs, monitors compliance with TAP provisions, and provides guidance to DoD Component heads; and

(4) Coordinates with the CJCS to provide JS Senior Enlisted Advisor participation for the TAP EC and Senior Enlisted Advisor representation to the TAP SSG;

(b) Under the authority, direction, and control of USD(P&R)), the Assistant Secretary of Defense for Health Affairs (ASD(HA)):

(1) Ensures that the Defense Health Agency provides transitional medical and dental care information pursuant to 10 U.S.C. 1145 to the TVPO for incorporation into Pre-separation Counseling; and

(2) Provides representation to the TAP EC and SSG working groups, as necessary;

(c) Under the authority, direction, and control of the USD(P&R), the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)):

(1) Helps the TVPO establish and publish guidance for participation in the TAP that is specific to eligible RC Service members as defined in law and policy;

(2) Coordinates with TVPO to integrate elements of Transition GPS, before the DD Form 214, ''Certificate of Release from Active Duty,'' August 20, 2009, into the Yellow Ribbon Reintegration Program in conjunction with the policy established in DoD Instruction 1342.28, ''DoD Yellow Ribbon Reintegration Program (YRRP)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134228p.pdf*), as appropriate;

(3) Provides Executive Director, Family and Employer Programs Policy, Senior Executive Service (SES), representation to the TAP SSG; and

(4) Provides representation to the TAP EC and SSG working groups, as necessary.

(d) Under the authority, direction, and control of the (ASD (M&RA), the Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)):

(1) Develops policy and programs in DoD Instruction 1342.22, ''Military Family Readiness'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134222p.pdf*) and other applicable MC&FP issuances that complements TAP;

(2) Coordinates with TVPO on the roles, responsibilities, and policies set out in DoD Instruction 1342.22. The roles include coordination with:

(i) Installation education officers that impact the delivery of the Transition GPS Accessing Higher Education track;

(ii) Certified financial counselors that impact the delivery of the Transition GPS Core Curricula Personal Financial Planning for Transition module;

(iii) TAP staff, in conjunction with Military Departments whose staff are functionally aligned with DASD(MC&FP), regarding the delivery of the Transition GPS components to enable eligible Service members to meet CRS;

(3) Provides policy regarding job placement counseling for the spouses of eligible transitioning Service members and career change counseling to Service members and dependents of eligible Service members in accordance with 10 U.S.C. Chapter 58; and

(4) Provides representation to the TAP EC and SSG working groups, as necessary.

(e) Under the authority, direction, and control of the (ASD(R&FM)), the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD(MPP)) provides:

(1) Information and updates on entitlements and policies affecting eligible Service members as defined in law and policy; and

(2) Representation to the TAP EC and SSG working groups, as necessary.

(f) Under the authority, direction, and control of the ASD(R&FM), the Deputy Assistant Secretary of Defense for Readiness (DASD(R)):

(1) Provides information and updates on entitlements and policies affecting eligible Service members as defined in law and policy;

(2) To the extent possible and where available, ensures DASD(R) programs and policies related to job training, employment skills training, apprenticeships, and internships complement those programs and policies that govern the TAP that fall under the purview of TVPO in conjunction with DoD Instruction 1322.29, ''Job Training, Employment Skills Training, Apprenticeships, and Internships (JTEST–A1) for Eligible Service Members'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/132229p.pdf*);

(3) Coordinates private-sector credentialing, licensing, and training outreach, and collaborates with the TVPO to align transition preparation across the MLC TAP and facilitate the military talent pipeline from the Military Departments to the civilian work force; and

(4) Provides representation to the TAP EC and SSG working groups, as necessary;

(g) Under the authority, direction, and control of the USD(P&R), the Director, Department of Defense Human Resource Activity (DoDHRA) provides:

(1) Administrative support to TVPO, including human capital, funding, and logistics; and

(2) Representation to the TAP EC and SSG working groups, as necessary.

(h) Under the authority, direction, and control of the Director, DoDHRA, the Director, Defense Suicide Prevention Office (DSPO):

(1) Provides suicide prevention and resource information to TVPO for incorporation into Transition GPS programming for eligible Service members as defined in statute and policy pursuant to 10 U.S.C. Chapter 58;

(2) Coordinates with TVPO on the role, responsibilities, and training of Suicide Prevention Program Managers (SPPMs), in conjunction with the Military Departments as it relates to Transition GPS; and

(3) Provides representation to the TAP EC and SSG working groups, as necessary.

(i) Under the authority, direction, and control of the Director, DoDHRA, the Director, Defense Manpower Data Center (DMDC):

(1) Oversees implementation of the TAP data collection, data sharing, and IT portfolio management requirements as described in this section;

(2) Provides assistance to TVPO with the establishment of business processes for data collection, data sharing, web services, and cost sharing related to IT portfolio management requirements in this part;

(3) Provides representation to the TAP EC and SSG working groups, as necessary; and

(4) Provides program status updates, as determined by the TVPO, based on data housed within DMDC capabilities;

(j) Under the authority, direction, and control of the ASD(R&FM), the Director, TVPO:

(1) Coordinates TAP policies, programs, and delivery with the USD(P&R);

(2) Develops policy, strategic guidance, and program goals for the TAP and Transition GPS; and reviews, modifies, and reissues such guidance, as required;

(3) Oversees the Military Departments' implementation of TAP;

(4) Implements the requirements of the TAP governance bodies as defined by Interagency Statement of Intent, ''Transition Assistance for Separating Service Members'';

(5) In conjunction with ASD(R&FM), supports and coordinates meetings and activities for TAP governance bodies, as defined in § 88.3;

(6) Serves as the DoD lead chair of the TAP SSG on a rotational basis with DOL and VA;

(7) Establishes processes to monitor compliance with statutory mandates and other performance management requirements, as appropriate;

(8) Establishes automated data collection processes through secure electronic data transfer, in conjunction with the Military Departments, partner agencies, and DMDC. (See paragraph (c) of appendix I to part 88);

(9) Before submission of operational execution plans, coordinates with the Military Departments and must receive approval from Director, TVPO, before final submission of operational execution plans, system modifications, or development of new systems that fall under DoD TAP data and information requirements.

(i) Implementation of any new IT system or capability; or

(ii) Revision to an existing system or capability of the Military Departments that support the TAP.

(10) Coordinates and collaborates with the interagency parties and other organizations, as appropriate, in accordance with a Memorandum of Understanding among the DoDVADOLEDDHS, SBA, and OPM ''Transition Assistance Program for Separating Service Members'' (available at *http://prhome.defense.gov/RFM/TVPO/*), to facilitate delivery of Transition GPS curricula, resources, and services, and to determine data sharing requirements;

(11) Coordinates with DMDC to provide TVPO-approved web-based services to the Military Departments for electronic transmission of DD Form 2958, ''Service Member's Individual Transition Plan Checklist'' and DD Forms 2648 or 2648–1, ''Pre-separation or Transition Counseling Checklist for Active Component (AC) Service Members'' and ''Transition Assistance Program (TAP) Checklist for Deactivating/Demobilizing National Guard and Reserve Service Members,'' respectively;

(12) Establishes a performance management framework to determine current and future resourcing and requirements;

(13) Analyzes data to evaluate the overall performance of the TAP;

(14) Establishes, reviews, assesses, and evaluates the effectiveness of Transition GPS;

(15) Oversees and monitors the development, delivery, maintenance, modification, and quality assurance of the Transition GPS brick-and-mortar and virtual curricula, products, and CRS deliverables, in accordance with this paragraph and MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members.'' Develops brick-and-mortar and virtual curricula for the components of Transition GPS that fall under the purview of DoD and coordinates with interagency partners on their respective curriculums;

(16) Coordinates with interagency parties, the Military Departments, and Joint Knowledge Online (JKO), on the methods, processes, and standards used to deliver Transition GPS brick-and-mortar and virtual curricula, products, and deliverables used within Transition GPS, in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members'' and this part;

(17) Monitors Transition GPS curricula delivery by TVPO and Military Departments by conducting evaluations and participant assessments;

(18) Updates DD Forms 2648, 2648–1 and 2958 in conjunction with the Military Departments, within 180 days of legislative changes that affect eligible Service members, as appropriate;

(19) Develops, maintains, standardizes, and oversees usage of the ITP at the appropriate time in an eligible Service member's MLC TAP in conjunction with Military Departments;

(20) Establishes and leads TAP Coordinating Council consisting of subject matter experts from the DoD Components, to formulate, review, and update TAP policies and programs. Collaborates and coordinates on the development of the Military Departments' implementation plans related to TAP. RC members appointed to the TAP Coordinating Council will be determined pursuant to guidance from the Director, TVPO and in consultation with the Military Departments;

(21) Designates the DoD lead for the EC Transition Assistance Working Group. Conducts outreach to private- and public-sector entities to improve transition preparation in order to keep transition services aligned to the needs of the civilian labor market; and

(22) Expands TAP services through online media and other cooperative outreach efforts to support eligible Service members and their spouses, as defined by statute and policy.

(k) The Secretaries of the Military Departments:

(1) Implement and administer TAP in accordance with this part;

(2) Oversee TAP for their respective AC and RC;

(3) Coordinate electronically with TVPO their implementation guidance pertaining to this part, before publication. A copy of the final implementing guidance will be provided to TVPO within 120 days from the publication date of this part. Future changes to TAP guidance will be forwarded to the TVPO within 30 days of issuance;

(4) Ensure the Inspector General (IG) of each Military Department, including their respective RC, conducts an inspection of TAP in accordance with established IG protocols;

(i) TAP IG inspection findings will be submitted biannually to the USD(P&R) no later than January 31 of the fiscal year following the previous inspection date.

(ii) The first TAP IG inspection findings will be submitted two full fiscal years from the effective date of this part.

(5) Internally resource TAP to meet the provisions as defined in law and policy;

(6) Ensure that eligible Service members receive the TVPO standardized Transition GPS components, develop a viable ITP, and meet CRS;

(7) Ensure that Service members who do not meet the CRS or do not have a viable ITP receive a warm handover, as defined in § 88.3, to the appropriate interagency party;

(8) Align, administer, and reinforce Transition GPS components and resources at appropriate key touch points throughout the MLC TAP of eligible Service members to ensure they are afforded the opportunity, time, and resources for career readiness preparation. At the separation, retirement, or release from active duty touch point all Service members must meet the CRS;

(9) Ensure Service member access to Transition GPS brick-and-mortar and virtual curricula;

(10) Provide the opportunity within the officer and enlisted evaluation systems to use the rate at which Service members within a command have met the CRS, as a performance criteria;

(11) In order to execute Transition GPS in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members'' and DoD 5500.07–R, ''Joint Ethics Regulation (JER)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/550007r.pdf*), DoD Instruction 1344.07, ''Personal Commercial Solicitation on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/134407p.pdf*), DoD Instruction 1000.15, ''Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/100015p.pdf*), DoDI 1322.25, ''Voluntary Education Program,'' and DoDI 1322.19, ''Voluntary Education Program in Overseas Areas'' to allow facility access to interagency parties on installations in the United States and abroad;

(12) Encourage installation commanders to permit properly vetted civilian employers to have access to transition assistance-related events and activities in the United States and abroad in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members,'' DoD 5500.07–R, and DoD Instruction 1344.07, at no cost to the U.S. Government. Access must be for the purpose of offering job opportunities, mentoring, internships, or apprenticeships leading to employment. Educational institution access will also be in accordance with DoD Instruction 1322.25, ''Voluntary Education Program,'' and DoD Instruction 1322.19, ''Voluntary Education Program in Overseas Areas;''

(13) Strongly encourage installation commanders to permit access to VSOs and MSOs to transition assistance-related events and activities in the United States and abroad in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members,'' DoD 5500.07–R, and DoD Instruction 1344.07, at no cost to the U.S. Government. Access must be for the purpose of assisting Service members with the pre- and post-military disability claim process and transition resources and services;

(14) Assign the appropriate Departmental Deputy Assistant Secretary or Director to serve as a TAP SSG member (*e.g.,* Civilian Personnel/Quality of Life; Air Force Management Integration; Fleet and Family Readiness); and

(15) Provides representatives to the TAP EC working groups, as necessary.

(l) The Chief of the National Guard Bureau assigns the Director of Personnel, an SES, to serve as a TAP SSG member.

(m) In addition to the responsibilities in paragraph (k) of this section and in consultation with the Commandant of the U.S. Marine Corps (USMC), the Secretary of the Navy (SECNAV):

(1) Develops joint implementation instructions to ensure statutory compliance for all eligible transitioning USMC and U.S. Coast Guard (USCG), personnel whenever the Coast Guard operates as a service in the Navy pursuant to 10 U.S.C. 5033 and 14 U.S.C. 3.

(2) Assigns an SES member to serve as TAP SSG member.

§ 88.6 Procedures.

(a) *Military Department Requirements.* The Military Services' additional requirements include:

(1) Perform these TAP operations and resource management functions:

(i) Develop requirements and budgets for the Program Objective Memorandum (POM); Future Year Defense Program (FYDP); and program budget reviews, as required to comply with TAP requirements. Coordinate with OSD TVPO for TAP resource advocacy throughout these cycles.

(ii) Establish program elements or accounting codes to separately and independently verify and review the monthly Military Department-funded execution data (*i.e.,* program funding levels, obligations, disbursements) in Defense Finance and Accounting Service (DFAS) reports and submit to TVPO quarterly. Any decrement to Military Department TAP annual program funding of 5% or greater must be reported to TVPO.

(iii) Identify and submit TAP-related issues at the general or flag officer and SES equivalent level to the TVPO in a timely manner so that TAP-related issues can go before the SSG for discussion and decision.

(2) Coordinate with TVPO on implementation of any new IT systems or capabilities and revisions to existing systems that support the TAP. TVPO will have final approval on any new IT systems and or modifications. TVPO approval will be obtained before the Military Departments implement any IT systems modifications or develop any new systems that support TAP. See paragraph (c) of appendix I to part 88.

(3) Use TVPO-selected standardized individual assessment tools.

(4) Ensure that Service members receive an individualized assessment, pursuant to this paragraph, of the various positions of civilian employment in the private sector for which members may be qualified as a result of the skills developed through MOC qualification, successful completion of resident training courses, attainment of military ranks or rates, or other military experiences.

(5) Develop, maintain, document, and oversee the IDP process.

(6) Inform and educate unit, command, and installation leadership on their responsibility to administer the TAP to ensure that eligible Service members meet the CRS before separation, retirement, or release from active duty.

(7) Identify the eligible population for Transition GPS services.

(8) Identify and provide qualified counselors and trained instructors to facilitate the Transition GPS core curricula and Accessing Higher Education track.

(9) Coordinate with DSPO SPPMs at the local installation level to provide information in support of the Transition GPS Core Curricula module on resilient transitions and to distribute suicide prevention information and resources pursuant to 10 U.S.C. Chapter 58 .

(10) Release eligible Service members during duty hours to complete the Transition GPS and exempt them from normal duty for the full 24-hour period of each workshop or briefing day and the 12 hours immediately preceding and following each workshop or briefing.

(11) Provide eligible Service members with the link to the TVPO web-based Transition GPS Participant Assessment and encourage them to complete it at the end of each Transition GPS brick-and-mortar and virtual curricula module

or group of modules. Responses will not identify individual Service members.

(12) Establish a process within the military personnel organizations of the Military Departments to receive a legible copy of the completed and authenticated DD Forms 2648 or 2648–1 from the TAP staff. The process will include a mechanism to verify transmission of the form to the eligible Service member's permanent official military personnel file.

(13) Maintain or establish permanent employment assistance centers at appropriate military installations pursuant to 10 U.S.C. 1143.

(14) Use appropriate assets at military installations and in the local community to enhance Transition GPS in accordance with DoD 5500.07–R and DoD Instruction 1344.07.

(15) Coordinate with the appropriate TAP interagency parties for scheduling and conducting the VA Benefits Briefings I and II and Career Technical Training track; DOLEW and SBA Entrepreneurship track in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members.''

(16) Coordinate warm handovers and Capstone support with interagency parties.

(17) Provide classroom space. Classes cannot exceed 50 participants (facilitator-to-student ratio should be 1:50 per separate classroom). A minimum of 10 participants is required to conduct a class. Military Departments will provide classrooms, appropriate facilities, IT infrastructure, fully-functioning web access, equipment, including classroom computers or accommodation for personal computers to enable effective Transition GPS instruction and counseling in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members;'' provide adequate facilities and workspace for instruction and counseling as agreed to by interagency parties also in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members.'' Military Departments may request exceptions for classrooms of more than 50 or less than 10 participants on a case-by-case basis. Such requests will be handled by the local installation level staff with partner agencies.

(18) Provide reasonable accommodations that enable wounded, ill or injured recovering Service members to successfully complete TAP.

(b) *TAP Implementation.* (1) Development of brick-and-mortar and virtual curricula, staff training, and delivery of certain elements of the Transition GPS Core Curricula and Transition GPS tracks will be conducted in coordination and conjunction with the TVPO and appropriate TAP interagency parties in accordance with MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members.''

(2) Interagency parties, and their respective curriculas consist of:

(i) VA: Provides the VA Benefits Briefings I and II and Career Technical Training track.

(A) The VA hosts a web portal for connectivity between employers and transitioning Service members, Veterans and military spouses.

(B) The VA web portal supports providing private and public sector employers with a direct link to profiles of separating Service members.

(ii) DOL: Provides the DOLEW.

(iii) SBA: Provides the Entrepreneurship track.

(iv) OPM: In conjunction with DOL, reviews and provides federal job search curriculum content for use in the DOLEW.

(v) ED: Consultative reviews of curricula to ensure accuracy of content, employment of adult learning principles, and to enhance adult learning experiences.

(vi) DHS: Coordinates and plans for USCG participation in the TAP, in accordance with this paragraph. MOU among DoD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members,'' and pursuant to 14 U.S.C. 13

(vii) DoD provides transition overview, resilient transitions, MOC Crosswalk, Financial Planning for Transition, ITP review, and Accessing Higher Education.

(c) *TAP Eligibility*—(1) *Service Members.* (i) Eligible Service members who have completed their first 180 days or more of continuous active duty in accordance with 10 U.S.C. 1142 are eligible for the following components of Transition GPS:

(A) Pre-separation or Transition Counseling.

(B) Transition GPS Core Curricula.

(C) Transition GPS Tracks.

(D) Capstone.

(ii) RC members may choose to decline pre-separation or transition counseling, using the DD Form 2648 or DD Form 2648–1, for each successive period of active duty under 10 U.S.C. 1142 consisting of 180 days or more of continuous active duty.

(iii) Eligible Service members may choose to participate in one or more of the individual Transition GPS tracks, if resources, capacity, and operational requirements allow, based on the Service member's interests and ability to meet the CRS and complete the track.

(iv) A minimum day requirement for Pre-separation or Transition Counseling does not apply to eligible Service members who are retiring or separating due to a disability.

(v) Administrative and punitive separations change the eligibility of Service member's participation as follows:

(A) Pre-separation or transition counseling will not be provided to a Service member who is being discharged or released before the completion of that member's first 180 continuous days or more on active duty pursuant to 10 U.S.C. 1142.

(B) All Service members shall participate in all mandatory components of Transition GPS. In cases where Service members receive a punitive or ''Under Other Than Honorable Conditions'' discharge, Commanders have the discretion to determine participation in the remaining Transition GPS curricula in consultation with interagency partners, as appropriate.

(2) *Spouses and dependents.* (i) Pursuant to 10 U.S.C. 1144, spouses of eligible Service members are entitled to the DOLEW.

(ii) Pursuant to 10 U.S.C. 1142 spouses of eligible Service members are entitled to:

(A) Job placement counseling for spouses and career change counseling to dependents of eligible members in accordance with 10 U.S.C. 1142. See paragraph (d)(3) of § 88.5 for the spouse job placement counseling responsibilities of the DASD(MC&FP).

(B) DoD and VA administered survivor benefits information.

(C) DoD financial planning assistance, including information on budgeting, saving, credit, loans, and taxes.

(E) VA-benefits orientation, such as education, employment, home loan services, housing assistance benefits information, and responsible borrowing practices counseling.

(iii) Pursuant to 10 U.S.C. 1142, eligible Service members and their dependents are entitled to:

(A) Career change counseling.

(B) Information on suicide prevention resource availability following military separation, retirement, or release from active duty.

(iv) Pursuant to 10 U.S.C. 1145, eligible Service members and their dependents are entitled to transitional

medical and health care that will be available for 180 days, beginning on the first day after the date of separation, retirement, or release from active duty.

(v) Unless prohibited by statute, spouses of eligible Service members are encouraged to participate in Transition GPS as resources and capacity allow. Participating spouses may have their attendance recorded in accordance with the privacy and information collection mandates and requirements of appendix I to part 88 and 32 CFR part 310.

(vi) Spouses or designated caregivers completing Pre-separation or Transition Counseling (using DD Forms 2648 or 2648–1) on behalf of an eligible recovering Service member will provide their Social Security Number for data collection purposes in accordance with this paragraph,10 U.S.C. 1142, DoD Instruction 1342.28 32 CFR part 310 and 14 U.S.C. 5033.

(d) *Transition GPS Priority of Service.* The following is the descending order of priority for participation in Transition GPS:

(1) Eligible Service members identified as part of the targeted population, as defined in § 88.3 of this part.

(2) Eligible Service members closest to their dates of separation, retirement, or release from active duty.

(3) Eligible Service members returning from overseas or assigned to remote or isolated and geographically dispersed locations.

(4) All other eligible Service members that do not fall into the categories addressed in paragraphs (a) through (c) of this section.

(5) Eligible Service members who have attended any previous Transition GPS component and who want to repeat a component, as resources and capacity allow.

(6) Spouses of eligible Service members, based on statute and policy, as resources and capacity allow.

(e) *Transition GPS participation.* All eligible Service members must participate in Transition GPS and must meet the Common CRS and the specific CRS commensurate with their personal higher education or career technical training objectives before separation, retirement, or release from active duty. This will be reflected by the discharge date recorded on the DD Form 214.

Appendix A to Part 88—Career Readiness Standards

(a) The CRS are defined as a set of common and specific activities and associated relevant deliverables (documentation within the last 12 months) that, when achieved, the Service member will be able to demonstrate that he or she is prepared to transition to effectively and pursue their personal post-separation higher education, career technical training, and civilian employment goals. General and flag officers are exempt from CRS, completion of the ITP, ITP Checklist, and Capstone.

(b) The CRS are tangible measures of a Service member's preparedness for higher education or direct entry into a civilian career. The tangible measures consist of:

(1) *Common CRS.* All eligible Service members will show documented evidence that they have:

(i) Completed the TVPO standardized ITP. The ITP must document the individual's personal employment; higher education; career technical training; or entrepreneurship goals, actions, and milestones ;

(ii) Completed the TVPO standardized 12-month post-separation budget;

(iii) Registered for VABenefits online account;

(iv) Completed the Continuum of Military Service Opportunity counseling (AC only);

(v) Evaluated the transferability of military skills to the civilian workforce and completed the TVPO standardized gap analysis provided during the MOC crosswalk;

(vi) Identified requirements and eligibility for certification, licensure, and apprenticeship in the Service member's desired potential career field;

(vii) Completed a standardized individual assessment tool, as determined by TVPO or the Military Departments, to identify personal interests and leanings that will enable informed decision-making regarding career selection;

(viii) Received a DOL Gold Card, as defined in § 88.3, for DOL American Job Centers; and

(ix) Completed a job application package, received a job offer letter, or provided proof of future employment. The job application package must include the Service member's private or public sector resume, personal and professional references, and at least two submitted job applications.

(2) *Accessing Higher Education and Career Technical Training CRS.* Eligible Service members seeking higher education or career technical training when they depart from military service will show documented evidence that they have:

(i) Completed a standardized individual assessment tool, selected by the Military Departments, to assess aptitudes, interests, strengths, or skills used to inform a Service member's decisions about selecting higher education and career technical training toward a desired future career field;

(ii) Completed a comparison of higher education or career technical training institution options;

(iii) Completed an application or received acceptance letter from a higher education or career technical training institution and

(iv) Confirmed one-on-one counseling with a higher education or career technical training institution advisor via telephone, email, or letter.

Appendix B to Part 88—MLC TAP

(a) *Key Touch Points.* (1) Key touch points of the MLC TAP are reflected in the individual Military Service's plans and will include, at a minimum:

(i) First permanent duty station for AC personnel or first home station for RC personnel during initial drilling weekends;

(ii) Reenlistment;

(iii) Promotion;

(iv) Deployment and redeployment or mobilization or activation; demobilization or deactivation;

(v) Change of duty station;

(vi) Major life events (*e.g.,* change in family status, change in Military Occupational Specialty, Navy Rating or Air Force Specialty Code); and

(vii) Retirement, separation or release from active duty.

(2) Transition GPS services may be made available to ineligible RC members during the MLC TAP as resources and capacity allow.

(b) *MLC TAP Timeline.* (1) The MLC TAP begins at the first permanent duty station or home station, continues throughout the military career of an eligible Service member, and culminates at Capstone. It includes the development of the IDP. Throughout the MLC TAP, Service members will be trained, educated, and postured to become career-ready upon separation from military service by completing the Transition GPS curriculum to meet the CRS. On commencing the transition process, the IDP will migrate into the ITP. The MLC TAP will include a Capstone.

(2) Before participating in Pre-separation or Transition Counseling, eligible Service members will complete a standardized individual assessment tool, as determined by TVPO or the Military Departments, to identify personal interests and leanings that will enable informed decision-making regarding career selection.

(3) Before participating in the Transition GPS Core Curricula, eligible Service members will complete a standardized individual assessment tool, selected by the Military Departments or TVPO, to assess aptitudes, interests, strengths, or skills used to inform a Service member's decisions about selecting higher education and career technical training toward a desired future career field.

(4) Eligible RC component Service members, on completion of two or more mobilizations, must have a relevant standardized individual assessment.

Appendix C to Part 88—Pre-Separation or Transition Counseling

(a) *Pre-Separation or Transition Counseling.* Mandatory counseling is provided to eligible Service members by TAP staff or command career counselors to inform members of services, benefits, curricula, assessments, CRS deliverables, and ITP during and after their separation, retirement, or release from active duty.

(1) An appropriate legal representative or ethics official will brief eligible Service members on ethics pursuant to DoD 5500.07–R, to ensure they understand information on post government (military) employment counseling (restrictions on employment, imposed by statute and regulation). These briefings shall be conducted by the Military Services as appropriate.

(2) Eligible Service members will receive information from a career counselor or transition staff member on how to access and

use the DD Form 2586, ''Verification of Military Experience and Training.''

(3) Eligible Service members who are voluntarily or involuntarily separated under any program initiated by a DoD instruction or directive, Congressional directive, Presidential executive order, or Military Department regulation, in order to ensure good order and discipline, shape the force, or draw down or realign forces, will be briefed by a career counselor or transition staff member on any special entitlements or benefits associated with these programs.

(4) Eligible Service members retained on active duty past their enlistment or reenlistment or contracts for purposes of mission essentiality, deployment continuity, or operational requirements, as determined by the Secretary concerned, will be briefed by a career counselor or transition staff member on any entitlements and benefits incurred during involuntary retention actions.

(5) Eligible Services members will be counseled and provided information or referrals, as requested, on all items listed on DD Forms 2648 or 2648–1 by the transition staff or command career counselors.

(b) *Pre-Separation or Transition Counseling Timeline.* Pursuant to 10 U.S.C. 1142, Pre-separation or Transition Counseling:

(1) For retirement purposes, will begin as soon as possible during the 24-month period preceding an anticipated retirement date but no later than 90 days before retirement; or

(2) For reasons other than retirement, will begin as soon as possible during the 12-month period preceding the anticipated date of separation but no later than 90 days before separation, retirement, or release from active duty; or.

(3) Will begin as soon as possible within the remaining period of service when:

(i) A retirement or other separation is unanticipated, and there are 90 or fewer days before separation, retirement, or release from active duty; or,

(ii) An eligible RC member is being demobilized or deactivated from active duty under circumstances in which operational requirements, as determined by the Secretary concerned, make the 90-day requirement unfeasible.

(4) Will not be provided to Service members who are discharged or released before completing their first 180 continuous days or more on active duty, as defined by 10 U.S.C. 1142. This limitation does not apply in the case of Service members who retire or separate for a disability.

(c) *Involuntary Separations.* Eligible Service members, and their dependents, undergoing involuntary separation from active duty as defined in 10 U.S.C. 1141 and in accordance with DoD Instruction 1332.30 and DoD Instruction 1332.14, will be made aware that they are entitled to:

(1) Use of commissary and exchange stores during the two-year period starting on the date of involuntary separation, pursuant to 10 U.S.C. 1146;

(2) Transitional medical and dental health care that will be available for 180 days beginning on the first day after the date of involuntary separation, pursuant to 10 U.S.C. 1145;

(3) Extended use of military family housing, subject to overseas Status of Forces Agreements, for up to 180 days after separation on a space-available basis and potential rental charges, pursuant to 10 U.S.C. 1147, the Secretary, shall require a reasonable rental charge for the continued use of military family housing under paragraph (a) of this appendix, except that such Secretary may waive all or any portion of such charge in any case of hardship;

(4) Overseas relocation assistance, including computerized job relocation assistance and job search information, pursuant to 10 U.S.C. 1148;

(5) Preference in hiring by non-appropriated fund instrumentalities, pursuant to 10 U.S.C. 1143; and

(6) Excess leave for a period not in excess of 30 days or permissive temporary duty for a period not in excess of 10 days for the purpose of carrying out necessary relocation activities, pursuant to 10 U.S.C. 1149.

(d) *Pre-Separation or Transition Counseling Checklist (DD Forms 2648 or 2648–1).* (1) The DD Form 2648 and DD Form 2648–1 will be used by eligible Service members to record Pre-separation or Transition Counseling.

(2) In accordance with 32 CFR part 310, privacy information contained within these forms will be maintained based on the System of Records Notification pertaining to these forms.

(3) All items on the applicable DD Forms 2648 or 2648–1 will be addressed during Pre-separation or Transition Counseling.

(4) Pre-separation or Transition Counseling checklist data will be submitted electronically to DMDC through the DMDC web-based service or TVPO-approved systems.

Appendix D to Part 88—IDP and ITP

(a) *IDP.* (1) Eligible Service members will initiate an IDP in accordance with Military Department regulations and procedures.

(2) Eligible Service members will document on the IDP the actions they must take to achieve their military and post-transition career goals and meet the CRS before separation, retirement, or release from active duty.

(3) Commanders, or commanders' designees, will ensure eligible Service members develop, update, and maintain the IDP at key touch points throughout the MLC TAP, in accordance with Military Department regulations and procedures.

(4) The IDP should be initiated in accordance with Military Departments regulations, but no later than 180 days after arrival at the first permanent active duty station for AC members or first home station for RC members during their initial drilling weekends.

(5) On the eligible Service member's decision to separate or retire or on notification of involuntary separation, the IDP will migrate into the ITP.

(b) *ITP.* (1) Service members will be introduced to the requirement of developing an ITP from their IDP during Pre-separation or Transition Counseling.

(2) The ITP is a step-by-step plan derived from the eligible Service member's IDP.

(3) Eligible Service members are required to document their post-military personal and professional goals and objectives on the ITP.

(4) The ITP is an evolving document that is reviewed, modified, and verified throughout transition preparation.

(5) ITP responses serve as potential triggers for further action by the eligible Service member to connect to the appropriate interagency party or subject matter expert for assistance.

(6) During the ITP review and verification processes, eligible Service members must produce evidence of the deliverables that meet the CRS before separation, retirement, or release from active duty.

(c) *ITP Checklist (DD Form 2958).* (1) The ITP Checklist, in conjunction with the ITP, will be used by the commander, or commander's designee, to verify that the eligible Service member has or has not met the CRS.

(2) If it is determined that the CRS or a viable ITP have not been achieved, then the ITP checklist will document confirmation of a warm handover to partner agencies and or other appropriate agencies.

(3) During the ITP review and verification processes, eligible Service members must produce deliverables to serve as evidence that they are prepared to meet the CRS before separation, retirement, or release from active duty.

(4) ITP Checklist data will be submitted electronically to DMDC through the DMDC web-based service or a TVPO-approved system.

(5) TAP staff will explain to eligible Service members during Pre-separation or Transition Counseling how the ITP and Pre-separation or Transition Counseling checklists work together to provide the Service member with a plan for meeting the CRS.

Appendix E to Part 88—Transition GPS (Goals, Plans, Success)

(a) Transition GPS. (1) Transition GPS is the package of TAP resources and services that will be used as a vehicle to enable eligible Service members to attain the CRS throughout the MLC TAP.

(2) Changes, as needed, to the standardized Transition GPS brick-and-mortar or virtual curricula, services, and learning objectives must be approved by TVPO for implementation across all Military Departments.

(3) The following Transition GPS components require mandatory participation unless Service members are exempt:

(i) Pre-separation or Transition Counseling is mandatory. See appendix C to part 88 for Pre-separation or Transition Counseling requirements.

(ii) VA Benefits Briefings I and II are mandatory.

(iii) Capstone is mandatory. See appendix H to part 88 for Capstone requirements.

(4) Participation in the DOLEW is mandatory, unless exempt. See appendix F to part 88 for specific DOLEW exemptions.

(5) Except for the components designated as mandatory, participation in Transition GPS tracks are based on proof of the Service member's ability to meet the associated CRS.

(6) Transition GPS consist of these components:

(i) *Pre-separation or Transition Counseling.* Pre-separation or Transition Counseling is mandatory for all eligible Service members no later than 90 days before separation, in accordance with 10 U.S.C. 1142. See appendix C to part 88 for Pre-separation or Transition Counseling requirements.

(ii) *Transition GPS Core Curricula.* Except for those subcomponents designated as mandatory, completion of the following subcomponents is determined based on the eligible Service member's ability to attain the CRS. The curricula consists of thefollowing subcomponents (defined in § 88.3):

(A) Transition Overview;

(B) Resilient Transitions;

(C) MOC Crosswalk;

(D) Personal Financial Planning for Transition;

(E) VA Benefits Briefings I and II, to be conducted pursuant to 10 U.S.C. 1142. Completion of this subcomponent is mandatory;

(F) DOLEW, to be conducted pursuant to 10 U.S.C. 1144. Completion of this subcomponent is mandatory, unless exempt. See appendix F to part 88 for DOLEW exemption eligibility; and

(G) ITP Review.

(iii) *Transition GPS Tracks.* (A) Eligible Service members may choose to participate in one or more, if resources, capability, and operational requirements allow of the Transition GPS tracks based on their interests and ability to meet the CRS.

(B) The outcome of completed tracks will be documented in the Service member's ITP and on the ITP checklist, as applicable.

(C) Eligible Service members may participate in one or more, if resource availability and operational requirements allow, of the following Transition GPS tracks:

(*1*) *Accessing Higher Education Track.* Eligible Service members pursuing higher education will receive guidance to prepare for the application process. On completing the Accessing Higher Education Track, eligible Service members will be prepared to:

(*i*) Complete an application to an accredited academic institution offering a sound program of study towards the Service member's career aspirations within the member's financial means.

(*ii*) Schedule a session with a counselor from an academic institution.

(*iii*) Meet individually with education counselors, as needed.

(*2*) *Career Technical Training Track.* Eligible Service members pursuing career technical training will receive guidance and help in selecting schools and technical fields. On completion of the Career Technical Training Track, eligible Service members will be prepared to:

(*i*) Complete an application to an accredited career technical training institution offering a sound program of study towards the Service member's career aspirations within the member's financial means.

(*ii*) Schedule a session with a counselor from a career technical training institution.

(*iii*) Meet individually with career technical training experts and VA vocational education counselors, as applicable.

(*3*) *Entrepreneurship Track.* Eligible Service members pursuing business ownership or self-employment in the private or non-profit sectors will receive information related to the benefits and challenges of entrepreneurship, the steps required to pursue business ownership and evaluate the feasibility of a business concept, and the SBA and other public and private sector resources available for further technical assistance and access to capital and contracting opportunities. Upon completing of Entrepreneurship Track, eligible Service members will have developed the initial components of a business feasibility plan at no cost to the participant.

(*i*) Eligible Service members will be given the opportunity to enroll in an optional eight-week online entrepreneurship course instructed by professors and practitioners.

(*ii*) Eligible Service members will be afforded the opportunity to connect with a small business owner as a mentor to assist with the business start-up process. A warm handover, as needed, will be coordinated through procedures established by the SBA.

(iv) *Capstone.* (A) Completion of Capstone is mandatory.

(B) Capstone provides an opportunity for eligible Service members to have attainment of the CRS verified by the commander or his or her designee.

(C) At Capstone, if the Service member cannot meet the CRS before transition, the commander or his or her designee confirms and documents a warm handover to appropriate interagency parties, or local resources. If in the judgement of the Commander or commander's designee, it is determined that the Service member does not meet CRS or does not have a viable ITP, then he or she must confirm that a warm handover takes place with the appropriate interagency parties, as needed.

(b) *Command responsibility.* (1) Commanders have oversight responsibility for Service members achieving CRS via Transition GPS. The oversight responsibility may not be delegated. Transition GPS may not be delegated except as stated in paragraph (b)(2) of this appendix.

(2) Commanders will:

(i) Ensure eligible Service members are afforded the opportunity, resources, and time to meet the CRS before separation, retirement, or release from active duty.

(ii) Be fully engaged throughout the MLC TAP in enabling Service members the opportunity, resources, and time to meet and attain the CRS and comply with statutory mandates before separation, retirement, or release from active duty.

(iii) Verify that eligible Service members have met the CRS and have a viable ITP during Capstone and ensure that members who did not meet the CRS or do not have a viable ITP receive a warm handover to the appropriate interagency parties or local resources.

(iv) Ensure Transition GPS components are delivered at key touch points throughout the MLC TAP.

(v) Ensure development and maintenance of the IDP throughout the MLC TAP and afford Service members the opportunity, resources and time to meet the CRS.

(c) *Transition GPS timeline.* In anticipation of the discharge or release from active duty of an eligible Service member, and during key touch points in the MLC TAP, the following timeline is applicable:

(1) In the case of an anticipated retirement, the components of Transition GPS not yet completed will begin as soon as possible during the 24-month period before the retirement date;

(2) In the case of a separation other than a retirement, the components of Transition GPS not yet completed will begin as soon as possible during the 12-month period before the anticipated discharge date;

(3) The incomplete components of Transition GPS will begin no later than 90 days before separation, retirement, or release from active duty except in those cases where statute determines specific timelines;

(4) In the case that there is a retirement or an unanticipated separation, and there are 89 days or fewer before discharge or release from active duty, the components of Transition GPS not yet completed will begin as soon as possible within the remaining period of service or the effective date on the DD 214, and the Service member must meet all requirements; and

(5) Transition GPS will begin as soon as possible within the remaining period of service when:

(i) An eligible RC member is being released from active duty under circumstances in which operational requirements, as determined by the Secretary concerned, make the prescribed timeline unfeasible; or

(ii) There are 90 or fewer days before the anticipated release from active duty.

Appendix F to Part 88—DOLEW Exemptions

(a) The only exemptions to eligible Service member participation in the DOLEW portion of the Transition GPS Core Curricula are:

(1) Eligible Service members retiring after 20 or more years of qualifying military service.

(2) Eligible Service members who, after serving their first 180 continuous days or more on active duty, pursuant to 10 U.S.C. 1142 meet at least one of the following criteria:

(i) Are able to provide documented evidence of civilian employment; or.

(ii) Are able to provide documented acceptance into an accredited career technical training, undergraduate, or graduate degree program; or.

(iii) Have specialized skills which, due to unavoidable circumstances, are needed to support a unit on orders scheduled to deploy within 60 days. The first commander in the eligible Service members' chain of command, with authority pursuant to 10 U.S.C. chapter 47, also known and referred to as the Uniform Code of Military Justice (UCMJ), must certify on the DD Form 2958 any such request for exemption from the DOLEW. A make-up plan must accompany the postponement certification.

(iv) Eligible recovering Service members who are separating, retiring, or being released from active duty who are enrolled in the Education and Employment Initiative, or similar transition program designed to secure

employment, higher education, or career technical training post-separation. The standardized terms and definitions for wounded, ill, and injured are outlined in the DoD/VA Wounded, Ill, and Injured Senior Oversight Committee Memorandum, ''Implementation of Wounded, Ill, and Injured Related Standard Definitions'' (available at *http://www.health.mil/Policies/2008/12/10/Implementation-of-WII-Standard-Definitions).*-.

(b) TAP staff will document on the DD Form 2958 the decision of eligible Service members who qualify for an exemption and elect not to participate in the DOLEW.

(c) Eligible RC Service members who have previously participated in the DOLEW may request an exemption.

(d) Eligible Service members who qualify for an exemption may still elect to participate in the DOLEW.

Appendix G to Part 88—Virtual Curricula

(a) DoD Components and Military Departments, in conjunction with JKO, DHS, VA, DOL, OPM, SBA and other appropriate interagency parties, must leverage the capabilities of web-based adult learning to ensure the transitioning force complies with statutory mandates to meet the CRS before separation, retirement, or release from active duty.

(b) As provided by TVPO or JKO, the virtual curricula provides an alternative delivery of Transition GPS to enable compliance with statutory mandates and attainment of the CRS as set by this Appendix. Those who can use the virtual curricula include:

(1) Eligible Service members whose duty locations are in remote or isolated geographic areas.

(2) Eligible Service members who are undergoing short-notice separation, as defined in the § 88.3 and pursuant to 10 U.S.C. chapter 59, and cannot access brick-and-mortar curricula in a timely manner.

(3) Spouses of eligible Service members, as resources and capacity allow.

(c) A Virtual Curricula must:

(1) Be easily accessible by eligible Service members through JKO;

(2) Be approved in design, look, color, etc., by the Director of TVPO in consultation with the Military Departments and partner agencies;

(3) Include interactive technology tools to monitor Service member participation in the training and knowledge gained;

(4) Include module materials and activities that engage participants, support diverse learning styles, foster frequent interaction, and encourage meaningful communication and collaboration between the participants and instructors;

(5) Include a data-capture feature or interface with the TVPO and DMDC-provided web service or process to ensure Service members receive credit for successfully completing the curricula;

(6) Ensure Virtual Curricula is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C 792.

(d) The virtual curricula's educational effectiveness and teaching and learning process will be assessed through an evaluation process that may include Service members' knowledge gain, retention, and satisfaction. TVPO will evaluate assessments in collaboration with the Military Departments and partner agencies.

(e) Intended learning outcomes will be reviewed regularly to ensure clarity, utility, and appropriateness.

(f) Documented procedures will be used to assure that security of personally identifiable information (PII) is protected in the conduct of assessments and evaluations and in the dissemination of results in accordance with 32 CFR part 310 and 14 U.S.C. 5033.

(g) Changes to the DoD virtual curricula will be approved by TVPO for implementation across all Military Departments.

Appendix H to Part 88—Capstone

(a) *Review and verification.* Capstone is a two-stage process. Stage one is an in-depth review of the Service members ITP and CRS, which is conducted by TAP staff. Stage two consists of the Commander or Commanders' designee verifying that the Service member has a viable ITP and has met the CRS. If the Commander or Commanders' designee determines that the Service member does not meet CRS or does not have a viable ITP, then he or she must confirm that a warm handover takes place with the appropriate interagency parties, as needed. The review and verification processes may or may not occur simultaneously.

(1) *Stage One—Capstone review.* During the Capstone review, a Service member's ITP, CRS deliverables pertaining to the member's personal goals and ITP Checklist will be checked to identify shortfalls and determine if the member is at risk of not meeting the CRS before separation, retirement, or release from active duty.

(i) The review will be conducted by:

(A) A TAP staff member or career counselor for eligible Service members in the rank of O–5 or below.

(B) The first Commander with UCMJ authority in the chain of command, or his or her designee, for eligible Service members in the rank of O–6 and above.

(ii) If during the review a Service member is determined to be incapable of meeting the CRS or has gaps in the ITP, the TAP staff will introduce the member to the necessary resources to assist him or her in becoming career ready. Resources include remedial skills building via the Transition GPS curricula, one-on-one assistance from TAP staff, and assistance from installation or local community resources.

(iii) Service members will document the point of contact name, phone number, and email address of remedial resources on the ITP.

(2) *Stage Two—Capstone verification.* The eligible Service member's Commander or his or her designee will review the ITP, CRS deliverables, and DD Form 2958 during Capstone verification to determine whether the requirements to complete the CRS have been attained.

(i) In cases where Service members are still not able to meet the CRS during Capstone verification, the Commander or his or her designee will initiate a warm handover to appropriate partner agencies or local resources for post-separation support in the community where the Service member plans to relocate; and

(ii) The Commander or his or her designee will confirm the warm handover has occurred by documenting it on the DD Form 2958.

(3) *Completion of Capstone.* Service members are to be counseled on their ITPs during Capstone. If they do not have a viable ITP or meet CRS, they will be referred to further training and services, as needed; and connected, as needed, to appropriate interagency parties and local resources that provide continued benefits, services, and support when they become veterans.

(b) *Timeline.* (1) Capstone will be completed for each eligible Service member in accordance with the timeline prescribed within this appendix to verify the member has met the CRS before separation, retirement, or release from active duty.

(2) Capstone will be completed no later than 90 days preceding an anticipated separation, retirement, or release from active duty for eligible Service members.

(3) Exceptions to this timeline are:

(i) In the case of eligible AC Service members with an unanticipated separation of 89 days or fewer before discharge or release from active duty, Capstone will begin no later than the date of separation as reflected on the DD Form 214.

(ii) In the case of eligible RC members release from active duty, in which operational requirements, as determined by the Secretary concerned, make the prescribed timeline unfeasible, Capstone will begin no later than the date of release from active duty as reflected on the DD Form 214.

Appendix I to Part 88—Data, Information Collection, Data Sharing, and Management Portfolio

(a) *Data.* Individual eligible Service member Transition GPS data and attendance will be stored in the DMDC-provided Web service capabilities for:

(1) DD Forms 2648 or 2648–1;

(2) Transition Overview;

(3) Resilient Transitions;

(4) MOC Crosswalk;

(5) Personal Financial Planning for Transition;

(6) VA Benefits Briefings I and II;

(7) DOLEW;

(8) ITP Review;

(9) Tracks;

(10) ITP Checklist; and

(11) Participant Assessment.

(b) *Data sharing.* (1) Specific information regarding data collection, data sharing, assessments, and evaluations can be found in the MOU among DOD, VA, DOL, ED, DHS, SBA, and OPM, ''Transition Assistance Program for Separating Service Members''. This reference serves as the basis of an information sharing agreement between the interagency parties and the DoD.

(2) TVPO will oversee and coordinate sharing requirements and authorities for DoD TAP data with interagency parties, as applicable.

(3) DMDC will process, store, host, and maintain data and coordinate data sharing on request that meets established DoD information assurance standards in accordance with this appendix and 32 CFR part 310.

(4) Each organization requesting TAP data sharing will prepare a business case to support the purpose and type of data requested from other parties.

(i) The business case will clearly articulate how the requested data enables the parties to meet their mission and better serve Service members and veterans.

(ii) The business case will be submitted to TVPO for review and approval.

(iii) Approved business cases will be submitted to DMDC to set up business processes and cost sharing arrangements.

(5) To ensure protection of PII and privacy:

(i) The DoD Components and interagency parties will share Service member information in accordance with 32 CFR part 310 and requirements for collecting, sharing, storing, and maintaining PII. They will meet the need, if required, to establish a system of records notification; and

(ii) All official procedures for safeguarding and retaining PII will be followed as established in 32 CFR part 310.

(c) *Management Portfolio.* (1) DoD TAP data and information requirements governed by this appendix will be reviewed by TVPO for alignment to the investment and IT portfolios to ensure no duplication of capability or system redundancies occur during requirement development or IT acquisition.

(2) TAP data will be shared in a standard form for the enterprise to facilitate compliance verification and to measure effectiveness of the program.

Dated: November 23, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–30240 Filed 11–27–15; 8:45 am]

BILLING CODE 5001–06–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GN Docket No. 12–268; DA 15–1238]

Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses

AGENCY: Federal Communications Commission.

ACTION: Final action; requirements and procedures.

SUMMARY: In this document, the Media Bureau adopts the following a final catalog of expenses; a procedure whereby reimbursement payments will be disbursed via the agency's internal vendor payment system; a procedural requirement that the Reimbursement Form, with supporting cost documentation, must be submitted each time an entity makes a request for reimbursement from the Fund; and a decision that cost documentation, as well as the name, address, and other identifying information pertaining to vendors, will not be made publicly available.

DATES: November 30, 2015.

ADDRESSES: A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or by email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Gallant, Policy Division, Media Bureau, FCC, 202–418–0614 or email *Pamela.Gallant@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 15–1238; GN Docket No. 12–268, released October 30, 2015. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

The Media Bureau adopts the final catalog of expenses, embedded in FCC Form 2100, Schedule 399, to be used by broadcasters and MVPDs seeking reimbursement from the TV Broadcaster Relocation Fund following the Incentive Auction. The costs included in the catalog are not intended to be an exhaustive list of reimbursable expenses, but rather represent those expenses that relocated broadcasters and MVPDs will most commonly incur as a result of the channel repack. Entities can submit expenses not listed in the catalog using the ''other'' catch-all categories found throughout the catalog. The Commission will send FCC Form 2100, Schedule 399 to the Office of Management and Budget for final approval of the information collection requirement contained therein under the Paperwork Reduction Act. The final version of the Reimbursement Form, FCC Form 2100, Schedule 399 (Reimbursement Form or Form), including the embedded expense catalog, will be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act.

In addition, the Media Bureau adopts a process for making payments from the TV Broadcaster Relocation Fund via the Commission's internal vendor payment system, rather than requiring recipients to establish individual accounts with the U.S. Treasury, as had previously been announced. The Media Bureau found that this change would mitigate against waste, fraud and abuse by saving Commission resources and providing the agency with more control over the creation of payment accounts.

The Media Bureau also adopts a process wherein a broadcaster or MVPD must submit information on the Reimbursement Form, with supporting cost documentation, each time it makes a request for reimbursement from the Fund, not only at the beginning and end of the reimbursement period.

Finally, after seeking comment on which data points, if any, should be considered confidential or nor subject to public disclosure, the Media Bureau concludes that cost documentation submitted by entities seeking reimbursement for actual costs (for example, invoices), as well as the name, address, and other identifying information pertaining to the vendor providing equipment or service to a specific broadcaster or MVPD, will not be made publicly available.

The Commission will send a copy of this document in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2015–29483 Filed 11–27–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217, 239, and 252

[Docket DARS–2015–0069]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition

Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. Directs contracting officers to additional DFARS Procedures, Guidance, and Information (PGI) by adding references at—

- DFARS 217.500(b) to PGI 217.502–1;
- DFARS 217.502–1(a)(1) and (b)(1) to PGI 217.502–1(a)(1) and (b)(1), respectively; and
- DFARS 239.7603 to PGI 239.7603.

2. Makes conforming changes at DFARS 239.7604, 252.239–7009, and 252.239–7010.

List of Subjects in 48 CFR 217, 239, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 217, 239, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217, 239, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. In section 217.500, paragraph (b) is added to read as follows:

217.500 Scope of subpart.

* * * * *

(b) A contracting activity from one DoD Component may provide acquisition assistance to deployed DoD units or personnel from another DoD Component. See PGI 217.502–1 for guidance and procedures.

■ 3. Sections 217.502 and 217.502–1 are added to read as follows:

217.502 Procedures.

217.502–1 General.

(a) *Determination of best procurement approach*—(1) *Assisted acquisitions.* Follow the procedures at PGI 217.502–1(a)(1), when a contracting activity from one DoD Component provides acquisition assistance to deployed DoD units or personnel from another DoD Component.

(b) *Written agreement on responsibility for management and administration*—(1) *Assisted acquisitions.* Follow the procedures at PGI 217.502–1(b)(1), when a contracting activity from a DoD Component provides acquisition assistance to deployed DoD units or personnel from another DoD Component.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7603 [Redesignated as 239.7604]

■ 4. Redesignate section 239.7603 as section 239.7604.

■ 5. Add new section 239.7603 to read as follows:

239.7603 Procedures.

Follow the procedures relating to cloud computing at PGI 239.7603.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.239–7009 [Amended]

■ 6. Amend section 252.239–7009, in the introductory text, by removing ''239.7603(a)'' and adding ''239.7604(a)'' in its place.

252.239–7010 [Amended]

■ 7. Amend section 252.239–7010, in the introductory text, by removing ''239.7603(b)'' and adding ''239.7604(b)'' in its place.

[FR Doc. 2015–30307 Filed 11–27–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386 and 390

[Docket No. FMCSA–2012–0377]

RIN 2126–AB57

Prohibiting Coercion of Commercial Motor Vehicle Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA adopts regulations that prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate commercial motor vehicles (CMVs) in violation of certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs)—including drivers' hours-of-service limits; the commercial driver's license (CDL) regulations; drug and alcohol testing rules; and the Hazardous Materials Regulations (HMRs). In addition, the rule prohibits anyone who operates a CMV in interstate commerce from coercing a driver to violate the commercial regulations. This rule includes procedures for drivers to report incidents of coercion to FMCSA, establishes rules of practice that the Agency will follow in response to reports of coercion, and describes penalties that may be imposed on entities found to have coerced drivers. This rulemaking is authorized by section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Motor Carrier Safety Act of 1984 (MCSA), as amended.

DATES: This final rule is effective January 29, 2016.

Petitions for Reconsideration of this final rule must be submitted to FMCSA Administrator no later than December 30, 2015.

ADDRESSES:

Availability of Rulemaking Documents

For access to docket FMCSA–2012–0377 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, 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.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Regulatory Affairs Division, Office of Chief Counsel, (202) 493–0349. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations and Acronyms

CDL Commercial Driver's License
CMV Commercial Motor Vehicle
DOT Department of Transportation
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations

HOS Hours of Service
HMRs Hazardous Materials Regulations
ICC Interstate Commerce Commission
MAP–21 Moving Ahead for Progress in the 21st Century Act
MCSA or 1984 Act Motor Carrier Safety Act of 1984
NAICS North American Industry Classification System
OIG Office of Inspector General
OSHA Occupational Safety and Health Administration
SBA Small Business Administration
STAA Surface Transportation Assistance Act of 1982

II. Executive Summary

Purpose and Summary of the Major Provisions

Congress required FMCSA to ensure that the regulations adopted pursuant to the MCSA, as amended by MAP–21, do not result in coercion of drivers by motor carriers, shippers, receivers, or transportation intermediaries to operate CMVs in violation of certain provisions of the FMCSRs and the HMRs.

The major provisions of this rule include prohibitions of coercion, procedures for drivers to report incidents of coercion to FMCSA, and rules of practice that the Agency will follow in response to reports of coercion.

Benefits and Costs

The FMCSA believes that this rule will not have an economically significant impact. The motor carriers, shippers, receivers, freight forwarders, brokers and transportation intermediaries that previously engaged in acts of coercion against truck or bus drivers will incur compliance costs to operate in accordance with the regulations, and they will lose whatever economic benefit coercion provided; however, the cost of compliance with existing regulations has already been captured in the analysis supporting the implementation of those regulations, so we do not consider them here. There will be safety benefits from increased compliance with the regulations and driver health benefits if HOS violations decrease. In the absence of coercion, the drivers will conduct their safety-sensitive work in a manner consistent with the applicable Federal regulations. During the four-year period from 2009 through 2012, OSHA determined that 253 whistleblower complaints from CMV drivers had merit. In the same period, FMCSA validated 20 allegations of motor carrier coercion of drivers that were filed with DOT's OIG. This is an average of 68.25 acts of coercion per year during the four-year period. The Agency estimates that the cost of eliminating this level of coercion would be less than the $100 million threshold required for economic significance under E.O. 12866.

III. Legal Basis for This Rulemaking

This rule is based on the authority of MCSA [49 U.S.C. 31136(a)], as amended by MAP–21 [Pub. L. 112–141, section 32911, 126 Stat. 405, 818, July 6, 2012] and on 49 U.S.C. 13301(a), as amended by the ICC Termination Act of 1995 [Pub. L. 104–88, 109 Stat. 803, December 29, 1995].

The 1984 Act confers on DOT authority to regulate drivers, motor carriers, and vehicle equipment. The 1984 Act stated that at a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators [49 U.S.C. 31136(a)].

Section 32911 of MAP–21 enacted a fifth requirement, *i.e.*, that the regulations ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title'' [49 U.S.C. 31136(a)(5)].

The 1984 Act also includes more general authority to ''(10) perform other acts the Secretary considers appropriate'' [49 U.S.C. 31133(a)(10)].

This rule includes two separate prohibitions. One prohibits motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to violate regulations based on section 31136 (which is the authority for many parts of the FMCSRs), 49 U.S.C. chapter 313 (the authority for the commercial driver's license (CDL) and drug and alcohol regulations), and 49 U.S.C. chapter 51 (the authority for the HMRs). This is required by 49 U.S.C. 31136(a)(5).

A second provision prohibits entities that operate CMVs in interstate commerce from coercing drivers to violate the commercial regulations. As explained more fully below, this provision is based on the broad general authority of 49 U.S.C. 31136(a)(1)–(4), especially paragraphs (a)(1) and (2). Banning coercion to violate the safety-related commercial regulations is well within the scope of section 31136(a)(1)–(4). Applying the same ban to commercial provisions that are not immediately related to safety is nonetheless consistent with the goals of section 31136 and will help to inhibit the growth of a culture of indifference to regulatory compliance, a culture known to contribute to unsafe CMV operations. Banning coercion to violate the commercial regulations is also within the broad authority transferred from the former ICC to prescribe regulations to carry out Part B of Subtitle IV of Title 49, United States Code (49 U.S.C. 13301(a)). This prohibition applies to operators of CMVs, which are mainly motor carriers, but not to shippers, receivers, or transportation intermediaries, since they are not subject to section 31136(a)(1)–(4) or section 13301.

Together, these two provisions cover most kinds of coercion drivers might encounter.

This rule also adopts procedures for drivers to report coercion and rules of practice the Agency will follow in addressing such reports.

FMCSA believes the reduction of regulatory violations caused by coercion will prove conducive to improved driver health and well-being, consistent with the objectives of section 31136(a)(2)–(4).

Before prescribing any regulations, FMCSA must consider their ''costs and benefits'' [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in this rule.

IV. Background

Section 32911 of MAP–21 is the most recent example of Congress' recognition of the important role the public plays in highway safety. In the 1980s, Congress implemented new financial responsibility requirements for motor carriers of property and passengers to encourage the insurance industry to exercise greater scrutiny over the operations of motor carriers as one method to improve safety oversight (section 30 of the Motor Carrier Act of 1980 (Pub. L. 96–296) and section 18 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261)).

Section 32911 of MAP–21 represents a similar congressional decision to expand the reach of motor carrier safety regulations from the supply side (the drivers and carriers traditionally regulated by the Federal government) to the demand side—the shippers, receivers, brokers, freight forwarders, travel groups and others that hire motor carriers to provide transportation and

whose actions have an impact on CMV safety.

Economic pressure in the motor carrier industry affects commercial drivers in ways that can adversely affect safety. For years, drivers have voiced concerns that other parties in the logistics chain are frequently indifferent to the operational limits imposed on them by the FMCSRs. Allegations of coercion were submitted in the docket for the Agency's 2010–2011 HOS rulemaking.[1] Also, drivers and others who testified at FMCSA listening sessions and before Congress said that some motor carriers, shippers, receivers, tour guides, and brokers insist that a driver deliver a load or passengers on a schedule that would be impossible to meet without violating the HOS or other regulations. Drivers may also be pressured to operate vehicles with mechanical deficiencies, despite the restrictions imposed by the safety regulations. Drivers who object that they must comply with the FMCSRs are sometimes told to get the job done despite the restrictions imposed by the safety regulations. The consequences of their refusal to do so are either stated explicitly or implied in unmistakable terms: Loss of a job, denial of subsequent loads, reduced payment, denied access to the best trips, etc.

Although sec. 32911 of MAP–21 amended 49 U.S.C. 31136(a), it did not amend the jurisdictional definitions in 49 U.S.C. 31132, which specify the reach of FMCSA's authority to regulate motor carriers, drivers, and CMVs. Thus, it appears that Congress did not intend to apply all of the FMCSRs to shippers, receivers, and transportation intermediaries that are not now subject to those requirements. (Motor carriers, of course, have always been subject to the FMCSRs.) Instead, sec. 32911 prohibited these entities from coercing drivers to violate most of the FMCSRs. This necessarily confers upon FMCSA the jurisdiction over shippers, receivers, and transportation intermediaries necessary to enforce that prohibition.

Although MAP–21 did not address coercion to violate the commercial regulations that the Agency inherited in the ICC Termination Act of 1995, FMCSA is adopting a rule in order to ensure that there is no significant gap in the applicability of the coercion prohibition. As discussed above in the Legal Basis section, the MCSA gives the Agency broad authority to ensure that CMVs are maintained, equipped, loaded, and operated safely, and that the responsibilities imposed on drivers do not impair their ability to operate CMVs safely [49 U.S.C. 31136(a)(1)–(2)]. Some of the commercial regulations have effects related to safety. Designation of a process agent under 49 CFR part 366 ensures that parties injured in a CMV crash can easily serve legal documents on the carrier operating the CMV, wherever the location of its corporate offices. Registration as a for-hire motor carrier under 49 CFR part 365, or as a broker under 49 CFR part 371, ensures that an applicant has met the minimum standards for safe and responsible operations. Coercion of drivers to violate requirements such as these could have an effect on their ability to operate CMVs safely, *e.g.*, requiring a driver to operate a vehicle in interstate commerce when the owner had neither obtained operating authority registration from FMCSA nor filed proof of insurance.

The minimum requirement to obtain FMCSA authority to operate as a for-hire motor carrier, freight forwarder, or broker under 49 U.S.C. 13902, 13903, or 13904, respectively, is willingness and ability to comply with "this part and the applicable regulations of the Secretary . . . ." Among those "applicable regulations" are this rule's ban on coercing drivers to violate the commercial regulations. For-hire motor carriers are subject to an even more explicit requirement to observe "any safety regulations imposed by the Secretary" [49 U.S.C. 13902(a)(1)(B)(i)], including § 390.6(a)(2). Moreover, independent of MAP–21, FMCSA has statutory authority under 49 U.S.C. 13301(a), formerly vested in the ICC, to prescribe regulations to carry out chapter 139 and the rest of Part B of Subtitle IV of Title 49. The prohibition on coercing drivers to violate the commercial regulations is within the scope of this authority.

Because both of the coercion prohibitions described above are based on 49 U.S.C. 31136(a), codified in subchapter III of chapter 311, violations of those rules would be subject to the civil penalties in 49 U.S.C. 521(b)(2)(A), which provides that any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of the regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139[2]) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $10,000 for each offense.

However, pursuant to the Debt Collection Improvement Act of 1996 [Pub. L. 104–134, title III, chapter 10, sec. 31001(s), 110 Stat. 1321–373], the maximum inflation-adjusted civil penalty per offense is $16,000 (49 CFR part 386, App. B, Paragraph (a)(3)).

V. Discussion of Comments

Overview

On May 13, 2014, the Agency published a notice of proposed rulemaking (NPRM) (79 FR 27265) to implement the MAP–21 prohibition of coercion.

Between May 13 and September 4, 2014, 94 submissions were posted to the docket. One of the submissions was a duplicate,[3] and three were non-responsive,[4] leaving 90 submissions from the following:

- One Federal agency: OSHA.
- Six motor carriers: Kimberly Arnold, Louisiana Transport, Inc., Mason/Dixon Lines, Inc., Schneider National, Inc., Wayne Yoder, one anonymous company, and the Motor Carrier Coalition comprised of 12 additional motor carriers.
- Ten industry associations: American Trucking Associations (ATA), Association of Independent Property Brokers & Agents (AIPBA), Institute of Makers of Explosives (IME), National Customs Brokers and Forwarders Association of America, Inc.(NCBFAA), National Grain and Feed Association (NGFA), National Industrial Transportation League (NIT League), National Shippers Strategic Transportation Council, Inc. (NASSTRAC), Owner-Operator Independent Drivers Association, Inc. (OOIDA), Snack Food Association, and Transportation Intermediaries Association (TIA).
- Two advocacy organizations: Advocates for Highway and Auto Safety (Advocates) and Road Safe America.
- One labor union: Transportation Trades Department, AFL–CIO (TTD).
- One transportation intermediary: Armada.
- One commercial carrier consultant: Richard Young; and
- 67 individuals including 15 who self-identified as drivers and 2 owner operators.

Comments Supporting the Rulemaking

Fifteen commenters, including two safety advocacy groups, two trade associations, a driver, an owner-operator, a union, OSHA, and seven individuals, expressed their general

[1] See 76 FR 81162.

[2] Sections 31138 and 31139 prescribe minimum financial responsibility standards for the transportation of passengers and property, respectively.

[3] Submission number 0080 is a duplicate of number 0089.

[4] Submission numbers 0010, 0015, and 0016.

support for the proposed rule. Road Safe America and Advocates support the Agency's efforts to end the practice of coercion, but Advocates recommended that FMCSA take additional steps, such as investigating all reported incidents of coercion, and exercise its authority to suspend the registration of those that engage in documented instances of coercion. ATA and AIPBA support prohibiting coercion, but expressed reservations about the potential impact the proposed rule would have on commercial relations between motor carriers and shippers, receivers, and intermediaries. OSHA, which is responsible for enforcing the whistleblower protection provisions of the Surface Transportation Assistance Act of 1981 (STAA) and 21 other statutes, supports the proposal and offered suggestions to make it more effective. TTD, a driver, an owner-operator, and seven individuals expressed strong support for the NPRM. Many of these commenters stated that the rule would finally make shippers, receivers and transportation intermediaries accountable for their actions.

Comments in Opposition to the Rulemaking

Eighteen commenters, including nine individuals, seven trade associations and two drivers expressed their general disapproval of the NPRM. Many of these commenters stated that they agree with FMCSA that CMV drivers should not be coerced into violating any laws or regulations; however, they believe the requirements proposed in the NPRM will lead to unintended consequences. Several commenters stated there is no need for this regulation because existing regulations already prohibit coercion. Three trade associations contend that the NPRM misapplies the legal doctrine of *respondeat superior* [5] in attempting to hold shippers and receivers legally responsible for drivers that they do not hire, direct or manage. NASSTRAC stated the proposed rules are ''arbitrary and capricious, contrary to law, impracticable and certain to do more harm than good.'' Another commenter argued that the Agency has not accurately assessed the cost of these requirements, and expressed concern that the complaint reporting process is highly subjective. Two drivers wrote that new regulations are not necessary; instead drivers need to stand up to anyone trying to coerce them into violating the rules. Two individuals commented that this NPRM does not impose any new requirements on shippers or receivers that will prevent them from detaining a driver for hours and then requiring the driver to leave the property even if the driver is out of hours.

FMCSA Response

These comments are discussed in detail below under the appropriate subject heading.

Definition of Coercion

OSHA commented that ''coercion is broader than just threats related to loss of work, future business, or other economic opportunities. Coercion and coercive tactics may also include threats of violence, demotion, reduction of pay, and withdrawal or reduction of benefits, or any action that is capable of dissuading a reasonable employee from engaging in whistleblowing activity.'' OSHA therefore recommended that the proposed definition of coercion, which referred to ''a threat . . . to withhold, or the actual withholding of, current or future business, employment, or work opportunities from a driver . . .'' be amended to refer to ''a threat . . . to take or permit any adverse employment action against a driver . . .''

NCBFAA pointed out that if a shipper, receiver, or transportation intermediary discovered an ''HOS issue—which would likely only be the case because the driver happened to say something about it—any decision to refuse to tender the shipment could be construed as violating the proposed regulation. For then, it would be knowingly 'withholding . . . work opportunities from a driver' when it 'knew' the driver was unable to lawfully handle the load. In that case, because the motor carrier elected to dispatch a driver that could not lawfully handle the load, the cargo would not be able to move until such time as the driver in question was again able to operate the equipment.'' ''The NCBFAA believes that where a shipper or transportation intermediary learns that a driver may not haul a load because he/she does not have the available hours, it should be able to freely advise the trucker of the situation so it can provide another driver who does have available hours to complete the haul in a timely manner. Alternatively, the shipper/transportation intermediary should be able to use another carrier entirely, particularly one that is sufficiently responsible and knowledgeable about the status of its drivers.''

TIA made the same point. ''Read literally, the definition would now make it a violation for a shipper or transportation intermediary to refuse a load to a driver if it 'knew or should have known' that the driver was about to exceed or already had exceeded the HOS regulations. Yet, the shipper or transportation intermediary could not properly request that the driver perform the transportation, as it would then be both 'coercing' the driver and aiding and abetting the HOS violation. So, if a driver *assigned by a motor carrier* shows up to pick up a load and advises the shipper or transportation intermediary that he or she cannot lawfully handle the load due to HOS or other concerns, the shipper or transportation intermediary would not be able to contact the carrier and request that they replace the driver. Instead the load would just sit. This is a catch 22 . . .''

NIT League offered a similar comment. ''If a shipper attempts to confirm a delivery appointment with the driver, does that equate to directing 'a driver to complete a run in a certain time'? It may not in the mind of the shipper but what if the driver has a different interpretation? If the driver objects to meeting that appointment due to HOS rules and the shipper gives the load to another carrier who can timely make the delivery, does that loss of business equate to coercion? What if the driver associates the selection of an alternative carrier with its objection but the shipper simply needed to meet its delivery requirements? The answers to these questions are far from clear. . . . [T]he League suggests that FMCSA modify its proposal to require the driver to inform the shipper of the potential safety violation at the time he/she lodges the objection and to promptly record the alleged coercion event. Specifically, the League suggests that FMCSA require a driver who is concerned about violating a safety rule to take the following steps *before* accepting the load: (1) Clearly articulate the objection to the allegedly coercing party and such objection must identify the specific FMCSA regulation that will be violated; and (2) record in a contemporaneous writing his/her objection and the facts and circumstances associated with the alleged coercion incident.''

ATA also recommended ''that the rule require a driver alleging coercion to make the objection at a time contemporaneous with the incident in a writing that identifies the regulation(s) that would be violated if the driver operated the CMV.''

[5] 'Respondeat superior' is a legal concept meaning that an employer is responsible for the wrongful acts of its employees or agents who are acting within the scope of their employment or agency.

FMCSA Response

FMCSA has revised and clarified the NPRM's definition of ''coercion.'' Readers may find it helpful to keep in mind the new definition (see § 390.5) as they review the Agency's response to specific comments.

Although the language proposed by OSHA is similar to that used in the NPRM, FMCSA agrees that OSHA's recommendation would clarify the intended scope of the definition. The Agency has therefore included the phrase ''take or permit any adverse employment action,'' which has the added benefit of resolving other concerns about the definition.

The NCBFAA, TIA, and NIT League comments correctly identified an unintended consequence of the proposed definition of ''coercion.'' Obviously, a shipper or transportation intermediary should not be liable for withholding a load from a driver who has stated that he or she could not make the trip without violating the FMCSRs. In that situation, both the driver and the shipper or transportation intermediary are acting appropriately. The Agency has therefore amended the reference to the withholding of ''current or future business, employment, or work opportunities'' by striking the reference to ''current or future'' business and adding the phrase ''take or permit any adverse employment action.'' The revised definition thus allows the shipper or transportation intermediary to take either of the actions that NCBFAA proposed without violating the rule, *i.e.*, to call the motor carrier and request another driver or to give the load to a different motor carrier. Neither action would attempt to force a driver to violate the FMCSRs, nor would it involve a threat to take other adverse employment action against the driver.

The removal of the word ''current'' resolves most of the TIA's and NIT League's concerns. There is no coercion to violate the FMCSRs when a shipper gives a load to another carrier after the original driver states that he or she cannot meet the requested delivery schedule without an HOS or other violation. On the contrary; that change of carriers is an attempt to ensure that no such regulatory violation occurs.

The Agency has also revised the definition of ''coercion'' to require the driver to identify ''at least generally'' the rules that he or she would have to violate in the course of the delivery. FMCSA is not requiring drivers to ''identify the specific FMCSA regulation that will be violated,'' as the NIT League and ATA requested. The FMCSRs are complex and drivers cannot be expected to have full command of regulatory citations. Nonetheless, the driver must be able to identify the problem clearly enough to enable FMCSA personnel to determine that it falls within a requirement or prohibition of the Agency's regulations. It will be sufficient, for example, if the driver indicates that he or she objects to a particular trip because of an HOS problem (''they told me to keep driving even when I hit 11 hours''), a maintenance issue (''the last inspection certificate was 3 years old''), or bad tires (''there was no tread on the front tires; I could see the ply in a couple of places'').

Similarly, the Agency will not require the driver to record his objection in ''a contemporaneous writing.'' On the other hand, if the shipper or transportation intermediary attempts to coerce the driver to take the load after hearing the objection, it would be in the driver's best interests to document that attempt as soon as practicable.

Additional Burdens Created by Rule

Many of the commenters believe shippers would have to adopt extensive and burdensome procedures to comply with the proposed rule. NASSTRAC wrote that ''[t]he aspect of the proposed rules that will cost the most (far more than the zero dollars FMCSA projects), and which is most contrary to established law, is the 'duty to inquire.' . . . It remains the case that every shipper would have to discuss HOS status for every scheduled shipment with every driver.''

The TIA commented that ''[t]he NPRM would place the shipper and transportation intermediary into the role of employee management having to ask about hours of service availability.''

NGFA noted that ''[i]n current operations, a shipper or receiver . . . does not check a driver's hours-of-service (HOS) log or inspect the driver's commercial motor vehicle—and it could be argued that the shipper or receiver does not have a duty or even a right to do so—if the driver is employed by another company. . . . Even if drivers and their employers are fully cooperative in this respect, the resulting burden and added costs for shippers and receivers would be tremendous.''

The NIT League objected to ''FMCSA's apparent intent to impose a duty on the shipper or receiver to inquire as to a for-hire driver's compliance with the HOS rules.''

Schneider National, on the other hand, wrote that ''[i]f we understand FMCSA's proposal correctly, exposure for a claim of coercion is triggered by an *objection* from a driver under circumstances which the intermediary 'knew or should have known' would require the driver to violate the safety regulations. Thus, it would appear that absent a driver's objection, there is no obligation on the part of those other than the motor carrier to whom the driver is directly employed or leased to independently assure compliance with the hours of service or other regulations.'' IME also interpreted the language of the NPRM as requiring the driver to object before a finding of coercion could be made.

FMCSA Response

Schneider National and IME are correct. This final rule does not require shippers, receivers, and transportation intermediaries (unlike motor carriers) to monitor a driver's compliance with the HOS rules or other regulations. As the preamble to the NPRM stated, a shipper, receiver, or transportation intermediary ''may commit coercion if it fails to heed a driver's *objection* that the request would require him/her to break the rules'' (79 FR 27267, emphasis added). There would be no requirement or even occasion to inquire into the driver's available hours *unless* the driver had raised an objection to the delivery schedule; and an inquiry would not be necessary if the shipper or transportation intermediary agreed to change the delivery schedule to match the driver's available hours or arranged with the motor carrier to have a different driver take the load.

Nevertheless, because many shippers, receivers, and transportation intermediaries believe that, in order to avoid potential liability, they must inquire about HOS compliance, and perhaps document all of their interactions with drivers, the Agency has amended the definition of ''coercion'' to make clear that the driver has an affirmative obligation to inform the motor carrier, shipper, receiver, or transportation intermediary when he or she cannot make the requested trip without violating one or more of the regulations listed in the definition. Motor carriers, shippers, receivers, and transportation intermediaries cannot commit coercion under the final rule unless and until they have been put on notice by the driver that he or she cannot meet the proposed delivery schedule without violating the HOS limits or other regulatory requirements. The purpose of that notice is, of course, to ensure that the driver is *not* coerced to commit such violations.

Agents, Officers, or Representatives

The NPRM proposed to apply the prohibition on coercion not only to

principals, but also to ''their respective agents, officers or representatives.'' Many commenters focused on this issue. A coalition of 12 motor carriers [6] (hereafter Coalition) described a hypothetical situation where ABC Transportation, Inc. hires John Doe Trucking, an independent owner-operator, which coerces one of its drivers to violate the HOS rules without the knowledge or approval of ABC Transportation. The Coalition asked ''[a]gainst which entity in this scenario and under the proposed regulation would FMCSA take enforcement action? One would expect John Doe Trucking. After all, it is the entity responsible for the coercive behavior. But if John Doe Trucking is considered an 'agent, officer, or representative' of ABC Transportation, Inc., ABC could, in fact, be on the hook. . . . In order to avoid the inequitable situation described above, the FMCSA . . . should consider narrowly defining the terms 'agents,' 'officers,' and 'representatives' to specifically exclude independent contractors with whom motor carriers contract to haul freight and who are not specifically authorized to act on their behalf.''

ATA agreed with the Coalition's comments and urged the Agency ''to clarify that, for purposes of the definition of 'coercion' and proposed section 390.6, a motor carrier's agents, officers or representatives only include anyone who is authorized to act on behalf of a motor carrier. In the instance where an independent contracting entity engaged in the act of coercion against one of its drivers, only that entity should be liable under proposed section 390.6—not the motor carrier to whom the equipment and driver are leased.''

Schneider National commented that it ''utilizes the services of approximately 2,000 independent contractors including a number of fleet owners. As such, Schneider shares the concerns raised in such comments relative to the use of terms 'agents,' 'officers' and 'representatives' used in conjunction with the term 'motor carrier' in § 390.6(a)(2), and adopts their comments as filed. . . . [S]imilar issues may arise in the context of brokerage operations. Consider, for example, a motor carrier contracted by a broker with respect to a particular shipment. In the normal circumstance, the broker would arrange for the transportation on a schedule which can be accomplished consistent with the hours of service regulations, provided the involved motor carrier has an available driver with appropriate 'hours'. The broker would not normally be privy to the motor carrier's driver/load assignment process. Under this circumstance, is the motor carrier, by virtue of the typical broker/carrier arrangement, an 'agent' or 'representative' of the broker such that the broker would be liable under the proposed rule for any motor carrier violation? The use of the terms 'agent', 'officers' and 'representatives' might suggest that liability in the foregoing circumstances could be attributed to the broker. Such a result would be inequitable.''

[6] C.R. England, Inc.; CRST International, Inc.; Central Refrigerated Service, Inc.; Cowan Systems, LLC; Dart Transit Company; Greatwide Truckload Management; Liquid Transport Corp.; National Carriers, Inc.; Oakley Trucking, Inc.; PGT Trucking, Inc.; Roadrunner Transportation Systems, Inc.; and Schneider National, Inc.

FMCSA Response

The issues raised by these comments were resolved by Congress in the MCSA of 1984. The prohibition on coercion is codified in the amended version of that statute at 49 U.S.C. 31136(a)(5). For purposes of the MCSA, '' 'employee' means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—(A) directly affects commercial motor vehicle safety in the course of employment; and (B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State'' [49 U.S.C. 31132(2)].

Independent owner operators employed by a motor carrier are statutorily defined as employees of that carrier for purpose of the FMCSRs, including this final rule. In the hypothetical situation described by the Coalition, the independent owner operator who owns John Doe Trucking is an employee of ABC Transportation. Any attempt by John Doe Trucking to coerce one of its drivers is therefore an attempt by ABC Transportation, through one of its employees, to coerce one of its drivers.

FMCSA published regulatory guidance on this issue on April 4, 1997 [62 FR 16370, 16407]:

Question 17: May a motor carrier that employs owner-operators who have their own operating authority issued by the ICC or the Surface Transportation Board [authority that is now issued by FMCSA] transfer the responsibility for compliance with the FMCSRs to the owner-operators?

Guidance: No. The term ''employee,'' as defined in § 390.5, specifically includes an independent contractor employed by a motor carrier. The existence of operating authority has no bearing upon the issue. The motor carrier is, therefore, responsible for compliance with the FMCSRs by its driver employees, including those who are owner-operators.

Brokers, however, are not employees of a motor carrier, nor are motor carriers agents or representatives of brokers. In a normal arms-length transaction, the broker deals with a motor carrier, not an individual driver. The motor carrier has an obligation to comply with the FMCSRs and thus to assign a driver who has sufficient hours to complete the trip on the schedule outlined by the broker and to provide equipment that meets applicable standards. Any coercion that occurred would typically be committed by the motor carrier that employed the driver. However, as TIA pointed out, a State court has held that where a broker contracted with a motor carrier but in fact exercised direct control over the driver, that broker was liable for a tort committed by the driver [*Sperl* v. *C. H. Robinson Worldwide, Inc.,* 946 NE.2d 463 (2011)]. A broker could be found liable for coercion if it interacted directly with a driver, instead of with the carrier, and attempted to force the driver to make a delivery on a schedule that would require a violation of the FMCSRs. The Agency has no information about how often direct interactions between transportation intermediaries and drivers may occur.

Respondeat Superior

Many commenters objected to the NPRM's assertion that the ''knew or should have known'' standard in the definition of coercion ''is essentially a restatement of the common law principle of 'respondeat superior,' which holds the 'master' (employer) liable for the acts of his 'servant' (employee).'' Schneider National offered a brief critique that captures the general reaction: ''FMCSA should retract its discussion on respondeat superior and make clear that it is basing the rulemaking on MAP–21. At the very least, it need[s to] make clear that its regulations are limited to dealing with the issue of possible driver coercion and such regulations or any enforcement actions thereunder are not a re-characterization of the employment relationship generally. Absent this, those against whom an enforcement action is brought may have greatly enhanced incentive to fully litigate every citation, unduly burdening FMCSA's enforcement effectiveness.''

FMCSA Response

FMCSA agrees with Schneider National's comment. This final rule is based on the authority of 49 U.S.C. 31136(a)(5). The discussion of ''respondeat superior'' in the NPRM was not intended to make shippers, receivers, and transportation intermediaries vicariously liable, because Congress made them directly liable through section 32911 of MAP–21. FMCSA emphasizes that any evidence gathered in response to a written complaint by a driver would point to specific individuals and that persons at higher levels in the organization would not necessarily be implicated.

In any case, the revised definition of coercion adopted in this final rule eliminates the ''knew or should have known'' standard by emphasizing more strongly the driver's duty to object as a predicate for any subsequent allegation of coercion.

Coercion That Fails

NASSTRAC objected to FMCSA's intent to ''penalize unsuccessful coercion, *i.e.,* customer requests that a driver ignores.'' NASSTRAC argued that ''[p]enalizing coercion resulting in violations better addresses the conduct Congress wanted to discourage. FMCSA has cited no analogous regulatory program that would penalize millions of Americans' words or requests even if they produce no actions. The Foreign Corrupt Practices Act and similar anti-bribery laws penalize inducements to violate laws, but they generally require some direct or indirect payment in addition to an oral or written request. In addition, penalizing shippers, receivers and intermediaries for words that produce no actions, let alone violations, implicates First Amendment considerations, as well as concerns about overkill.''

FMCSA Response

Drivers of CMVs are required to comply with all applicable regulatory standards. Those who resist coercion do not lose the benefit of this rule. The act of coercion is complete when the attempt is made; it does not require success. If Congress had wished to impose limits on the common understanding of coercion, it would have said so in 49 U.S.C. 31136(a)(5). Coercion does, however, require some kind of threat; merely asking a driver to make a trip that would violate a regulation would not constitute coercion. If the driver refused to make such a trip, a further discussion of his or her response and related issues might or might not cross the line into coercion. The answer would depend on the substance of the conversation and the existence of a threat, explicit or implied, to make the driver pay an economic price for refusing to violate an FMCSA regulation.

Burden of Proof

Two trade associations, ATA and NITL, Advocates, Mr. Wayne Yoder, who is a carrier, and four anonymous individuals commented on who should bear the burden to prove coercion. Among these commenters, ATA and two individuals argued that the driver should bear the burden of proof in coercion cases. The individuals said it must be the driver's responsibility because only the driver controls the information on his logs.

On the other hand, Advocates stated that ''once a complaint is determined by FMCSA to meet the substantive criteria outlined in Section 386.12(e) of the NPRM a prima facie showing of coercion has been made under the proposed regulations. As such, the burden of proof should shift to the alleged offender to demonstrate that there was a valid reason for the actions in dispute as is the current legal framework applied in cases alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964.''

A carrier and three individuals (Mr. Nick Scarabello and two anonymous people) noted the driver is not well positioned to provide evidence of coercion. The carrier responding to the NPRM stated that a motor carrier is better able to provide evidence by way of rate agreements, contracts, orders, or bills of lading from the customer, but the driver has no way of printing or saving messages sent via company-owned and installed communication devices. An anonymous individual suggested that trucking companies should be required to record all phone conversations with drivers as a way to prevent or provide evidence of coercion. A commenter stated after a driver files a report of an incident, FMCSA should request written transcripts of the conversation and supporting documents. An anonymous commenter wrote that ''if you don't put the burden of proof on the carrier or dispatcher[,] then it's the driver[']s word against the company and the driver still ends up being punished.''

OOIDA stated that FMCSA places the enforcement burden on drivers to prove a violation of the law that results in the issuance of penalties and fines for the government. OOIDA argued FMCSA should take the lead in coercion enforcement activities instead of placing the responsibility to initiate and prove incidents of coercion upon those least able to deal with the problem directly, the target of the coercion.

ATA and the NIT League recommended that the Agency adopt a standard of ''clear and convincing evidence,'' rather than ''preponderance of the evidence.'' The NIT League argued that this standard is appropriate because of the significant consequences associated with a violation of the coercion prohibition, which include potential monetary penalties and suspension or revocation of the registration of an offender. Conversely, OOIDA stated FMCSA should not weaken the rule by adopting an evidentiary standard that exceeds the standard for determining other safety violations.

FMCSA Response

When imposing a civil penalty for coercion, the government has the burden of proof. The driver, however, is typically the only person in a position to provide the critical evidence needed to sustain the action against a carrier, shipper, receiver, or transportation intermediary. The NPRM simply acknowledged this reality. While it may sometimes be difficult for the driver to provide relevant evidence, as OOIDA and others argued, there is no realistic alternative. The Agency will not require motor carriers to record all phone conversations and other communications with drivers, a far-reaching requirement which was not proposed for public comment in the NPRM. FMCSA will investigate timely complaints that meet the standards outlined in § 386.12 and may be able to locate or generate additional information, but the driver must supply the essential facts.

There is no good reason to adopt a ''clear and convincing'' evidentiary standard for coercion cases when the ''preponderance'' standard is used for all other motor carrier enforcement actions. The potential penalties applicable to a violation of 49 U.S.C. 31136(a)(5) and this rule's implementing regulations are the same as those applicable to a violation of 49 U.S.C. 31136(a)(1)–(4) and the implementing FMCSRs.

Title VII of the Civil Rights Act of 1964 prohibits certain employers from discriminating against employees on the basis of race, color, religion, sex, or national origin. There is nothing in MAP–21 to indicate that Congress intended to make CMV drivers who are subject to coercion a protected class in the same sense as individuals subject to

racial, religious, sexual, or other discrimination. The shifting of the burden of proof under Title VII is therefore not indicative of a similar legislative intent to shift the burden to carriers, shippers, receivers or transportation intermediaries after a driver files a non-frivolous coercion complaint. The burden of proof in coercion cases remains with FMCSA.

Application to Governmental Entities

NASSTRAC commented that ''FMCSA has asserted that state and local governments would be unaffected, as would Indian Tribal Governments. However, Indian Tribal Governments, and state and local governments (and federal government entities) are shippers and receivers of freight transported by CMVs. The Department of Defense ships and receives large volumes every year. *All* of these shippers would apparently have a duty to inquire as to HOS and other compliance by every driver, even though many probably have no idea that HOS rules even exist.''

TIA provided a similar comment: ''TIA urges the Agency . . . to clearly define the scope of this rule to include the Department of Defense (DOD), the General Services Administration (GSA), Port Terminal Operators, and all other applicable entities that contract with motor carriers to haul their specific goods along the transportation supply-chain.''

FMCSA Response

The MAP–21 prohibition on coercion amended 49 U.S.C. 31136(a), a provision originally enacted by the MCSA. Under the MCSA, the term ''employer'' ''(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but (B) *does not include the [Federal] Government, a State, or a political subdivision of a State.*'' [49 U.S.C. 31132(3) (emphasis added)]. MAP–21 subjected motor carriers, shippers, receivers, and transportation intermediaries to the prohibition on coercion [§ 31136(a)(5)], but it did not limit the governmental exemption in § 31132(3). FMCSA has no authority to apply this final rule to Federal, State or local governmental entities. Whether a terminal operator qualifies as a political subdivision of a State will require a case-by-case evaluation.

Deadline To File Coercion Complaints

OSHA recommended that the proposed 60-day filing deadline be extended to 180 days. ''The 60-day filing period for the anti-coercion rule would greatly limit the ability of DOT to act on valid complaints of coercive activity that drivers have timely filed under the STAA [*i.e.,* 49 U.S.C. 31105, enacted by the Surface Transportation Assistance Act of 1982 (STAA)]. Consequently, the short period decreases the effectiveness of the statute and weakens its overall deterrence value. The Department of Labor/OSHA has found that by providing workers with a filing period of 180 days [as authorized by 49 U.S.C. 31105], it is able to pursue a greater number of meritorious complaints and more fully fulfill its mandate under STAA.'' An individual, Lisa Pate, also noted the inconsistency between FMCSA's proposed 60-day deadline and OSHA's 180-day deadline.

OSHA recommended ''tolling of the filing deadline, in case there are delays in transferring the allegation to the appropriate Division Administration.'' Similarly, the Advocates wrote that ''[v]ictims of coercion should not be time-barred from seeking an appropriate remedy under the law for the failure of FMCSA to promptly request further information or transfer the complaint to the appropriate Division Administrator.''

The NIT League, on the other hand, wrote that ''because the allegations of coercion will often involve verbal communications at freight pick-up locations, . . . it will be critical for complaints to be filed promptly and for the accused party to be provided with prompt notice of the complaint. This would help ensure that any internal investigation of the driver's allegations either by the driver's employer or the alleged coercer can be conducted expeditiously, any relevant evidence can be preserved, and witnesses can be interviewed before memories fade. Thus, the NIT League suggests that the time period for drivers to file complaints be reduced to 30 days and that any party accused of coercion be served with the complaint upon its filing with FMCSA.''

FMCSA Response

OSHA regulations (29 CFR 1978.100 *et seq.*) and the underlying statute (49 U.S.C. 31105) protect employees who are discharged, disciplined, or discriminated against under certain circumstances. Those actions are likely to generate records that can be reviewed months later. Coercion, on the other hand, may occur without leaving clear documentary evidence. FMCSA continues to believe that a deadline shorter than 180 days is appropriate to ensure that a complaint is filed while the recollections of both the driver and the alleged coercer are fresh. However, the Agency considers the 30-day deadline proposed by the NIT League to be unfair to drivers, some of whom are on the road for weeks at a time and may not be in a position to file a complaint that quickly. In order to ensure that drivers have sufficient time to prepare and submit a coercion complaint, the final rule extends the 60-day period proposed in the NPRM to 90 days.

Criteria To Evaluate Coercion Claims

OSHA commented that ''the proposed requirement that the complaint be 'non-frivolous' is overly vague and should be eliminated. The current proposed requirement of 'non-frivolity' would allow for enormous amounts of discretion across FMCSA Divisions. Gross discretion will undoubtedly lead to regional disparities in the enforcement of the provision and severely limit the overall effectiveness of the provision.''

The NIT League suggested that the Agency clarify the criteria that will be used in evaluating reported incidents of coercion. IME expressed concern over the burden imposed on carriers, shippers, receivers, and transportation intermediaries to defend against driver complaints. IME argued that the proposed rule is, ''by its very nature, . . . fraught with subjectivity. In order to avoid or defend against complaints of coercion, carriers, shippers and receivers will be compelled to memorialize every significant interaction they have with drivers.''

FMCSA Response

The MCSA includes the following: ''(a) Investigating complaints.—The Secretary of Transportation shall conduct a timely investigation of a nonfrivolous written complaint alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days'' [49 U.S.C. 31143(a)]. The ''nonfrivolous'' standard has been used in 49 CFR 386.12(b) for many years without the adverse consequences OSHA predicted, and the Agency believes its use in 49 CFR 386.12(e)(2) will be comparably straightforward and effective.

FMCSA does not agree with commenters' assessment of the burden involved in defending against driver complaints. The ''subjectivity'' that IME feared has been virtually eliminated by the revised definition adopted in this final rule, which requires the driver to state explicitly that he or she cannot deliver the load without violating the

applicable regulations, and why that is the case. There can be no coercion unless the shipper, receiver, or transportation intermediary responds with an equally explicit threat to force the driver to make the delivery despite the regulatory violation it would entail. While groundless allegations of coercion are possible, such accusations are also possible under OSHA's whistleblower rules, yet they appear to be a relatively minor problem and are readily dismissed for want of evidence.

Penalties

Advocates argued that the Agency should suspend the operating authority of motor carriers found to have committed coercion, rather than just issue ''meaningless fines.'' Coercion involving private carriers should be reported to the relevant States ''so that the state licensing authority may take the appropriate action as well as have a complete record of the entities they are responsible for monitoring.'' Advocates noted that an $11,000 fine (since increased to $16,000) ''pales in comparison to the $250,000 punitive fine that can be levied against a company by the Department of Labor under the Surface Transportation Assistance Act (STAA) after a finding that a driver was dismissed for refusing to compromise a health or safety standard.''

An individual commenter, Jim Duvall, wrote that ''Any fine or monetary penalty should directly benefit the driver(s) harmed in the action.''

Three commenters stated that the final rule should impose penalties against drivers who make false claims of coercion. One commenter said there should be a penalty for drivers who make false accusations because they either refuse to take responsibility for their own failure to properly calculate their hours or knowingly violate the HOS rules because they do not want to ''miss the load.'' Two other individuals stated that there should be penalties for drivers who are disgruntled and file baseless coercion complaints to get back at their employer. AIPBA noted that the imposition of significant penalties against drivers who are found to have falsely accused a broker will deter ''such improper and fraudulent conduct by unscrupulous drivers.''

FMCSA Response

FMCSA will take aggressive action when a violation of the prohibition against coercion can be substantiated. This action will include civil penalties consistent with the regulations, and may include initiation of a proceeding to revoke the operating authority of a for-hire motor carrier. Under 49 U.S.C. 13905, a carrier that engages in willful non-compliance with an Agency regulation or order may have its operating authority revoked. FMCSA's policy on revocation was set forth in a notice published on August 2, 2012 (77 FR 46147). The Agency agrees that coercion is the type of violation that may fall into this category.

Some commenters appear to regard a coercion allegation that cannot be substantiated as a false accusation. That is not necessarily true. Despite its best efforts, FMCSA may not be able adequately to document some allegations that are in fact correct. In any case, neither section 32911 of MAP–21 nor the Agency's general civil penalty statute authorizes penalties against drivers who make false accusations of coercion.

As for Mr. Duvall's recommendation, ''All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account)'' in the U.S. Treasury [49 U.S.C. 521(b)(10)]. The Agency cannot pay drivers the civil penalties it collects for incidents of coercion. And unlike OSHA, FMCSA has no authority to require the violator to compensate the driver for injuries he or she has suffered.

Coercion as an Acute Violation

ATA argued that a violation of proposed § 390.6, which prohibits coercion, should not necessarily be classified as an acute violation in Appendix B, section VII of Part 385, as proposed in the NPRM. Instead, coercion should be acute, critical, or neither, depending on the classification of the regulation the driver was coerced to violate.

FMCSA Response

FMCSA agrees that a carrier's safety fitness should be determined on the basis of the regulations it violates or coerces a driver to violate. In other words, coercion itself should not be treated as acute (or critical). The final rule therefore eliminates the NPRM's proposed amendments to Appendix B of 49 CFR part 385. This is consistent with the Agency's practice of limiting acute and critical classifications to regulations which, if violated, are likely to increase the risk of crashes. Because FMCSA currently has no data showing a link between coercion and crashes, it seems appropriate not to classify coercion as acute. If new data or further analysis shows such a link, the Agency may revisit this decision. As indicated above, however, FMCSA will impose significant penalties when reports of coercion can be proved.

Coercion of Carriers

NASSTRAC described a hypothetical situation where Shipper A hires Carrier B to deliver a load on a reasonable schedule. However, when Carrier B's driver arrives to pick up the load, he tells Shipper A that he has to go off duty in a few hours under the HOS regulations, making it impossible to meet Shipper A's delivery schedule. ''Shipper A says in frustration, 'That's the last time I use Carrier B.' Is Shipper A subject to a penalty of up to $11,000 just for saying those words, even if no safety violation occurs? How many penalties could Shipper A face if it makes no more use of Carrier B?''

ATA urged ''FMCSA to consider amending the proposed definition in section 390.5 to cover not only the driver as the target of withholding or coercion, respectively, but also his/her employer.''

FMCSA Response

NASSTRAC has described a normal and completely legal business response to inadequate service. Shipper A has not coerced the driver to violate the HOS rules, nor has it coerced Carrier B to put pressure on the driver to violate the rules. It has simply decided not to use a carrier that does not dispatch drivers who can meet the agreed upon delivery schedule.

Section 32911 of MAP–21 applies only to the coercion of drivers, not to the coercion of motor carriers. Under 49 U.S.C. 31136(a)(5), the Agency's regulations must ensure that ''(5) an *operator* of a commercial motor vehicle is not coerced by a *motor carrier,* shipper, receiver, or transportation intermediary . . .'' (emphasis added). Because an ''operator'' is distinct from a ''motor carrier,'' the term ''operator'' necessarily refers only to drivers. While shippers may sometimes coerce motor carriers to pressure their drivers to violate the FMCSRs, the coercion of motor carriers is not covered by MAP–21 or this rule.

Miscellaneous Comments

Driver Confidentiality. OOIDA argued that FMCSA must have whistleblower protections in place. ''This includes a guarantee of a certain amount of confidentiality in driver communications with the agency, and procedures at the agency to take action against parties who retaliate against drivers who submit good faith allegation[s] of coercion to the agency.''

FMCSA Response

FMCSA is required by 49 U.S.C. 31143(b) to keep the identity of a complainant confidential unless ''disclosure is necessary to prosecute a violation.'' Because a party accused of coercion cannot defend itself without knowing the name of the accuser, and when and where the alleged incident occurred, the driver's identity cannot be confidential. Retaliation for reporting incidents that, for whatever reason cannot be substantiated, is not covered by this rule. OSHA, however, may be able to provide relief.

Communications with Drivers. ''OOIDA suggests that FMCSA require all parties providing drivers with instructions, rules, or other conditions on the transportation to maintain all such communications as they do supporting documents under the HOS rules. OOIDA is aware that many motor carriers, brokers and third parties already retain such communication, and so this requirement should not be a significant burden. Such records should be regularly reviewed during safety audits and compliance reviews. The potential safety benefits of motor carriers knowing that these records will be available to enforcement would outweigh any added burden.''

FMCSA Response

The Agency could not act on such a far-reaching and controversial proposal without first publishing it for notice and comment. The NPRM proposed no such requirement, and it is not included in this final rule.

Notifying Carriers and Consumer Reporting Agencies. OOIDA commented that, ''One form of coercion and retaliation against drivers is the reporting of negative information about a driver in an employment history submitted to a consumer reporting agency. Other motor carriers purchase that employment history from the consumer reporting agency to fulfill their FMCSR hiring requirements, and they often make negative hiring decisions based on those reports. On their face, some of the information reported appears performance related, such as 'late pick-up/delivery.' But there is nothing to protect drivers from being tagged with a negative mark on their employment history if the late pickup or delivery resulted from conditions or circumstances that caused the driver to run out of legal hours to make the delivery on time. Resistance to coercion (*i.e.,* the driver objections proposed by the Notice) may be reported as 'refused dispatch' or 'insubordination.' These employment records can effectively disqualify a driver from being considered for employment by motor carriers or make it much harder for the driver to find employment. The result is that safety-conscious drivers who do the right thing and resist coercion get bad employment reports and are driven out of the industry. Other drivers who capitulate to demands to violate the rules and save their jobs can keep fairly clean employment records and stay in the industry. . . . FMCSA should impose penalties upon motor carriers who submit such information to consumer reporting agencies and who refuse to remove such information after it is submitted.''

FMCSA Response

Negative reports about a driver by a motor carrier could constitute ''adverse employment actions'' prohibited by this final rule. However, there would be significant evidentiary obstacles to making a coercion case in these situations. A late pickup or delivery may not have been caused by unrealistic demands the driver was coerced to meet. Bad planning on the part of the driver or carrier, unexpected traffic congestion, or other factors could also explain some delays. Tracing reports of ''insubordination'' back to the driver's refusal to be coerced would inevitably involve a detailed examination of one or more incidents and conflicting accounts of the reason for the alleged insubordination. While FMCSA will review all reported incidents, the Agency cannot take action against a carrier for coercion unless there is evidence that an unfavorable report on a driver was motivated by a desire to punish the driver for refusal to be coerced.

The Rule Should Govern the Demands of Receivers. OOIDA argued that ''[t]he most powerful tool that receivers have over drivers is the withholding of a signature or receipt from the driver acknowledging receipt of the freight—a document the driver needs as a condition for being compensated by their carrier or third-party and that the driver must obtain before driving away to get rest or new business. Withholding such receipt is commonly used by receivers to coerce drivers to [1] accept the receiver's schedule to unload a vehicle (no matter when the driver arrived at the docks, when the driver's next scheduled pickup or delivery may be, or what the driver's Hours of Service status may be); . . . [3] require the driver to break down pallets and sort and stack freight.'' OOIDA also described situations where drivers are held at a receiver's dock past the 14th hour after coming on duty, and then forced to drive away from the receiver's facility in violation of § 395.3(a)(2).

FMCSA Response

While the situation OOIDA described involving a signature or receipt was not discussed in the NPRM, withholding a delivery receipt might be used to coerce a driver to violate the FMCSRs. A receiver that forces a driver to leave its premises is not threatening the driver with an adverse employment action; it is asserting its right as a property owner to control access to the property.

Comments on Issues Outside the Scope of This Rulemaking

Fourteen commenters raised issues beyond the scope of this rulemaking, involving lack of adequate parking; detention time and detention pay; and various HOS provisions. Because none of these issues was related to coercion of drivers to violate FMCSA regulations, the Agency will not comment on them in this document.

VI. Section-by-Section Description

A. Part 386

Section 386.1, ''Scope of the rules in this part,'' is amended by adding a new paragraph (c) referring to the filing and handling of coercion complaints under new § 386.12(e).

The NPRM's § 386.12(e) is called ''Complaint of coercion.'' The procedures to file and handle coercion complaints outlined in the NPRM have been revised. The complaint must be filed within 90 days after the event with the Agency's on-line National Consumer Complaint Database (*http://nccdb.fmcsa.dot.gov*), or with the Division Administrator where the driver is employed. FMCSA may reassign the complaint to the Division Administrator best situated to investigate it. In addition, the final rule removes a sentence included in the NPRM stating that the Division Administrator may issue a Notice of Claim or Notice of Violation when appropriate. Because that statement could be read as a limitation on the Agency's enforcement options, it has been deleted.

B. Part 390

Section 390.3(a) is amended to include a reference to the coercion provisions in § 386.12(e) and § 390.6, and describe the applicability of those provisions.

Section 390.5 is amended to add definitions of ''Coerce or coercion,'' ''Receiver or consignee,'' ''Shipper,'' and ''Transportation intermediary.'' The definitions of ''Receiver or consignee,'' ''Shipper,'' and ''Transportation intermediary'' make these entities

subject to the prohibition on coercion in § 390.6 only when shipping, receiving or arranging transportation of property (and in the case of ''transportation intermediaries,'' passengers) in interstate commerce. Although the term ''transportation intermediary'' is commonly associated with brokers and freight forwarders, it also includes travel agents and similar entities that arrange group tours or trips and contract with motorcoach operators for transportation services. Such intermediaries and their agents are subject to the prohibition on coercion. Because the HMRs apply to transportation in intrastate commerce, the definitions make clear that the prohibition on coercion applies to parties that ship, receive, or arrange transportation of hazardous materials in interstate or intrastate commerce. The NPRM's definition of ''coerce or coercion'' has been amended (1) by removing the reference to ''current or future'' business; (2) adding a prohibition on ''any adverse employment action against a driver,'' and (3) deleting references to violations of §§ 385.105(b), 385.111(a), (c)(1), or (g), which were erroneously included.

Section 390.6(a)(1) is added to prohibit motor carriers, shippers, receivers, or transportation intermediaries, or the agents, officers, or representatives of such entities, from coercing drivers to operate CMVs in violation of 49 CFR parts 171–173, 177–180, 380–383, or 390–399, or §§ 385.415 or 385.421. These parts correspond to the statutory language in 49 U.S.C. 31136(a)(5). Parts 171–173 and 177–180 are the HMRs applicable to highway transportation promulgated under 49 U.S.C. chapter 51. Parts 382–383 are the commercial driver's license (CDL) and drug and alcohol testing regulations promulgated under 49 U.S.C. chapter 313. Parts 390–399 are those portions of the FMCSRs promulgated under the authority (partial or complete) of 49 U.S.C. 31136(a). The other parts or sections listed are based on one or more of the statutes referenced in 49 U.S.C. 31136(a)(5).

Section 390.6(a)(2) is added to prohibit operators of CMVs or their agents, officers, or representatives, from coercing drivers to violate 49 CFR parts 356, 360, or 365–379. This subsection is based on the authority of 49 U.S.C. 31136(a)(1)–(4) and 49 U.S.C. 13301(a).

Section 390.6(b) describes the procedures for a driver to file a complaint of coercion with FMCSA.

VII. Regulatory Analyses

A. Regulatory Planning and Review and DOT Regulatory Policies (E.O. 12866) and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this rule is a significant regulatory action under E. O. 12866 (58 FR 51735, October 4, 1993), as supplemented by E. O. 13563 (76 FR 3821, January 21, 2011), and significant within the meaning of the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The estimated economic costs of the rule will not exceed the $100 million annual threshold (as explained below).

Extent of Economic Impact

The 1982 STAA includes whistleblower protections for motor carrier employees (49 U.S.C. 31105). OSHA, which administers the complaint process created by section 31105, received 1,158 complaints from CMV drivers between FY 2009 and FY 2012.[7] OSHA found that 253 of them (22 percent) had merit.[8] Between FY 2009 and FY 2012, the OIG hotline received 91 complaints alleging that motor carriers had coerced or retaliated against drivers. FMCSA determined that 20 of these complaints had merit.[9] The average number of verified complaints for that 4-year period was therefore 68.25 per year [(253 + 20)/4 = 68.25].

Some unknown portion of the 253 complaints filed with OSHA during that period almost certainly dealt with coercion or similar actions. Even if all of them were coercion-related, this number—combined with the 20 substantiated complaints filed with the OIG—remains small compared to the total population of CMV drivers. Section 31105, however, applies only to employers (basically motor carriers) while this rule will also cover shippers, receivers, and transportation intermediaries. The Agency is unable to estimate the number of coercion allegations it may receive, whether triggered by actions of motor carriers or other entities made subject to this rule by MAP–21.

In view of the small number of coercion-related complaints filed with OSHA and DOT's OIG, the aggregate economic value to motor carriers of these coercion-related incidents is likely to be low. Therefore, the cost to carriers of eliminating those incidents—assuming the rule has that effect—and incurring the higher costs of compliance, would also be low; however, the cost of compliance with existing regulations has already been captured in the analysis supporting the implementation of those regulations, so we do not consider them here. We believe that the application of this rule to shippers, receivers, brokers, freight forwarders, and other transportation intermediaries will not significantly increase the number of coercion complaints, since drivers generally have more frequent and direct contacts with their employers than with these other parties. In addition, even though the rule applies to a larger population, FMCSA also notes that the rule should have a deterrent effect on entities considering coercion.

The roughly 68 annual complaints noted above is the only available estimate of coercion in the trucking industry now. This rule would be expected to reduce the amount of coercion that takes place, but there is no available measure of the effectiveness of the rule. The relatively low number of complaints suggests that the overall economic impact will be less than the $100 million threshold of economic significance under E.O. 12866.

Benefits

If coercion creates situations where CMVs are operated in an unsafe manner, then there are consequences for safety and driver health risks. By forcing drivers to operate mechanically unsafe CMVs or drive beyond their allowed hours, coercion increases the risk of crashes. Reduction of these behaviors because of this rule would generate a safety benefit. Additionally, the operation of CMVs beyond HOS limits has been shown to have negative consequences for driver health. A reduction of this practice would create an improvement in driver health. The Agency lacks data to quantify the safety or health benefits attributable to the rule.

Costs

This rule, as an enforcement measure, would impose compliance costs on carriers and on other business entities utilizing the motor carrier industry. If drivers now operate CMVs in violation of HOS rules, or if coercion had caused drivers to operate their CMV even

[7] U.S. Department of Labor, Occupational Safety & Health Administration (OSHA), Whistleblower Protection Program: Investigative Data Fact Sheets. Available at *http://www.whistleblowers.gov/wb_data_FY05-12.pdf.*

[8] *Ibid.*, Footnote 3.

[9] U.S. Department of Transportation, Office of the Inspector General (OIG). This averaged 23 complaints per year, (with 44 in 2010), which the OIG referred to FMCSA. FMCSA substantiated 20 complaints (22 percent) of violations of acute and critical regulations due to driver allegations of unlawful discrimination or discipline (*See* 29 CFR 1978.100 *et seq.*). Available at *http://www.oig.dot.gov/Hotline.*

though there were mechanical defects, carriers would potentially have to reorganize their schedules or hire new drivers to operate in compliance. Maintenance costs might also accelerate as a result of this rule, as the industry improves compliance with the existing safety standards resulting from increased risk of enforcement action. Additionally, the entities that practice coercion would lose the economic benefit of that coercion. This economic benefit could be time-related (if drivers are coerced into driving when they should stop and rest, stop and wait for CMV maintenance, or drive a vehicle they are not qualified to operate rather than wait for a qualified driver).

Drivers alleging coercion will have to provide a written statement describing the incident along with evidence to support their charges. This total paperwork burden is difficult to estimate but is not likely to be very large. Similarly the Agency believes that the investigation of those reports will not have a large cost.

Summary

The Agency does not believe that the benefits and costs of this rule would create a large economic impact. The safety benefits and compliance costs are likely to be very small based on the small number of expected cases each year. Therefore, the Agency believes that the rule will not be economically significant.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, as well as governmental jurisdictions with populations of less than 50,000.[10] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the rule is not expected to have a significant economic impact on a substantial number of small entities. As indicated above, OSHA found merit in only 253 complaints filed by CMV drivers over a 4-year period, or about 63 per year. Even if all of the complaints were classified as coercion-related, that number would be very small when compared to the size of the driver population and motor carrier industry.

The Small Business Administration (SBA) classifies businesses according to the average annual receipts. The SBA defines a ''small entity'' in the motor carrier industry [*i.e.,* general freight truck transportation, subsector 484 of the North American Industry Classification System (NAICS)] as having revenues of less than $27.5 million per firm. Likewise, transportation intermediaries (*i.e.,* subsector 488 of NAICS) which include brokers and freight forwarders, are classified as small if their annual revenue is under $15 million.[11]

Table 1 presents a breakdown of FMCSA's revenue estimates for the populations in various categories. By SBA standards, the vast majority of all businesses in the motor carrier and related industries are ''small entities.'' Although general freight transportation arrangement firms fall under the $15 million threshold, there is an exception for ''non-vessel household goods forwarders.'' [12] This exception stipulates that the revenue threshold, for this subset of freight forwarders in the trucking industry is $27.5 million. As indicated above, fewer than 70 coercion complaints per year have been filed with OSHA and FMCSA in the past few years. We have no reason to believe that number will increase significantly under the rule. In fact, the potential penalty for coercing a driver should have a deterrent effect. Even if the penalty assessed might have a ''significant economic impact,'' the limited number of recent coercion complaints suggests that the penalty would not affect ''a substantial number of small entities,'' given that there are nearly 500,000 firms in the industry that qualify as small entities.

This rule does not affect industry productivity by requiring new documentation, affecting labor productivity or availability, or increasing expenditures on maintenance or new equipment. The fines, which are the only impact (unless the carrier's operating authority is suspended or revoked), can be avoided by not coercing drivers into violating existing regulations. Furthermore, by regulation, the Agency's fines are usually subject to a maximum financial penalty limit of 2 percent of a firm's gross revenue. For the vast majority of small firms, a fine at this level would not be ''significant'' in the sense that it would jeopardize the viability of the firm.

The table below excludes shippers and receivers subject to the prohibition on coercion, a group which is a large portion of the entire U.S. population, because anyone who sends or receives a package would be considered a shipper or receiver. However, compliance with the prohibition on coercion of drivers is not expected to have significant economic impact on many of them. Consequently, because they are not expected to be in a position to coerce a driver, I certify that the action will not have a significant economic impact on a substantial number of small entities.

[10] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

[11] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System Codes (NAICS), See NAIC subsector 484 (Truck Transportation) and 488 Support Activities for Transportation).effective July, 2012. The Small Business Size Standards used in the Initial Regulatory Flexibility Act analysis (IRFA) were released by the Small Business Administration in January 2012. The SBA issued revised Small Business Standards in July 2014. See downloadable PDF file at *https://www.sba.gov/content/small-business-size-standards.*

[12] According to the 2007 Economic Census data, 2,221 establishments were classified as non-vessel common carriers. These establishments accounted for 10.2 percent of the number of, and 5.2 percent of the annual revenue for, the total number of establishments classified under NAICS Code 488510-Freight Transportation Arrangement. In 2007, the average revenue for all entities classified to NAICS Code 488510 was $1.8 million. Therefore, the results of the analysis are the same regardless of whether the Small Business Standard is $15 million or $27.5 million.

TABLE 1—TOTAL NUMBER OF ENTITIES AND DETERMINATION, 2012

Type of entity	Number	Determination
Motor carriers (property)	[13] 523,239	99% below 27.5 million.[14]
Motor carriers (passenger)	12,184	99% below $15 million.[15]
Freight forwarders	[16] 14,319	97% below $27.5 million.
Property brokers	21,565	99% below $27.5 million.

Source: Motor carrier (passenger), and property broker numbers is updated from the Initial Regulatory Flexibility Act analysis (IRFA) to reflect revisions reported in ''2014 Pocket Guide to Large Truck and Bus Statistics,'' Federal Motor Carrier Administration, October 2014. The 2014 Pocket Guide is available at *http://www.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts.*

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Charles Medalen, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 2015 after adjusting for inflation) or more in any 1 year.

E. Federalism (E.O. 13132)

A rulemaking has implications for Federalism under section 1(a) of E.O. 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with E.O. 13132. This rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. FMCSA has determined that this rule will not have substantial direct costs on or for States nor will it limit the policymaking discretion of States. Accordingly, this rulemaking does not have Federalism implications.

F. Civil Justice Reform (E.O. 12988)

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

G. Protection of Children (E.O. 13045)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

H. Taking of Private Property (E.O. 12630)

FMCSA reviewed this rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

I. Privacy Impact Assessment

FMCSA conducted a privacy impact assessment (PIA) of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004). The assessment considered impacts of the final rule on the privacy of information in an identifiable form and related matters. The final rule will impact the handling of personally identifiable information (PII). FMCSA has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has evaluated protections and alternative information handling processes in developing the final rule in order to mitigate potential privacy risks.

For the purposes of both transparency and efficiency, the privacy analysis conforms to the DOT standard Privacy Impact Assessment (PIA) and will be published on the DOT Web site at *www.dot.gov/privacy* concurrently with the publication of the rule. The PIA addresses the rulemaking, associated business processes contemplated in the rule and any information known about the systems or existing systems to be implemented in support of the final rulemaking. A PIA for the Coercion NPRM was previously developed and is

[13] Includes interstate motor carriers and intrastate hazardous materials motor carriers.

[14] The results show that 99 percent of all motor carriers (property) with recent activity have 148 PUs or fewer.

[15] The methodology used to determine the percentage of motor carriers (property and passenger) is the same methodology described in detail at pages 31 through 34 of the September 2014 Initial RFA prepared for the proposed rule on Motor Carrier Safety Fitness Determination.

[16] The number of freight forwarders reported (21,809) in the IFRA was obtained from the U.S Census Bureau 2007 Economic Census. The 21,809 entities are the number of establishments, not the number of firms that operated for all or part of 2007. An establishment is a place of business. A firm may operate out of more than one establishment. Hence, the number of firms is a subset of the number of establishment. In the 2007 Economic Census, 15,180 firms were classified to NAICS Code 488510-Freight Transportation Arrangement. The number of firms that operated for all or part of the year accounted for 69.6 percent of establishments (15,180 ÷ 21,809). The product of 69.9 percent and 20,573 establishments reported the 2012 Economic Census yielded an estimated 14,319 firms in 2012. These data are available on the Census Bureau American Fact Finder Web site at *http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t.*

currently available to the public on the DOT Web site at *www.dot.gov/privacy.* The PIA has been reviewed, and revised as appropriate, to reflect the final rule and will be published not later than the date on which the Department initiates any of the activities contemplated in the Final Rule determined to have an impact on individuals' privacy and not later than the date on which the system (if any) supporting implementation of the Final Rule is updated.

As required by the Privacy Act, FMCSA and the Department will publish, with request for comment, a revised system of records notice (SORN) that will cover the collection of information that is affected by this final rule. Since coercion complaints will be stored in the National Consumer Complaint Database (NCCDB), the SORN for the NCCDB (DOT/FMCSA 004—National Consumer Complaint Database (NCCDB)—75 FR 27051—May 13, 2010) will be revised to reflect the new collection of information and published in the **Federal Register** not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier. Additionally, FMCSA will revise the PIA for NCCDB (formally the Safety Violations and Household Goods Consumer Complaint Hotline Database) posted on June 6, 2006 and an updated PIA will be available to the public on the DOT Web site at *www.dot.gov/privacy.*

The privacy risks and effects associated with the cases resulting from this rule are not unique and have previously been addressed by the enforcement case file storage requirements in the Electronic Document Management System (EDMS) PIA posted on June 6, 2006 and the DOT/FMCSA 005—Electronic Document Management System SORN (71 FR 35727) published on June 21, 2006.

J. Intergovernmental Review (E.O. 12372)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. Information submitted by drivers alleging coercion is exempt from PRA requirements because it is collected pursuant to ''an administrative action or investigation involving an agency against specific individuals or entities'' [44 U.S.C. 3518(c)(1)(B)(ii)].

L. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). FMCSA conducted an environmental assessment and determined that the rule has the potential for minor environmental impacts. Based on the limited data FMCSA has concerning the extent of the affected CMV driver population, these impacts would be very small and FMCSA does not expect any significant impacts to the environment from this rule. The environmental assessment has been placed in the rulemaking docket.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions from any of the alternatives are expected to fall below the CAA *de minimis* thresholds as per 40 CFR 93.153 and are, therefore, not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

M. Environmental Justice (E.O. 12898)

FMCSA evaluated the environmental effects of this rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor is there any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were a ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's EA, discussed under National Environmental Policy Act, would result in high and adverse environmental impacts.

N. Energy Supply, Distribution, or Use (E.O. 13211)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

O. Indian Tribal Governments (E.O. 13175)

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

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

49 CFR Part 386

Administrative practice and procedures, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA amends parts 386 and 390 in 49 CFR chapter III, subchapter B, as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L.

106–159, 113 Stat.1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.81 and 1.87.

■ 2. Revise the heading of part 386 as set forth above.

■ 3. Amend § 386.1 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 386.1 Scope of the rules in this part.

(a) Except as indicated in paragraph (c) of this section, the rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

* * * * *

(c) The rules in § 386.12(e) govern the filing by a driver and the handling by the appropriate Division Administrator of complaints of coercion in violation of § 390.6 of this subchapter.

■ 4. Amend § 386.12 as follows:

■ a. Revise the section heading;

■ b. Add and reserve paragraph (d); and

■ c. Add paragraph (e).

§ 386.12 Complaints.

* * * * *

(d) [Reserved]

(e) *Complaint of coercion.* (1) A driver alleging a violation of § 390.6(a)(1) or (2) of this subchapter must file a written complaint with FMCSA stating the substance of the alleged coercion no later than 90 days after the event. The written complaint, including the information described below, must be filed with the National Consumer Complaint Database at *http://nccdb.fmcsa.dot.gov* or the FMCSA Division Administrator for the State where the driver is employed. The Agency may refer a complaint to another Division Administrator who the Agency believes is best able to handle the complaint. Information on filing a written complaint may be obtained by calling 1–800–DOT–SAFT (1–800–368–7238). Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the person allegedly coercing the driver;

(iii) The provisions of the regulations that the driver alleges he or she was coerced to violate; and

(iv) A concise but complete statement of the facts relied upon to substantiate each allegation of coercion, including the date of each alleged violation.

(2) *Action on complaint of coercion.* Upon the filing of a complaint of coercion under paragraph (e)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (e)(1).

(i) If the Division Administrator determines that the complaint is non-frivolous and meets the requirements of paragraph (e)(1) of this section, he/she shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from such investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints.

(ii) If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (e)(1) of this section, he/she shall dismiss the complaint and notify the driver in writing of the reasons for such dismissal.

(3) *Protection of complainants.* Because prosecution of coercion in violation of § 390.6 of this subchapter will require disclosure of the driver's identity, the Agency shall take every practical means within its authority to ensure that the driver is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure. This will include notification that 49 U.S.C. 31105 includes broad employee protections and that retaliation for filing a coercion complaint may subject the alleged coercer to enforcement action by the Occupational Safety and Health Administration.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 5. Revise the authority citation for part 390 to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4114 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744), sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; and 49 CFR 1.81, 1.81a and 1.87.

■ 6. Revise § 390.3(a) to read as follows:

§ 390.3 General applicability.

(a)(1) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce.

(2) The rules in 49 CFR 386.12(e) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce:

(i) To violate certain safety regulations are applicable to all motor carriers, shippers, receivers, and transportation intermediaries; and

(ii) To violate certain commercial regulations are applicable to all operators of commercial motor vehicles.

* * * * *

■ 7. Amend § 390.5 by adding definitions of ''Coerce or Coercion,'' ''Receiver or consignee,'' ''Shipper,'' and ''Transportation intermediary,'' in alphabetical order, to read as follows:

§ 390.5 Definitions.

* * * * *

Coerce or *Coercion* means either—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold business, employment or work opportunities from, or to take or permit any adverse employment action against, a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require him or her to violate one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 171–173, 177–180, 380–383, or 390–399, or §§ 385.415 or 385.421, or the actual withholding of business, employment, or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for having refused to engage in such operation of a commercial motor vehicle; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold business, employment or work opportunities or to take or permit any adverse employment action against a driver in order to induce the driver to operate a commercial motor vehicle under conditions which the driver stated would require a violation of one or more of the regulations, which the driver identified at least generally, that are codified at 49 CFR parts 356, 360, or 365–379, or the actual withholding of business, employment or work opportunities or the actual taking or permitting of any adverse employment action to punish a driver for refusing to engage in such operation of a commercial motor vehicle.

* * * * *

Receiver or *consignee* means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials

transported in interstate or intrastate commerce.

* * * * *

Shipper means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

* * * * *

Transportation intermediary means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

* * * * *

■ 8. Add § 390.6 to read as follows:

§ 390.6 Coercion prohibited.

(a) *Prohibition.* (1) A motor carrier, shipper, receiver, or transportation intermediary, including their respective agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 171–173, 177–180, 380–383 or 390–399, or §§ 385.415 or 385.421;

(2) A motor carrier or its agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 356, 360, or 365–379.

(b) *Complaint process.* (1) A driver who believes he or she was coerced to violate a regulation described in paragraph (a)(1) or (2) of this section may file a written complaint under § 386.12(e) of this subchapter.

(2) A complaint under paragraph (b)(1) of this section shall describe the action that the driver claims constitutes coercion and identify the regulation the driver was coerced to violate.

(3) A complaint under paragraph (b)(1) of this section may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

Issued under the authority of delegation in 49 CFR 1.87 on: November 23, 2015.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2015–30237 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02]

RIN 0648–XE215

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2015 Commercial Accountability Measure and Closure for South Atlantic Golden Tilefish Hook-and-Line Component

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures for the commercial hook-and-line component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. NMFS projects commercial hook-and-line landings for golden tilefish will reach the hook-and-line component's commercial annual catch limit (ACL) on December 8, 2015. Therefore, NMFS closes the commercial hook-and-line component for golden tilefish in the South Atlantic EEZ on December 8, 2015, and it will remain closed until the start of the next fishing year on January 1, 2016. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, December 8, 2015, until 12:01 a.m., local time, January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 23, 2013, NMFS published a final rule for Amendment 18B to the FMP (78 FR 23858). Amendment 18B to the FMP established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery and allocated the commercial golden tilefish ACL among two gear types, the longline and hook-and-line components.

The commercial ACL (equivalent to the commercial quota) for the hook-and-line component for golden tilefish in the South Atlantic is 135,324 lb (61,382 kg), gutted weight, for the current fishing year, January 1 through December 31, 2015, as specified in 50 CFR 622.190(a)(2)(ii).

Under 50 CFR 622.193(a)(1)(i), NMFS is required to close the commercial hook-and-line component for golden tilefish when the hook-and-line component's commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial ACL for the hook-and-line component for golden tilefish in the South Atlantic will be reached by December 8, 2015. Accordingly, the commercial hook-and-line component for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, December 8, 2015, until 12:01 a.m., local time, January 1, 2016.

The commercial longline component for South Atlantic golden tilefish closed on February 19, 2015, for the remainder of the fishing year, until 12:01 a.m., local time, January 1, 2016 (80 FR 8559, February 18, 2015). Furthermore, recreational harvest for golden tilefish closed on August 11, 2015, for the remainder of the fishing year, until 12:01 a.m., local time, January 1, 2016 (80 FR 48041, August 11, 2015). Therefore, because the commercial longline component and the recreational sector are already closed, and NMFS is closing the commercial hook-and-line component through this temporary rule, all fishing for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, December 8, 2015, until 12:01 a.m., local time, January 1, 2016.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, December 8, 2015. During the closure, the sale or purchase of golden tilefish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of golden tilefish that were harvested by hook-and-line, landed ashore, and sold prior to 12:01 a.m., local time, December 8, 2015, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for

golden tilefish would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.190(c)(1)(ii).

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial hook-and-line component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because the capacity of the fishing fleet allows for rapid harvest of the commercial ACL for the hook-and-line component, and there is a need to immediately implement this action to protect golden tilefish. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial ACL for the hook-and-line component.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 24, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–30318 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150302204–5999–02]

RIN 0648–BE93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 15

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 15 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP), as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule revises the FMP framework procedures to streamline the process for changing certain regulations affecting the shrimp fishery. Additionally, Amendment 15 implements changes to the FMP that revise the maximum sustainable yield (MSY), overfishing threshold, and overfished threshold definitions and values for three species of penaeid shrimp. The purpose of this rule and Amendment 15 is to streamline the management process for Gulf shrimp stocks and to revise criteria for determining the overfished and overfishing status of each penaeid shrimp stock using the best available science.

DATES: This rule is effective December 30, 2015.

ADDRESSES: Electronic copies of Amendment 15, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2015/Am%2015/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 12, 2015, NMFS published a notice of availability for Amendment 15 and requested public comment (80 FR 48285). On August 25, NMFS published a proposed rule for Amendment 15 and requested public comment (80 FR 51523). The proposed rule and Amendment 15 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendment 15 and this final rule is provided below.

Management Measure Contained in This Final Rule

This final rule revises the FMP framework procedures at 50 CFR 622.60(a) and (b) to allow for modification of accountability measures under the standard documentation process of the open framework procedure. Also, this final rule removes outdated terminology from the regulations, such as ''total allowable catch,'' and removes the phrase ''transfer at sea provisions'' from the list of framework procedures because this phrase was inadvertently included in the final rule for the Generic Annual Catch Limits and Accountability Measures Amendment (76 FR 82044, December 29, 2011). The transfer at sea text was never intended by the Council to be included in the list of framework procedures when they were revised in 2011, but were included as a result of an error by NMFS during that rulemaking.

Additional Measures Contained in Amendment 15

Amendment 15 also contains actions that are not being codified in the regulations, but guide the Council and NMFS in establishing other management measures, which are codified. Amendment 15 revises the MSY, the overfishing threshold, and the overfished threshold definitions and values for penaeid shrimp stocks (brown, white, and pink shrimp).

The criteria and values for MSY, the overfishing threshold, and the overfished threshold for penaeid shrimp were established in Amendment 13 to the FMP (71 FR 56039, September 26, 2006). Historically, Gulf penaeid shrimp stocks were assessed with a virtual population analysis (VPA), which reported output in terms of number of parents. However, the 2007 pink shrimp stock assessment VPA incorrectly determined that pink shrimp were undergoing overfishing because the model could not accommodate low effort. In 2009, NMFS stock assessment analysts determined that the stock synthesis model was the best choice for modeling Gulf shrimp populations.

Amendment 15 modifies stock status determination criteria to match the biomass-based output of the stock synthesis model. These revisions to the penaeid shrimp stock status criteria are expected to cause little to no change to the biological, physical, or ecological environments because these changes are only to the stock status reference points and therefore will not have a direct impact on the actual harvest of penaeid shrimp.

Comments and Responses

No substantive comments were received on either Amendment 15 or the proposed rule. One comment was received from a Federal agency that stated that it had no comment on the proposed rule or on Amendment 15.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Amendment 15, the FMP, the Magnuson-Stevens Act, and other applicable law. This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gulf of Mexico, Shrimp.

Dated: November 23, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.60, revise paragraphs (a) and (b) to read as follows:

§ 622.60 Adjustment of management measures.

* * * * *

(a) *Gulf penaeid shrimp.* For a species or species group: Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, quotas (including a quota of zero), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, allowable biological catch (ABC) and ABC control rules, rebuilding plans, restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait), target effort and fishing mortality reduction levels, bycatch reduction criteria, BRD certification and decertification criteria, BRD testing protocol and certified BRD specifications.

(b) *Gulf royal red shrimp.* Reporting and monitoring requirements, permitting requirements, size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, and restrictions relative to conditions of harvested shrimp (maintaining shrimp in whole condition, use as bait).

[FR Doc. 2015–30214 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150311250–5474–01]

RIN 0648–BE97

Fisheries of the Northeastern United States; Blueline Tilefish Fishery; Secretarial Emergency Action

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: This rule extends emergency permitting and possession limit regulations for the blueline tilefish fishery in waters north of the Virginia/North Carolina border that were implemented on June 4, 2015. This extension is necessary to continue to constrain fishing effort on the blueline tilefish stock while a long-term management plan is developed. The rule is expected to reduce fishing mortality and help ensure the long-term sustainability of the stock.

DATES: The expiration date of the emergency rule published on June 4, 2016 (80 FR 31864) is extended through June 3, 2016.

ADDRESSES: Copies the Environmental Assessment and Regulatory Impact Review (EA/RIR) and other supporting documents for this emergency action are available from John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA, 01930. The EA/RIR is also accessible via the Internet at: *http://www.greateratlantic.fisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

This temporary final rule extends emergency permitting and possession limit regulations for the blueline tilefish (*Caulolatilus microps*) fishery in the Greater Atlantic Region (*i.e.*, Federal waters north of the latitude of the Virginia/North Carolina border) as described in the original emergency action that published on June 4, 2015 (80 FR 31864). The initial temporary rule was implemented in response to a request for emergency action from the Mid-Atlantic Fishery Management Council. That temporary final rule

included detailed information on the background, purpose, need, and justification to implement these emergency management measures, and that information is not repeated here.

Section 305(c) of the Magnuson-Stevens Act allows for the extension of an emergency action, which is otherwise effective for up to 180 days, for up to another 186 days, provided that certain criteria are met: (1) The public has had an opportunity to comment on the emergency regulation; and (2) in the case of a Council recommendation for emergency action, the Council is actively developing an fishery management plan (FMP) amendment or regulations to address the emergency on a permanent basis. NMFS accepted public comment on the initial emergency measures in the final rule through July 6, 2015; comments and responses are summarized below. The Mid-Atlantic and South Atlantic Fishery Management Councils are both working on long-term management measures for blueline tilefish along the Atlantic coast. The Mid-Atlantic Council has initiated an amendment to its Golden Tilefish FMP to add blueline tilefish fishery management measures to that FMP and manage the stock within its jurisdiction. Final action on that amendment is expected to occur at the Council's February 2016 meeting so that rulemaking may be completed before this temporary extension expires. This extension does not change the measures already in place. NMFS is not accepting additional public comment on this extension, and has determined that all the necessary criteria have been met and, therefore, is extending these emergency measures.

Extended Emergency Management Measures

This temporary final rule extends the following management measures for blueline tilefish in the Greater Atlantic Region:

1. A requirement for commercial or charter/party vessels landing blueline tilefish in the Northeast region (*i.e.*, north of the latitude of the Virginia/North Carolina border: 36°33′01.0″ N. latitude) to hold a valid Northeast open access golden tilefish commercial or charter/party vessel permit, which are issued by the Greater Atlantic Regional Fisheries Office;
2. A commercial possession limit of 300 lb (136 kg) whole weight per trip; and
3. A recreational possession limit of seven blueline tilefish per person, per trip.

None of these management measures modify the existing possession regulations for golden tilefish, or any other species.

In addition to the efforts being made by the Mid-Atlantic Council, the South Atlantic Council is considering revisions to its Snapper Grouper FMP to modify blueline tilefish management measures that may or may not affect the Mid-Atlantic Council's management of this stock. Questions remain on potential stock structure of the species throughout its distribution and there is considerable uncertainty in the data and projections in the most recent benchmark stock assessment that are currently being explored. It is expected that the long-term management of blueline tilefish fisheries will be improved once these scientific and policy issues are resolved. These extended emergency measures will continue to protect blueline tilefish in the Greater Atlantic Region while allowing the Councils more time to finalize their work.

Comments and Responses

We received numerous public comments prior to implementation of the emergency action, primarily from fishermen who were opposed to overly-restrictive possession limits on blueline tilefish. Overall, the concerns raised in these comments were addressed by the management measures that we implemented. We received three comments during the original rule's comment period, and these are summarized below.

Comment 1: One comment was from a North Carolina-based commercial fishing organization. The commenter suggested that the blueline tilefish possession limits implemented by the rule disproportionately impacted commercial fishing vessels while not equally restraining recreational fishing vessels.

Response: According to the analyses in the EA (see **ADDRESSES**), the possession limits implemented by NMFS were expected to have minor negative impacts on both commercial and recreational fishing vessels. In recent years, only 18 percent of commercial trips landed more than 500 lb (227 kg) of blueline tilefish, and in 2014, 94 percent of landings were derived from only six vessels (out of 81 active vessels). Therefore, the commercial possession limit of 300 lb (136 kg) was not expected to impact the vast majority of vessels in the fishery, and by design, reduces incentives to target blueline tilefish. Similarly, in the recreational fishery in recent years, only 12 percent of charter/party trips landed more than seven fish per person. Therefore, impacts on the overall commercial and recreational fisheries were projected to be comparable, with little impact on the vast majority of trips.

Comment 2: One comment from a New Jersey recreational fisherman opposed the recreational possession limit, stating it was too restrictive.

Response: As noted in the response above, a minority of recreational trips are likely to be affected by the possession limit of seven fish per person. The objective of the emergency rule was to prevent further expansion of catch on this species, and we believe the seven-fish possession limit to be appropriate, and consistent with the recommendations of the Council. Additionally, the blueline tilefish possession limits do not impact the possession limits of golden tilefish or other species.

Comment 3: One comment was from a recreational fisherman who was opposed to a possession limit of one fish per vessel (Alternative 2 in the EA).

Response: NMFS agrees that the possession limits under Alternative 2 would have been more restrictive, and likely to result in greater negative impacts on a higher proportion of fishery participants. NMFS chose to implement the possession limit of seven fish per person to help constrain fishing effort, while still allowing the fishery to continue.

Classification

The Regional Administrator, Greater Atlantic Region, NMFS, has determined that the emergency measures extended by this temporary rule are necessary for the conservation and management of the blueline tilefish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

Under 5 U.S.C. 553(d)(1), the Assistant Administrator for Fisheries finds good cause to waive the 30-day delayed effectiveness of this action. Because the extension of these emergency measures contains regulations already in place, it is contrary to public interest to allow them to expire. As described more fully in the original emergency action (80 FR 31864; June 4, 2015), the reasons justifying promulgation of the rule on an emergency basis make a delay in effectiveness contrary to the public interest. The possession limits implemented for recreational and commercial blueline tilefish vessels fishing in Federal waters north of the Virgina/North Carolina border are needed to constrain fishing mortality on the stock that would otherwise be unregulated. To provide protection for blueline tilefish, and to allow additional

time for the Council to develop an appropriate long-term solution for the management of this stock, expediting these emergency measures is necessary.

This action is being taken pursuant to the emergency provision of the Magnuson-Stevens Act and is exempt from OMB review.

This rule is exempt from the otherwise applicable requirement of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

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

Dated: November 24, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–30320 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 229

Monday, November 30, 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 EDUCATION

2 CFR Part 3474

[Docket ID ED–2015–OS–0105]

RIN 1894–AA07

Open Licensing Requirement for Direct Grant Programs

AGENCY: Office of the Secretary, Department of Education.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On November 3, 2015, we published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require that all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds. That NPRM established a 30-day comment period beginning on November 3, 2015, and closing on December 3, 2015. We are extending the public comment period for 15 days, until December 18, 2015.

DATES: The comment period for the notice of proposed rulemaking that published on November 3, 2015 (80 FR 67672), is extended. We must receive your comments on or before December 18, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *U.S. Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed regulations, address them to Sharon Leu, U.S. Department of Education, 400 Maryland Avenue SW., room 6W252, Washington, DC 20202–5900.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sharon Leu, U.S. Department of Education, 400 Maryland Avenue SW., room 6W252, Washington, DC 20202–5900. Telephone: 202–453–5646 or email: *tech@ed.gov.*

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: On November 3, 2015, we published an NPRM in the **Federal Register** (80 FR 67672), to amend the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in order to require that all Department grantees awarded direct competitive grant funds openly license to the public all copyrightable intellectual property created with Department grant funds. The NPRM established a 30-day comment period, closing on December 3, 2015. To ensure that all interested parties are provided ample time and opportunity to submit comments, we are extending the public comment period for an additional 15 days. Written comments must be submitted to us no later than December 18, 2015.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 23, 2015.

Arne Duncan,

Secretary of Education.

[FR Doc. 2015–30279 Filed 11–24–15; 11:15 am]

BILLING CODE 4000–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN26

Prevailing Rate Systems; Abolishment of the Newburgh, NY, Appropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would abolish the Newburgh, New York, appropriated fund Federal Wage System (FWS) wage area and redefine Orange County, NY, to the New York, NY, survey area; Dutchess County, NY, to the New York area of application; Delaware and Ulster Counties, NY, to the Albany-Schenectady-Troy, NY, area of application; and Sullivan County, NY, to the Scranton-Wilkes-Barre, Pennsylvania, area of application. These changes are based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC) to best match the counties proposed for redefinition to nearby FWS survey areas.

DATES: We must receive comments on or before December 30, 2015.

ADDRESSES: You may submit comments, identified by ''RIN 3206–AN26,'' using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Brenda L. Roberts, Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

Email: pay-leave-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule that would abolish the Newburgh, NY, appropriated fund FWS wage area and redefine the geographic boundaries of the New York, NY; Albany-Schenectady-Troy, NY; and Scranton-Wilkes-Barre, PA, appropriated fund FWS wage areas. The proposed rule would redefine Orange County, NY, to the New York survey area; Dutchess County, NY, to the New York area of application; Delaware and Ulster Counties, NY, to the Albany-Schenectady-Troy area of application; and Sullivan County, NY, to the Scranton-Wilkes-Barre area of application.

The Newburgh wage area is presently composed of three survey counties (Dutchess, Orange, and Ulster Counties) and two area of application counties (Delaware and Sullivan Counties).

Under section 5343 of title 5, United States Code, OPM is responsible for defining wage areas following the regulatory criteria under section 532.211 of title 5, Code of Federal Regulations. Under the regulatory criteria, OPM considers the following factors when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

The Office of Management and Budget defines Metropolitan Statistical Areas (MSAs) and maintains and updates the definitions of MSA boundaries following each decennial census. OMB's 2013 definitions of MSAs added Dutchess and Orange Counties to the New York-Newark-Jersey City, NY–NJ–PA MSA. The New York-Newark-Jersey City is now split between the Newburgh and New York wage areas. OPM regulations at 5 CFR 532.211 do not permit splitting MSAs for the purpose of defining a wage area, except in very unusual circumstances.

Dutchess and Orange Counties, NY

Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties, NJ; Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties, NY; and Pike County, PA, comprise the New York-Newark-Jersey City, NY–NJ–PA MSA. The New York-Newark-Jersey City MSA contains parts of the Newburgh and New York FWS wage areas. Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union Counties, NJ, and Bronx, Kings, Nassau, New York, Queens, Suffolk, and Westchester Counties, NY, are part of the New York survey area. Hunterdon, Monmouth, Ocean (excluding the Fort Dix Military Reservation), and Sussex Counties, NJ; Putnam, Richmond, and Rockland Counties, NY; and Pike County, PA, are part of the New York area of application. Dutchess and Orange Counties, NY, are part of the Newburgh survey area.

There now appear to be no unusual circumstances for Dutchess and Orange Counties to be split from the majority of the counties of the New York-Newark-Jersey City MSA. Therefore, OPM proposes to redefine Dutchess and Orange Counties to the New York wage area. Because Orange County has a large FWS workforce of 800 employees, it would be redefined to the New York survey area. With only 39 FWS employees, Dutchess County would be redefined to the New York area of application.

Delaware, Sullivan, and Ulster Counties, NY

With the redefinition of Dutchess and Orange Counties to the New York wage area, the Newburgh wage area would no longer be a viable wage area and would be abolished. Its remaining constituent counties would be redefined to a neighboring wage area.

In selecting a wage area to which Delaware County should be redefined, the distance criterion favors the Albany-Schenectady-Troy wage area. The commuting patterns criterion slightly favors the New York wage area. The overall population and employment and the kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. Based on these findings, OPM is proposing to redefine Delaware County as an area of application county to the Albany-Schenectady-Troy wage area.

In selecting a wage area to which Sullivan County would be redefined, the distance criterion favors the Scranton-Wilkes-Barre wage area. The commuting patterns criterion favors the New York wage area. The overall population and employment and the kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. Based on these findings, OPM is proposing to redefine Sullivan County as an area of application to the Scranton-Wilkes-Barre area of application.

In selecting a wage area to which Ulster County would be redefined, the distance criterion favors the Albany-Schenectady-Troy wage area. The commuting patterns criterion favors the New York wage area. The overall population and employment and the kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. Based on these findings, OPM is proposing to redefine Ulster County as an area of application county to the Albany-Schenectady-Troy wage area.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters affecting the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532—[Amended]

■ 2. Appendix A to subpart B of part 532 is amended for the State of New York by removing the entry for Newburg.

■ 3. Appendix C to subpart B is amended by removing the wage area listing for Newburgh, NY, and revising the wage area listing for the Albany-Schenectady-Troy, NY; New York, NY; and Scranton-Wilkes-Barre, PA, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

NEW YORK

Albany-Schenectady-Troy

Survey Area

New York:
Albany
Montgomery
Rensselaer
Saratoga
Schenectady

Area of Application. Survey area plus:

New York:
Columbia
Delaware
Fulton
Greene
Schoharie
Ulster
Warren
Washington

* * * * *

New York

Survey Area

New Jersey:
Bergen
Essex
Hudson
Middlesex
Morris
Passaic
Somerset
Union
New York:
Bronx
Kings
Nassau
New York
Orange
Queens
Suffolk
Westchester

Area of Application. Survey area plus:

New Jersey:
Hunterdon
Monmouth
Ocean (Excluding the Fort Dix Military Reservation)
Sussex
New York:
Dutchess
Putnam
Richmond
Rockland
Pennsylvania:
Pike

* * * * *

PENNSYLVANIA

* * * * *

Scranton-Wilkes-Barre

Survey Area

Pennsylvania:
Lackawanna
Luzerne
Monroe

Area of Application. Survey area plus:

New York:
Sullivan
Pennsylvania:
Bradford
Columbia
Lycoming (Excluding Allenwood Federal Prison Camp)
Montour
Sullivan
Susquehanna
Wayne
Wyoming

* * * * *

[FR Doc. 2015–30310 Filed 11–27–15; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2011–0189 and NRC–2014–0240]

RIN 3150–AJ49

Mitigation of Beyond-Design-Basis Events; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a proposed rule that it published in the **Federal Register** (FR) on November 13, 2015, proposing to amend its regulations that establish regulatory requirements for nuclear power reactor applicants and licensees to mitigate beyond-design-basis events. This action is necessary to correct an NRC docket ID number that was listed incorrectly.

DATES: The correction is effective November 30, 2015.

ADDRESSES: Please refer to Docket ID NRC–2014–0240 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0240. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Timothy Reed, Office of Nuclear Reactor Regulation, telephone: 301–415–1462, email: *Timothy.Reed@nrc.gov;* or Eric Bowman, Office of Nuclear Reactor Regulation, telephone: 301–415–2963, email: *Eric.Bowman@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: In the FR on November 13, 2015, in FR Doc. 2015–28589, on page 70640, in the first column, the third paragraph, the ninth line, correct ''NRC–2012–0059'' to read ''NRC–2014–0240.''

Dated at Rockville, Maryland, this 24th day of November 2015.

For the Nuclear Regulatory Commission.

Leslie Terry,

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

[FR Doc. 2015–30258 Filed 11–27–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

[Docket ID FFIEC–2014–0001]

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1510]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Chapter III]

Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996

AGENCY: Office of the Comptroller of the Currency (''OCC''), Treasury; Board of Governors of the Federal Reserve System (''Board''); and Federal Deposit Insurance Corporation (''FDIC'').

ACTION: Notice of outreach meeting.

SUMMARY: The OCC, Board, and FDIC (together ''we'' or ''Agencies'') announce the sixth and final outreach meeting on the Agencies' interagency process to review their regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (''EGRPRA'').

DATES: An outreach meeting will be held in the Washington, DC area at the FDIC's L. William Seidman Center at Virginia Square in Arlington, Virginia, on Wednesday December 2, 2015, beginning at 9:00 a.m. Eastern Standard Time (EST). Online registrations will be accepted through November 30, 2015, or until all seats are filled, whichever is earlier. If seats are available after the close of online registration, individuals may register in person at the L. William Seidman Center on the day of the meeting.

ADDRESSES: The Agencies will hold the December 2, 2015, outreach meeting at the FDIC's L. William Seidman Center at Virginia Square, 3501 Fairfax Drive, Arlington, VA 22226. Live video of this meeting will be streamed at: *http://egrpra.ffiec.gov/.* Participants attending in person should register at: *http://egrpra.ffiec.gov/outreach/outreach-index.html.*

In addition, to enhance participation, interested persons anywhere in the country will have the opportunity to view and participate in the meeting online using their computers. Members of the public watching online will be able to submit written comments at any time during the meeting using the text chat feature. In addition to the online option, a toll-free telephone number (800) 857–9751 (Participant passcode: 6040376) is available for members of the public who would like only to listen to the meeting, and who may choose later to submit written comments. Information regarding these additional participation options is described in the meeting details section for the Washington, DC area meeting at: *http://egrpra.ffiec.gov/outreach/outreach-meeting-details-dc.html.*

Any interested individual may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html.* On this site, click ''Submit a Comment'' and follow the instructions. Alternatively, comments also may be submitted through the Federal eRulemaking Portal ''Regulations.gov'' at: *http://www.regulations.gov.* Enter ''Docket ID FFIEC–2014–0001'' in the Search Box, click ''Search,'' and click ''Comment Now.'' Those who wish to submit their comments by an alternate means may do so as indicated by each agency below.

OCC

The OCC encourages commenters to submit comments through the Federal eRulemaking Portal, Regulations.gov, in accordance with the previous paragraph. Alternatively, comments may be emailed to *regs.comments@occ.treas.gov* or sent by mail to Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Mail Stop 9W–11, 400 7th Street SW., Washington, DC 20219. Comments also may be faxed to (571) 465–4326 or hand delivered or sent by courier to 400 7th Street SW., Washington, DC 20219. For comments submitted by any means other than Regulations.gov, you must include ''OCC'' as the agency name and ''Docket ID FFIEC–2014–0001'' in your comment.

In general, the OCC will enter all comments received into the docket and publish them without change on Regulations.gov. Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not include any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the OCC at 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect or photocopy comments. You may make an appointment by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to a security screening.

Board

The Board encourages commenters to submit comments regarding the Board's regulations by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.* Follow the instructions for submitting comments on the Agency Web site.
- Federal eRulemaking Portal, in accordance with the directions above.
- Email: *regs.comments@federalreserve.gov.* Include ''EGRPRA'' and Docket No. R–1510 in the subject line of the message.
- FAX: (202) 452–3819.
- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

In general, the Board will enter all comments received into the docket and publish them without change on the Board's public Web site, *www.federalreserve.gov;* Regulations.gov; and *http://egrpra.ffiec.gov.* Comments received, including attachments and other supporting materials, as well as any business or personal information you provide, such as your name and address, email address, or phone number, are part of the public record and subject to public disclosure. Therefore, please do not enclose any information with your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may inspect and photocopy in person all comments received by the Board in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may make an appointment by calling (202) 452–3000. Upon arrival, visitors will be required to

present valid government-issued photo identification and submit to a security screening.

FDIC

The FDIC encourages commenters to submit comments through the Federal eRulemaking Portal, ''Regulations.gov,'' in accordance with the directions above. Alternatively, you may submit comments by any of the following methods:

• *Agency Web site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web site.

• *Email: Comments@FDIC.gov.* Include ''EGRPRA'' in the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m. (EDT).

The FDIC will post all comments received to *http://www.fdic.gov/regulations/laws/federal* without change, including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9:00 a.m. and 5:00 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by calling (877) 275–3342.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi M. Thomas, Special Counsel, (202) 649–5490; for persons who are deaf or hard of hearing, TTY (202) 649–5597.

Board: Kevin Wilson, Financial Analyst, (202) 452–2362; Claudia Von Pervieux, Counsel (202) 452–2552; for persons who are deaf or hard of hearing, TTY (202) 263–4869.

FDIC: Ruth R. Amberg, Assistant General Counsel, (202) 898–3736; for persons who are deaf or hard of hearing, TTY 1–800–925–4618.

SUPPLEMENTARY INFORMATION: EGRPRA [1] directs the Agencies, along with the Federal Financial Institutions Examination Council (Council), not less frequently than once every ten years, to conduct a review of their regulations to identify outdated or otherwise unnecessary regulations imposed on insured depository institutions. As part of this review, the Agencies are holding a series of six outreach meetings to provide an opportunity for bankers, consumer and community groups, and other interested persons to present their views directly to senior management and staff of the Agencies on any of 12 specific categories of the Agencies' regulations, as further described below. The Agencies held the first of these outreach meetings on December 2, 2014, in Los Angeles, California; the second outreach meeting on February 4, 2015, in Dallas, Texas; the third outreach meeting on May 4, 2015, in Boston, Massachusetts; the fourth outreach meeting, which focused on rural banks and their communities, in Kansas City, Missouri on August 4, 2015; and the fifth outreach meeting on October 19, 2015 in Chicago, Illinois. Additional details, including videos and transcripts of the first five outreach meetings, are available on the EGRPRA Web site at: *http://egrpra.ffiec.gov/outreach/outreach-index.html.*

The final outreach meeting will be held on December 2, 2015, in the Washington, DC area at the FDIC's L. William Seidman Center at Virginia Square in Arlington, Virginia, and will be streamed live at: *http://egrpra.ffiec.gov/.* FDIC Chairman Martin J. Gruenberg, Comptroller of the Currency Thomas J. Curry, and Federal Reserve Board Governor Daniel K. Tarullo are scheduled to attend, along with senior staff members of the Agencies. The meeting will consist of panels of bankers and consumer and community groups who will present particular issues. There will be limited time after each panel for comments from meeting attendees. In addition, there will be a session at the end of the meeting during which audience members may present views on any of the regulations under review. The Agencies reserve the right to limit the time of individual commenters, if needed, in order to accommodate the number of persons desiring to speak.

Comments made by panelists, audience members, and online participants at this meeting will be reflected in the public comment file. Audience members who do not wish to comment orally may submit written comments at the meeting. As noted above, any interested person may submit comments through the EGRPRA Web site during open comment periods at: *http://egrpra.ffiec.gov/submit-comment/submit-comment-index.html* or directly to the Agencies through any of the other manners specified above.

All participants attending in person should register for the Washington, DC area outreach meeting at: *http://egrpra.ffiec.gov/outreach/outreach-index.html.* Because of space constraints, on-site attendance will be limited. Online registrations will be accepted through November 30, 2015, or until all seats are filled, whichever is earlier. If seats are available, individuals may register in person at the L. William Seidman Center on the day of the meeting. Individuals do not need to register to view the live-stream broadcast.

We note that the meeting will be video-recorded and publicly webcast in order to increase education and outreach. By participating in person at the meeting, you consent to appear in such recordings.

Additional Background on EGRPRA

Section 2222 of EGRPRA directs the Agencies, along with the Council, to conduct a review of their regulations not less frequently than once every ten years to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. In conducting this review, the Agencies are required to categorize their regulations by type and, at regular intervals, provide notice and solicit public comment on categories of regulations, requesting commenters to identify areas of regulations that are outdated, unnecessary, or unduly burdensome. The statute requires the Agencies to publish in the **Federal Register** a summary of the comments received, identifying significant issues raised and commenting on these issues. The statute also directs the Agencies to eliminate unnecessary regulations to the extent that such action is appropriate. Finally, section 2222 requires the Council, of which the Agencies are members, to submit a report to Congress that summarizes any significant issues raised in the public comments and the relative merits of such issues. The report also must include an analysis of whether the Agencies are able to address the regulatory burdens associated with such issues by regulation or whether these burdens must be addressed by legislative action.

For purposes of this review, the Agencies have grouped our regulations into 12 categories: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. On June 4, 2014, we published a **Federal Register** document announcing the start of the EGRPRA review process and also asking for public comment on three of these categories—Applications and Reporting; Powers and Activities;

[1] Public Law 104–208 (1996), 110 Stat. 3009–414, codified at 12 U.S.C. 3311.

and International Operations regulations.[2] In that document we published a chart, listing the Agencies' regulations in the 12 categories included in the EGRPRA review. The comment period for this **Federal Register** document closed on September 2, 2014. On February 13, 2015, we published a **Federal Register** document asking for public comment on three additional categories—Banking Operations; Capital; and the Community Reinvestment Act.[3] The comment period for the second **Federal Register** document closed on May 14, 2015. On June 5, 2015, the Agencies published a third **Federal Register** document asking for public comment on three additional categories—Consumer Protection; Directors, Officers and Employees; and Money Laundering.[4] This third **Federal Register** document announced that the Agencies' expanded the scope of the EGRPRA review to cover newly issued regulations. The comment period for the third document closed on September 3, 2015. Before the end of the year, the Agencies intend to issue the final **Federal Register** document, requesting comment on regulations in the last three categories—Rules of Procedure; Safety and Soundness; and Securities, as well as on any other final rules not covered by one of the prior **Federal Register** documents. In addition, to be as inclusive as possible, the Agencies will invite comment during the comment period for the fourth document on any Agency rule that is issued in final form before the end of the year. Finally, as noted in prior documents, the Agencies will continue to accept comments on any rules included in the prior **Federal Register** documents for which we have already sought comment during the open comment period in the final **Federal Register** document.

Dated: November 18, 2015.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 19, 2015.

Robert deV. Frierson,

Secretary of the Board.

Dated: November 18, 2015.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2015–30247 Filed 11–27–15; 8:45 am]

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

[2] 79 FR 32172.

[3] 80 FR 7980.

[4] 80 FR 32046.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6542; Directorate Identifier 2015–NM–038–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Embraer S.A. Model ERJ 170 airplanes; and all Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. This proposed AD was prompted by reports of cracks in certain engine low-stage bleed check valves. This proposed AD would require replacing the air management system (AMS) controller operation program of the AMS controller processor boards, and replacement of the current low-stage bleed check valve and associated seals. We are proposing this AD to prevent failure of the low-stage bleed check valve, which could result in dual engine in-flight shutdown.

DATES: We must receive comments on this proposed AD by January 14, 2016.

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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170–Putim–12227–901 São Jose dos Campos–SP–BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2015–6542; 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 Operations 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: Ana Martinez Hueto, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149.

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–2015–6542; Directorate Identifier 2015–NM–038–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 based on 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 proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2015–02–02, dated March 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes. The MCAI states:

This [Brazilian] AD was prompted by reports of cracks in some engine low-stage bleed check valves having part number (P[/]N) 1001447–6. Further analysis has determined that if a new (zero hour) low-stage bleed check valve P/N 1001447–6 is installed in an airplane already equipped with the Air Management System (AMS) controller processor boards containing the AMS Controller Operational Program version Black Label 13, or a later version, premature cracking on the petals of the low-stage bleed check valve is not expected to occur. We are issuing this [Brazilian] AD to prevent the possibility of a dual engine in-flight shutdown due to low-stage bleed check valve failure.

The required action is replacement of the AMS controller operation program of the AMS controller processor boards, and replacement of the low-stage bleed check valves and associated seals. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542.

Related Service Information Under 1 CFR Part 51

Embraer has issued Service Bulletin 190–36–0023, Revision 03, dated September 24, 2014, which describes procedures for replacing the engine low-stage bleed check valves. Embraer has also issued Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013, which describe procedures for replacing the AMS controller operation program of the AMS controller processor boards. 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.

Differences Between the MCAI and This Proposed AD

The applicability of paragraph (g) of this proposed AD is limited to airplanes identified in Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013. The MCAI did not include this limitation. We have included this limitation because Model ERJ 190 airplanes with serial number (S/N) 19000587, S/N 19000589, S/N 19000593 and subsequent have a modification incorporated at the factory equivalent to the modification required by this AD.

Also, this proposed AD includes all Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes, because of an additional proposed requirement in paragraph (j)(1) of this AD, which is related to installation of used low-stage bleed check valves having P/N 001447–6 on Model ERJ 170 airplanes. ANAC is considering future rulemaking to include a similar requirement.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an 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 affects 197 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $638 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $192,666, or $978 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 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 adding the following new airworthiness directive (AD):

Embraer S.A.: Docket No. FAA–2015–6542; Directorate Identifier 2015–NM–038–AD.

(a) Comments Due Date

We must receive comments by January 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) All Embraer S.A. Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes; and Model ERJ 170–200 LR, –200 SU, and –200 STD airplanes.

(2) All Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, and –200 IGW airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Reason

This AD was prompted by reports of cracks in certain engine low-stage bleed check valves. We are issuing this AD to prevent failure of the low-stage bleed check valve, which could result in dual engine in-flight shutdown.

(f) Compliance

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

(g) Modification

For Embraer S.A. Model ERJ 190 airplanes identified in Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013, within 3 months after the effective date of this AD, replace the Hamilton Sundstrand air management system (AMS) controller operation program of the AMS controller processor boards, as specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Replace with a new, improved program, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013.

(2) Replace with a version of the Hamilton Sundstrand AMS controller operation program approved after August 31, 2012, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee.

(h) Valve Replacement

For Embraer S.A. Model ERJ 190 airplanes identified in Embraer Service Bulletin 190–21–0041, Revision 02, dated July 30, 2013, within 3 months after the effective date of this AD, and after accomplishment of the actions required by paragraph (g) of this AD: Replace the check valve and associated seals of the left-hand and right-hand engine bleed system with a check valve identified in paragraph (i) of this AD, and new seals, in accordance with the Accomplishment Instructions of Embraer Service Bulletin 190–36–0023, Revision 03, dated September 24, 2014.

(i) Allowed Valves

When complying with paragraph (h) of this AD, the low-stage bleed check valves having P/N 1001447–6, and associated seals, are replaced with new ones (zero-hour). Low-stage bleed check valves having P/N 1001447–6 that can be demonstrated with logged hours only on ERJ–170 aircraft and/or on ERJ–190 aircraft equipped with the AMS Controller Operational Program version Black Label 13, or a later version, can be used instead of new ones (zero-hour).

(j) Parts Installation Limitation

(1) For Model ERJ 170–100 STD, –100 LR, –100SU, –100SE, –200 STD, –200 LR, and –200 SU airplanes: No person may install on any airplane a low-stage bleed check valve having P/N 1001447–6 that was installed on any Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, or –200 IGW airplane, any serial number except 190–00587, 190–00589, and 190–00593 and subsequent, prior to accomplishment of paragraph (g) of this AD.

(2) For Model ERJ 190–100 STD, –100 LR, –100IGW, –200 STD, –200 LR, and –200 IGW airplanes: No person may install on any airplane on which the actions of paragraph (g) of this AD have been done, a low-stage bleed check valve having P/N 1001447–6 that was previously installed on any Model ERJ 190–100 STD, –100 LR, –100 IGW, –200 STD, –200 LR, or –200 IGW airplane, any serial number except 190–00587, 190–00589, 190–00593 and subsequent, prior to accomplishment of paragraph (g) of this AD.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD. This service information is not incorporated by reference in this AD.

(i) Embraer Service Bulletin 190–21–0041, dated September 27, 2012.

(ii) Embraer Service Bulletin 190–21–0041, Revision 01, dated December 20, 2012.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the service information identified in paragraph (k)(2)(i), (k)(2)(ii), or (k)(2)(iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Embraer Service Bulletin 190–36–0023, dated July 22, 2013.

(ii) Embraer Service Bulletin 190–36–0023, Revision 01, dated September 3, 2013.

(iii) Embraer Service Bulletin 190–36–0023, Revision 02, dated April 30, 2014.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Ana Martinez Hueto, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1622; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or ANAC; or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian Airworthiness Directive 2015–02–02, dated March 6, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6542.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170 – Putim – 12227–901 São Jose dos Campos – SP – BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 20, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30224 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1014; Directorate Identifier 2015–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA is withdrawing a notice of proposed rulemaking (NPRM). The NPRM proposed a new airworthiness directive (AD) that had applied to all Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines. The proposed action would have required reducing the cyclic life limits for certain high-pressure turbine (HPT) disks. Accordingly, we withdraw the proposed rule.

DATES: The proposed rule published in the **Federal Register** on June 8, 2015 (80 FR 32315, June 8, 2015) is withdrawn as of November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with

a proposed AD (80 FR 32315, June 8, 2015). The proposed AD had applied to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 650–15 and Tay 651–54 turbofan engines. The NPRM proposed to reduce the cyclic life limits for certain HPT disks. The proposed action was prompted by an analysis that showed the need to reduce the cyclic life limits for certain HPT disks. The proposed actions intended to prevent failure of the HPT disk, which could result in uncontained disk release, damage to the engine, and damage to the airplane.

Since we issued the NPRM (80 FR 32315, June 8, 2015), additional information became available after the public comment period closed on August 7, 2015.

Upon further consideration, we hereby withdraw the proposed rule because we will propose to supersede AD 2006–18–14 (71 FR 52988, September 8, 2006).

Withdrawal of the NPRM (80 FR 32315, June 8, 2015) constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule. Therefore, Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) do not cover this withdrawal.

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. FAA–2015–1014; Directorate Identifier 2015–NE–14–AD, published in the **Federal Register** on June 8, 2015 (80 FR 32315), is withdrawn.

Issued in Burlington, Massachusetts, on November 20, 2015.

Colleen M. D'Alessandro,

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

[FR Doc. 2015–30010 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6539; Directorate Identifier 2015–NM–036–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the forward engine mounts are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive detailed inspections of the right and left forward engine mounts, and corrective action if necessary. These inspections are required by AD 2015–05–02. This proposed AD would reduce the compliance times for those inspections. We are proposing this AD to detect and correct fatigue cracking in the forward engine mounts, which could result in reduced structural integrity of the airplane and could lead to in-flight loss of an engine, possibly resulting in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 14, 2016.

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: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth–eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2015–6539; 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 Operations 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

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–2015–6539; Directorate Identifier 2015–NM–036–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 based on 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 proposed AD.

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or

because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple–site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

Failure of a forward engine mount could lead to in-flight loss of an engine, possibly resulting in reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0038, dated March 4, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. The MCAI states:

> During a A320 Extended Service Goal (ESG) residual fatigue test, in which new loads were used, taking into account the results of the 2006 fleet survey, the CFM56–5A/5B forward engine mount experienced a failure before reaching the threshold/interval for the detailed inspection of that forward engine mount, as identified in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 2 (hereafter referred to in this [EASA] AD as 'the ALS') task 712111–01. In case of total loss of the primary load path, the current maintenance requirements do not ensure the design integrity of the remaining structure.
>
> This condition, if not corrected, could lead to in-flight loss of an engine, possibly resulting in reduced control of the aeroplane and injury to persons on the ground.
>
> For the reasons described above, this [EASA] AD requires implementation of a reduced threshold and interval for the detailed inspections (DET) of the forward engine mount on both right hand (RH) and left hand (LH) sides, as specified in the ALS, task 712111–01.
>
> Once further investigations and test are completed, the threshold and interval of the ALS task 712111–01 will likely be modified accordingly.

Required actions include repair of discrepancies (cracks) found during the inspection. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6539.

Related AD

AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015), which is applicable to all Airbus Model A318, A319, A320, and A321 series airplanes, requires revising the maintenance or inspection program, as applicable, to incorporate certain Airworthiness Limitation Items. Paragraph (n)(2) of AD 2015–05–02 requires incorporating Part 2-Damage–Tolerant Airworthiness Limitation Items (DT ALI), of the Airbus A318/A319/A320/A321 ALS, Revision 02, dated May 28, 2013. AD 2015–05–02 corresponds to EASA AD 2013–0147, dated July 16, 2013. We considered the fleet size that would be affected by superseding AD 2015–05–02, and the consequent workload associated with revising maintenance record entries, and determined that this proposed AD should not supersede AD 2015–05–02.

Although this proposed AD would not supersede AD 2015–05–02, paragraph (g) of this proposed AD would terminate the initial and repetitive inspections for the corresponding inspections in paragraph (n)(2) of AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015), for Airbus Airworthiness Limitation Tasks 712111–01–1, 712111–01–2, 712111–01–3, and 71211–01–4, ''Detailed Inspection of Forward Engine Mount Installation.''

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Interim Action

We consider this proposed AD interim action. Once further investigations and tests are completed, the initial compliance time and repetitive intervals for Airbus Airworthiness Limitation Tasks 712111–01–1, 712111–01–2, 712111–01–3, and 712111–01–4, ''Detailed Inspection of Forward Engine Mount Installation,'' could be revised and we might consider further rulemaking at that time.

Costs of Compliance

We estimate that this proposed AD affects 940 airplanes 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 this proposed AD on U.S. operators to be $79,900, or $85 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition parts cost specified in this AD.

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 adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2015–6539; Directorate Identifier 2015–NM–036–AD.

(a) Comments Due Date

We must receive comments by January 14, 2016.

(b) Affected AD

This AD affects AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015).

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD.

(1) Model A318–111 and –112 airplanes.

(2) Model A319–111, –112, –113, –114, and –115 airplanes.

(3) Model A320–211, –212, and –214 airplanes.

(4) Model A321–111, –112, –211, –212, and –213 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by an evaluation by the design approval holder indicating that the forward engine mounts are subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking in the forward engine mounts, which could result in reduced structural integrity of the airplane and could lead to in-flight loss of an engine, possibly resulting in reduced controllability of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the latest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do a detailed inspection of the left and right forward engine mounts for discrepancies (cracking), using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Repeat the inspection thereafter at intervals not to exceed 800 flight cycles.

Note 1 to paragraphs (g) and (h) of this AD: Guidance for the inspection and engine mount replacement can be found in Task 712111–210–040 of the Airbus A318/A319/A320/A321 Maintenance Manual.

(1) Within 800 flight cycles since the first flight of the airplane.

(2) Within 800 flight cycles since the most recent detailed inspection specified in Airbus Airworthiness Limitation Tasks 712111–01–1, 712111–01–2, 712111–01–3, or 712111–01–4, ''Detailed Inspection of Forward Engine Mount Installation,'' as applicable.

(3) Within 800 flight cycles after the effective date of this AD.

(h) Corrective Action

If any discrepancy (cracking) is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the affected forward engine mount with a serviceable part, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) No Terminating Action

Replacement of a forward engine mount does not constitute terminating action for the repetitive inspections required by paragraph (g) of this AD.

(j) Termination of Certain Tasks Required by AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015)

Accomplishment of the inspections required by paragraph (g) of this AD terminates the initial and repetitive inspections specified in paragraph (n)(2) of AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015), for Airbus Airworthiness Limitation Tasks 712111–01–1, 712111–01–2, 712111–01–3, and 712111–01–4, ''Detailed Inspection of Forward Engine Mount Installation.''

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0038, dated March 4, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6539.

(2) For service information identified in this AD contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 20, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30216 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6541; Directorate Identifier 2015–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of a manufacturing oversight, in which a supplier omitted the required protective finish on certain bushings installed in the rear spar upper chord on horizontal stabilizers, which could lead to galvanic corrosion and consequent cracking of the rear spar upper chord. This proposed AD would require an inspection or records check to determine if affected horizontal stabilizers are installed, related investigative actions, and for affected horizontal stabilizers, repetitive inspections for any crack of the horizontal stabilizer rear spar upper chord, and corrective action if necessary. We are proposing this AD to detect and correct cracking of the rear spar upper chord, which can result in the failure of the upper chord and consequent departure of the horizontal stabilizer from the airplane, which can lead to loss of continued safe flight and landing.

DATES: We must receive comments on this proposed AD by January 14, 2016.

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 Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6541.

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–2015–6541; 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: Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6595; fax: 425–917–6590; email: *jason.deutschman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–6541; Directorate Identifier 2015–NM–135–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://www.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

We received reports of a manufacturing oversight, in which the required protective finish (zinc-nickel alloy plate or cadmium plate) was omitted on the 182A1508–4/–5/–6 bushings (in line with the terminal fitting holes) installed in the rear spar upper chord on horizontal stabilizers with certain serial numbers. This issue was discovered after production of the affected stabilizers.

The 182A1508–4/–5/–6 bushings are made from aluminum-nickel-bronze. Installing these bushings, without the required protective finish, into the 2024–T3511 aluminum horizontal stabilizer rear spar upper chord can lead to galvanic corrosion between the dissimilar metals. Bushings with galvanic corrosion, if not corrected, can lead to cracking of the rear spar upper chord, which can result in the failure of the upper chord and consequent departure of the horizontal stabilizer from the airplane, which can lead to loss of continued safe flight and landing.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015. The service information describes procedures for an inspection or records review to determine if affected horizontal stabilizers are installed,

related investigative actions, high frequency eddy current inspections for any crack of the horizontal stabilizer rear spar upper chord, and corrective action if necessary. 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 AD 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 proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.''

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as Required for Compliance (RC) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as RC, the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an AMOC is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

Costs of Compliance

We estimate that this proposed AD affects 1,397 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection or check	1 work-hour × $85 per hour = $85	$0	$85	$118,745

We estimate the following costs to do any necessary inspections that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these inspections:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspections	4 work-hours × $85 per hour = $340	$0	$340

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

We have received no definitive data that would enable us to provide cost estimates for the on-condition repairs specified in this proposed AD.

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 adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2015–6541; Directorate Identifier 2015–NM–135–AD.

(a) Comments Due Date

We must receive comments by January 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and 900ER series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of a manufacturing oversight, in which a supplier omitted the required protective finish on certain bushings installed in the rear spar upper chord on horizontal stabilizers, which could lead to galvanic corrosion and consequent cracking of the rear spar upper chord. We are issuing this AD to detect and correct cracking of the rear spar upper chord, which can result in the failure of the upper chord and consequent departure of the horizontal stabilizer from the airplane, which can lead to loss of continued safe flight and landing.

(f) Compliance

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

(g) Serial Number Check or Inspection To Determine If Certain Horizontal Stabilizers Are Installed, Related Investigative Actions, Repetitive Inspections for Cracks, and Corrective Action

(1) Except as specified in paragraph (h)(1) of this AD, within the compliance time identified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, do the actions specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Do a records check to determine if an affected horizontal stabilizer is installed and if any horizontal stabilizer has been exchanged, and do all applicable related investigative actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015. Affected horizontal stabilizers are identified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015.

(ii) Do an inspection of the horizontal stabilizer identification plate to determine if any affected horizontal stabilizer is installed, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015. Affected horizontal stabilizers are identified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015.

(2) If, during any action required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, any affected horizontal stabilizer is found: Except as specified in paragraph (h)(1) of this AD, within the compliance time identified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, do a high frequency eddy current (HFEC) inspection for any crack of the horizontal stabilizer rear spar upper chord and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, except as required by paragraph (h)(2) of this AD. Repeat the inspection thereafter at intervals identified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015.

(h) Exceptions to the Service Information Specifications

(1) Where Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a horizontal stabilizer on any airplane, except as specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) A horizontal stabilizer may be installed if the part is inspected in accordance with ''Part 2: Horizontal Stabilizer Identification Plate Inspection'' of the Accomplishments Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, and no affected serial number is found.

(2) A horizontal stabilizer may be installed if the part is inspected in accordance with ''Part 2: Horizontal Stabilizer Identification Plate Inspection'' of the Accomplishments Instructions of Boeing Alert Service Bulletin 737–55A1097, dated July 1, 2015, and an affected serial number is found, provided the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD are done, as applicable.

(i) An initial HFEC inspection specified in paragraph (g)(2) of this AD is done before further flight and thereafter repetitive HFEC inspections specified in paragraph (g)(2) of this AD are done within the compliance times specified in paragraph (g)(2) of this AD.

(ii) All applicable corrective actions are done before further flight as required by paragraph (h)(2) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet

the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Jason Deutschman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6595; fax: 425–917–6590; email: *jason.deutschman@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 20, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30223 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6537; Directorate Identifier 2014–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by reports of cracking of the aft fixed fairing (AFF) of the pylons due to fatigue damage of the structure. This proposed AD would require repetitive inspections for damage and cracking of the AFF of the pylons, and repair if necessary. We are proposing this AD to detect and correct damage and cracking of the AFF of the pylons, which could result in detachment of a pylon and consequent reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 14, 2016.

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: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2015–6537; 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 Operations 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

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–2015–6537; Directorate Identifier 2014–NM–154–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 based on 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 proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0154, dated July 2, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> On aeroplanes equipped with post-mod 33844 CFM pylons, several operators have reported cracks on the Aft Fixed Fairing (AFF). After material analysis, it appears that the pylon AFF structure, especially on this configuration, is subject to fatigue constraint damage which could lead to pylon AFF cracks.
>
> Further to these findings, Airbus released Alert Operators Transmission (AOT) A54N002–12 which provides instructions to inspect the pylon AFF, applicable only to aeroplanes incorporating Airbus production mod 33844 on CFM pylons. More recently, Airbus issued Service Bulletin (SB) A320–54–1027, superseding AOT A54N002–12.
>
> This condition, if not detected and corrected, could lead to detachment of a pylon AFF from the aeroplane, possibly resulting in injuries to persons on the ground.
>
> For the reasons described above, this [EASA] AD requires repetitive detailed inspections (DET) of the pylon AFF and, depending on findings, accomplishment of applicable corrective action(s).

Since the MCAI was issued, EASA has clarified that the detachment of a pylon AFF from the airplane could result in damage to the airplane; such damage could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–6537.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–54–1027, dated April 10, 2014. This service information describes procedures for inspections for damage and cracking of the AFF of the pylons, and repair if necessary. 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 This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Explanation of ''RC'' Procedures and Tests in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which procedures and tests in the service information are required for compliance with an AD. Differentiating these procedures and tests from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The procedures and tests identified as Required for Compliance (RC) in any service information have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

As specified in a NOTE under the Accomplishment Instructions of the specified service information, procedures and tests that are identified as RC in any service information must be done to comply with the proposed AD. However, procedures and tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an alternative method of compliance (AMOC), provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC will require approval of an AMOC.

Costs of Compliance

We estimate that this proposed AD affects 69 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours 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 this proposed AD on U.S. operators to be $23,460, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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 adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2015–6537; Directorate Identifier 2014–NM–154–AD.

(a) Comments Due Date

We must receive comments by January 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, –214, and –215 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes; certificated in any category; all manufacturer serial numbers on which Airbus Modification 33844 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of cracking of the aft fixed fairing (AFF) of the pylons due to fatigue damage of the structure. We are issuing this AD to detect and correct damage and cracking of the AFF of the pylons, which could result in detachment of

a pylon and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

At the later of times specified in paragraphs (g)(1) and (g)(2), or (g)(1) and (g)(3), of this AD, as applicable: Do a detailed inspection for damage and cracking of the AFF of the pylons, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1027, dated April 10, 2014. Repeat the inspection thereafter at intervals not to exceed 2,500 flight cycles or 3,750 flight hours, whichever occurs first.

(1) For all airplanes: Before exceeding 5,000 flight cycles or 7,500 flight hours, whichever occurs first since the airplane's first flight.

(2) For airplanes on which the inspection specified in Airbus All Operators Transmission (AOT) A54N002–12 has been done as of the effective date of this AD: Within 2,500 flight cycles or 3,750 flight hours, since the most recent accomplishment of maintenance planning document (MPD) Task ZL 371–01, or since doing the most recent inspection specified in Airbus AOT A54N002–12, whichever occurs first.

(3) For airplanes on which the inspection specified in Airbus AOT A54N002–12 has not been done as of the effective date of this AD: Within 750 flight cycles or 1,500 flight hours after the effective date of this AD, whichever occurs first.

(h) Repair

If any crack is found during any inspection required by paragraph (g) of this AD; before further flight, repair in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–54–1027, dated April 10, 2014. Accomplishment of this repair does not terminate the repetitive inspections required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0154, dated July 2, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6537.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 20, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30218 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6538; Directorate Identifier 2015–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by an evaluation by the design approval holder (DAH) indicating that the bulkhead is subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections of the aft pressure bulkhead web for any cracking, incorrectly drilled fastener holes, and elongated fastener holes, and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct fatigue cracking of the aft pressure bulkhead web at the ''Y''-chord, which could result in reduced structural integrity of the airplane and rapid decompression of the fuselage.

DATES: We must receive comments on this proposed AD by January 14, 2016.

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 Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6538.

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–2015–6538; 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:

Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6450; fax: 425–917–6590; email: *Alan.Pohl@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–6538; Directorate Identifier 2015–NM–031–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://www.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

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We have received an evaluation by the design approval holder (DAH) indicating that the aft pressure bulkhead is subject to WFD. Cracks have been reported in the aft pressure bulkhead web at the web-to-''Y''-chord interface and have occurred in the aft row of fasteners connecting the aft pressure bulkhead web to the ''Y''-chord. This condition, if not corrected, could result in fatigue cracking of the aft pressure bulkhead web at the ''Y''-chord, which could result in reduced structural integrity of the airplane and rapid decompression of the fuselage.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015. This service information describes, among other actions, procedures for repetitive inspections of the aft pressure bulkhead web for any cracking, incorrectly drilled fastener holes, and elongated fastener holes; and related investigative and corrective actions. 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

We are proposing this AD 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 proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' Refer to this service information for details on the procedures and compliance times.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

AD 2012–18–13 R1, Amendment 39–17429 (78 FR 27020, May 9, 2013), refers to Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, as an appropriate source of service information for doing certain actions required by that AD. Since AD 2012–18–13 R1 was issued, Boeing issued Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, to address WFD by adding new inspections specified in tables 9, 10, and 11 of paragraph 1.E.,

''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015. Boeing determined that the WFD-based inspections specified in tables 9, 10, and 11 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, affect only Group 2 airplanes because Group 1 airplanes will reach their limit of validity before the compliance times specified in tables 9, 10, and 11 (Group 1 is for airplanes having line numbers 1 through 2565; Group 2 is for airplanes having line numbers 2566 through 3132).

Therefore, although Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, is effective for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, this proposed AD applies to only certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes (*i.e.,* Group 2 airplanes). This difference is due to the fact that this proposed AD only addresses the new WFD inspections specified in Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015.

Accomplishing the actions required by paragraphs (g) and (h) of this proposed AD would terminate the inspections required by paragraphs (k) and (l) of AD 2012–18–13 R1, Amendment 39–17429 (78 FR 27020, May 9, 2013).

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 122 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections of the web at the ''Y''-chord.	Up to 60 work-hours × $85 per hour = Up to $5,100 per inspection cycle.	$0	Up to $5,100 per inspection cycle	Up to $622,200 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

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 adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2015–6538; Directorate Identifier 2015–NM–031–AD.

(a) Comments Due Date

We must receive comments by January 14, 2016.

(b) Affected ADs

This AD affects AD 2012–18–13 R1, Amendment 39–17429 (78 FR 27020, May 9, 2013).

(c) Applicability

This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, identified as Group 2 in Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the aft pressure bulkhead is subject to widespread fatigue damage. We are issuing this AD to detect and correct fatigue cracking of the aft pressure bulkhead web at the ''Y''-chord, which could result in reduced structural integrity of the airplane and rapid decompression of the fuselage.

(f) Compliance

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

(g) Repetitive Inspections of the Aft Pressure Bulkhead Web at the ''Y''-Chord Upper Bulkhead

At the applicable time specified in tables 9 and 10 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015: Do detailed and low frequency eddy current (LFEC) inspections from the aft side of the aft pressure bulkhead web, or do detailed and high frequency eddy current (HFEC) inspections from the forward side of the aft pressure bulkhead web, for any cracking, incorrectly drilled fastener hole, and elongated fastener hole, and do all applicable related investigative and corrective actions, in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, except as required by paragraph (i) of this AD. Do all related investigative and corrective actions before further flight. If any cracking, incorrectly drilled fastener hole, or elongated fastener hole is found, before further flight, repair the web using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Thereafter, repeat the inspections at the applicable times specified in tables 9 and 10 of paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015.

(h) Repetitive Inspections of the Aft Pressure Bulkhead Web at the ''Y''-Chord Below S–15

At the applicable time specified in table 11 of 1.E., ''Compliance'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015: Do detailed and eddy current inspections of the web from the forward or aft side of the bulkhead for any cracking, incorrectly drilled fastener hole, and elongated fastener hole, and do all applicable corrective actions, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, except as required by paragraph (i) of this AD. Do all corrective actions before further flight. If any cracking, incorrectly drilled fastener hole, or elongated fastener hole is found, before further flight, repair the web using a method approved in accordance with the procedures specified in paragraph (l) of this AD. Thereafter, repeat the inspections at the applicable times specified in table 11 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015.

(i) Exception to the Service Information

Where Boeing Alert Service Bulletin 737–53A1214, Revision 5, dated January 30, 2015, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(j) Terminating Action for Other Rulemaking

Accomplishing the actions required by paragraphs (g) and (h) of this AD terminates the inspections required by paragraphs (k) and (l) of AD 2012–18–13 R1, Amendment 39–17429 (78 FR 27020, May 9, 2013).

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if the actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 737–53A1214, Revision 4, dated December 16, 2011, which is not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–917–6450; fax: 425–917–6590; email: *Alan.Pohl@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 20, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30217 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4006; Airspace Docket No. 15–ANE–3]

Proposed Amendment of Class E Airspace; West Dover, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E Airspace at West Dover, VT as the Mt. Snow Non-Directional Beacon (NDB) has been decommissioned, requiring airspace redesign at Deerfield Valley Regional Airport. This action would enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would recognize the airport's name change.

DATES: Comments must be received on or before January 14, 2016.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg Ground Floor Rm W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2015–4006; Airspace Docket No. 15–ANE–3, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2015–4006; Airspace Docket No. 15–ANE–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2015–4006; Airspace Docket No. 15–ANE–3." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet above the surface at Deerfield Valley Regional Airport, West Dover, VT. Airspace reconfiguration to within an 11-mile radius of the airport is necessary due to the decommissioning of the Mt. Snow NDB, and cancelation of the NDB approach, and for continued safety and management of IFR operations at the airport. This action would also recognize the airport's name change from Mt. Snow Airport to Deerfield Valley Regional Airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

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

* * * * *

ANE VT E5 West Dover, VT [Amended]

Deerfield Valley Regional Airport, VT
(Lat. 42°55′58′′N., long. 71°26′09′′W.)

That airspace extending upward from 700 feet above the surface with an11-mile radius of Deerfield Valley regional Airport.

Issued in College Park, Georgia, on November 17, 2015.

Ryan W. Almasy,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2015–30184 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3967; Airspace Docket No. 15–ASW–12]

Proposed Establishment of Class E Airspace; Clinton, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Clinton, AR. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures developed at Clinton Municipal Airport, for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before January 14, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, telephone (202) 366–9826. You must identify the docket number FAA–2015–3967; Airspace Docket No. 15–ASW–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, 20591; telephone: 202–267–8783. The order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_offederal-regulations/ibr_locations.html.*

FAA order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2015–3967/Airspace Docket No. 15–ASW–12.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700

feet above the surface within a 6.0-mile radius of Clinton Municipal Airport, Clinton, AR, to accommodate new standard instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

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

* * * * *

ASW LA E5 Clinton, LA [New]

Clinton Municipal Airport, LA
(Lat. 35°35′52″ N., long. 092°27′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of Clinton Municipal Airport.

Issued in Fort Worth, TX, on November 18, 2015.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–30188 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 801, and 1100

[Docket No. FDA–2015–N–2002]

RIN 0910–AH19

Clarification of When Products Made or Derived From Tobacco Are Regulated as Drugs, Devices, or Combination Products; Amendments to Regulations Regarding ''Intended Uses''; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the notice of proposed rulemaking (NPRM) that appeared in the **Federal Register** of September 25, 2015. In the NPRM, FDA requested comments on the proposed regulation that describes the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: The comment period for the proposed rule published on September 25, 2015 (80 FR 57756) is extended. Submit either electronic or written comments by December 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–2015–N–2002 for this rulemaking. 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: Bryant Godfrey or Darin Achilles, Office of Regulations, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave, Silver Spring, MD 20993–0002, 877–287–1373, *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 2015 (80 FR 57756), FDA proposed a regulation that describes the circumstances in which a product made or derived from tobacco that is intended for human consumption will be subject to regulation as a drug, device, or a combination product under the FD&C Act. Interested persons were originally given until November 24, 2015, to comment on the NPRM.

The Agency has received a request for a 45-day extension of the comment period for the NPRM. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the NPRM.

FDA has considered the request and is reopening the comment period for the NPRM for 30 days, until December 30, 2015. The Agency believes that reopening the comment period for an additional 30 days allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

Dated: November 23, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–30271 Filed 11–27–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

[Docket No FR–5888–P–02]

Federal Policy for the Protection of Human Subjects, Extension of Public Comment Period

AGENCY: Office of the General Counsel, HUD.

ACTION: Extension of public comment period.

SUMMARY: Through this notice, HUD is extending the public comment period on its proposed rule pertaining to Federal Policy for the Protection of Human Subjects, published in the **Federal Register** on October 1, 2015.

DATES: *Comment Due Date:* The comment due date of December 7, 2015, for the proposed rule published on October 1, 2015, at 80 FR 59092, is extended to January 6, 2016.

ADDRESSES: You may submit comments, identified by docket ID number HHS–OPHS–2015–0008, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next Web page, click on ''Submit a Comment'' action and follow the instructions.

• *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions] to:* Jerry Menikoff, M.D., J.D., OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Barry L. Steffen, Policy Development Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8114, Washington, DC 20410–8000, telephone 202–402–5926. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY number by calling the Federal Relay Service number at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, at 80 FR 59092, HUD published a proposed rule in the **Federal Register** on Federal Policy for the Protection of Human Subjects. HUD's proposed rule adopted the policy on the protection of human subjects set forth in a proposed rule issued by the Department of Health and Human Services and 15 other Federal Departments and Agencies and published on September 8, 2015, at 80 FR 53933. Through the September 8, 2015, and October 1, 2015, rules, the Federal Departments and Agencies proposed revisions to modernize, strengthen, and make more effective the Federal Policy for the Protection of Human Subjects that was promulgated as a Common Rule in 199, and sought comment on the proposed revisions through December 7, 2015.

Since the proposed rules were published in September and October, respectively, requests have been made to extend the public comment period to allow time to more thoroughly review the proposed revisions offered for comment by the Federal Departments and Agencies. The Department of Health and Human Services and the 15 other Federal Department Agencies have extended the time to submit public comments on the September 8, 2015, proposed rule to January 6, 2016, and HUD extends its public comment period for its October 1, 2015, proposed rule to this same date—January 6, 2016.

Dated: November 24, 2015.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2015–30317 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

28 CFR Part 58

[Docket No. EOUST 105]

RIN 1105–AB30

Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed Under Chapter 11 of Title 11

AGENCY: Executive Office for United States Trustees (''EOUST''), Justice.

ACTION: Notice of public hearing; reopening of comment period.

SUMMARY: On November 10, 2014, the Department of Justice, through its component, the EOUST, published its notice of proposed rulemaking (''NPRM''), Procedures for Completing Uniform Periodic Reports in Non-Small Business Cases Filed under Chapter 11 of Title 11 (''Periodic Reports''). In order to accommodate requests by certain commenters to meet with representatives of the EOUST to discuss the NPRM, and to provide an opportunity for interested persons to express their views directly to EOUST officials, the EOUST will hold a public hearing on the NPRM. In conjunction with the public hearing, the EOUST has reopened the comment period and will accept supplemental comments from those who submitted comments during the initial comment period and new comments from those who did not.

DATES: 1. *Public Hearing:* The public hearing will be held on Wednesday, February 17, 2016, from 10:00 a.m. to 1:00 p.m., Eastern Time.

2. *Deadline for Comments:* Comments on the NPRM must be submitted on or before Monday, February 22, 2016.

ADDRESSES: 1. *Location of Public Hearing:* The public hearing will be held at the EOUST's Executive Conference Center, 441 G Street NW., Sixth Floor, Washington, DC 20530 (the GAO Building).

2. *Submission of Comments:* The comments may be submitted via one of the following methods:

(a) Mail or Hand Delivery/Courier. EOUST, 441 G Street NW., Suite 6150, Washington, DC 20530, attention: Carrie Weinfeld. Comments received by mail will be considered timely if they are postmarked on or before Monday, February 22, 2016, and deliveries by courier should be received by EOUST by 5:00 p.m. Eastern Time on Monday, February 22, 2016; or

(b) Federal eRulemaking Portal. Please follow the instructions for submitting comments located on the Federal eRulemaking Portal at *www.regulations.gov.* Comments will be accepted through the Federal eRulemaking Portal until 11:59 p.m. Eastern Time on Monday, February 22, 2016.

FOR FURTHER INFORMATION CONTACT: Carrie Weinfeld, (202) 307–1399 (this is not a toll free number), or *carrie.b.weinfeld@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

NPRM, Periodic Reports, and Public Comments

1. *NPRM and Periodic Reports:* The NPRM and the proposed forms for the Periodic Reports are available online at *www.justice.gov/ust/rules-and-federal-register-notices* and also at *www.regulations.gov.*

2. *Public Comments:* The initial comment period for the NPRM closed on January 9, 2015. Comments received as of January 9, 2015, are available online at *www.regulations.gov.*

Public Hearing

1. *EOUST Panel:* A panel of representatives from the EOUST will preside at the public hearing.

2. *Attendance and Security:* The public hearing will be open to the public, with attendance limited to the available space. Timely registration is required to ensure adequate seating, but attendance is not guaranteed until registration is confirmed by the EOUST. Attendees may begin arriving at 9:00 a.m. Eastern Time and should allow a minimum of 15 minutes to clear security and be escorted to the public hearing room before 10:00 a.m. Eastern Time. All those attending the public hearing must timely register; present government-issued photo identification (such as a valid driver's license); and enter the building through the visitor's entrance at 441 G Street NW., between 4th and 5th Streets.

3. *Registration:* To register for the public hearing, send an email to *USTPMOR.NPRM@usdoj.gov* on or before January 6, 2016. The email must include the participant's name, address, and phone number. Participants who need special assistance, such as sign language interpretation or other reasonable accommodations, should also include this information in the email. In addition, participants who intend to make an oral presentation must so state in the email. The EOUST will send an email confirming registration.

4. *Written Statement:* Participants who register to make an oral presentation must, on or before January 6, 2016, either submit a written statement or state that they intend to rely on their public comment(s) submitted on or before that date. Organizations should designate no more than one individual to speak on behalf of the organization.

5. *Oral Presentation:* Oral presentations will be limited to five (5) minutes and should summarize the participant's written statement or submitted comment(s). Participants who register to make oral presentations should be prepared to respond orally to questions from the EOUST Panel. Participants who register to make oral presentations will be informed prior to the public hearing of the order of the presentation.

Public Inspection of the Record and Protecting Personally Identifiable Information

1. *Public Inspection:* The public hearing will be transcribed. The transcript, all written statements, and all public comments will be made available for public inspection online at *www.regulations.gov.* The public hearing transcript will also be posted on the EOUST's Web site.. As part of the process to finalize the NPRM, the EOUST will review and analyze all public comments, written statements, and the transcript of the public hearing. The final rule will be published in the **Federal Register**, along with the EOUST's analysis of the public comments, written statements, and the transcript of the public hearing.

2. *Personally Identifiable Information:* All comments will be publicly posted; therefore, you should submit only information that you wish to make publicly available. If you wish to submit personally identifiable information as part of your comment, you must include in the first paragraph the phrase ''PERSONALLY IDENTIFIABLE INFORMATION.'' You must also prominently identify all personally identifiable information to be redacted within the comment. If you wish to submit confidential business information as part of your comment or statement, you must include in the first paragraph the phrase ''CONFIDENTIAL BUSINESS INFORMATION.'' You must also prominently identify all confidential business information to be redacted within the comment. If a comment has so much personally identifiable information or confidential business information redacted that it cannot be reviewed effectively after redaction, all or part of that comment may not be posted or considered in the EOUST's analysis.

Dated: November 20, 2015.

Clifford J. White III,

Director, Executive Office for United States Trustees.

[FR Doc. 2015–30294 Filed 11–27–15; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

[Docket No. MSHA–2014–0019]

RIN 1219–AB78

Proximity Detection Systems for Mobile Machines in Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to a request, the Mine Safety and Health Administration (MSHA) is extending the comment period on the Agency's proposed rule on Proximity Detection Systems for Mobile Machines in Underground Mines. This extension gives stakeholders additional time to evaluate the comments and testimony received thus far and provide meaningful input.

DATES: The comment period for the proposed rule published on September 2, 2015 (80 FR 53070), is extended. Comments must be received or postmarked by midnight Eastern Standard Time on December 15, 2015.

ADDRESSES: Submit comments and informational materials, identified by RIN 1219–AB78 or Docket No. MSHA–2014–0019, by one of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-Mail: zzMSHA-comments@dol.gov*. Include RIN 1219–AB78 or Docket No. MSHA–2014–0019 in the subject line of the message.
- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.
- *Fax:* 202–693–9441.
- *Hand Delivery or Courier:* MSHA, 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East.

Instructions: All submissions must include RIN 1219–AB78 or Docket No. MSHA–2014–0019. Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to *http://www.regulations.gov* and *http://www.msha.gov/currentcomments.asp,* including any personal information provided.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* or *http://www.msha.gov/currentcomments.asp*. To read background documents, go to *http://www.regulations.gov*. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk on the 4th Floor East.

Email Notification: To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register**, go to *http://www.msha.gov*.

FOR FURTHER INFORMATION CONTACT: Sheila A. McConnell, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *mcconnell.sheila.a@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: On September 2, 2015 (80 FR 53070), MSHA published a proposed rule that would require underground coal mine operators to equip coal hauling machines and scoops with proximity detection systems. Miners working near these machines face pinning, crushing, and striking hazards that result in accidents involving life threatening injuries and death. MSHA believes that the use of proximity detection systems would reduce the potential for these pinning, crushing, or striking accidents.

On September 28, 2015 (80 FR 58229), MSHA published a document announcing the dates and locations for four public hearings on the proposed rule. The hearings were held in October 2015. MSHA posted the comments received and the hearing transcripts on the Agency's Web site, and on *http://www.regulations.gov*. The comment period was scheduled to close on December 1, 2015.

On November 18, 2015, MSHA received a request to extend the comment period an additional two weeks to provide more time for interested parties to comment. In response to this request, MSHA is extending the comment period from December 1, 2015, to December 15, 2015.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2015–30181 Filed 11–25–15; 11:15 am]

BILLING CODE 4520–43–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 216

Request for Information (RFI) Regarding Involving the Public in the Formulation of Forest Service Directives

AGENCY: Forest Service, USDA.

ACTION: Request for Information.

SUMMARY: The Department of Agriculture (USDA), Forest Service, Business Operations, Office of Regulatory and Management Services (ORMS) is preparing to revise a portion of the Code of Federal Regulations (CFR) governing public participation requirements and procedures related to the issuance or revision of internal Agency directives. The Forest Service is committed to ensuring that a broad and representative cross-section of the interested public is provided advance notice and a full and fair opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs. In keeping with this commitment, the Agency is interested in enhancing its public engagement and expanding its approach for public notice and comment beyond just formal rulemaking. The Agency has identified a need to update the relevant regulations to reflect the varied media consumption patterns of key Forest Service stakeholders and the public at large. These potential regulatory revisions are also necessary to ensure that written policies align with the Agency's current practices, which have changed to ensure compliance with recent court orders.

The Agency is hosting a webinar for all interested members of the general public to inform the public of these changes to the Forest Service's public participation procedures. This session will include additional information on the need for these changes and the outcomes the Agency is seeking to achieve. It will also include an outline of a potential path forward and provide attendees an opportunity to ask questions, provide input, and suggest ideas.

DATES: A webinar will be held for interested members of the general public on Tuesday, December 15, 2015, from 1:00–2:30 p.m. Eastern Standard Time/10:00–11:30 a.m. Pacific Standard Time.

ADDRESSES: The webinar will be held via Adobe Connect web conferencing software. To access the presentation, enter the following URL into any Flash-enabled web browser: *https://usfs.adobeconnect.com/orms/.* Audio-only access is available toll-free by calling (888) 844–9904 and entering the following access code: 4909819.

FOR FURTHER INFORMATION CONTACT: Earnest Rawles, Acting Assistant Director, Office of Regulatory and Management Services—Directives and Regulations Branch (202) 205–2601, *WO_Directives@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of this RFI is to inform the public, gather feedback on potential future strategies for notifying the public, and obtaining comments prior to making any amendments to the Forest Service Directive System. Information obtained in response to this RFI may be used by the Forest Service for program planning and development, or for other purposes. Note that information shared by the Forest Service in conjunction with this RFI may or may not be used to inform or issue further policy.

Background: The Forest Service is bound by the Forest and Rangeland Renewable Resources Planning Act of 1974, as modified by the National Forest Management Act of 1976, ''to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards, criteria, and guidelines applicable to Forest Service programs'' (16 U.S.C. 1612(a)). Many of these standards, criteria, and guidelines are contained in the Forest Service Directive System, which is used to implement existing laws and regulations. The Forest Service Directive System contains the Agency's policies, practices, and procedures and serves as the primary basis for the internal management and control of programs and administrative direction to Agency employees. The Forest Service Manual contains legal authorities, objectives, policies, responsibilities, and guidance needed on a continuing basis by Agency line officers and primary staff to plan and execute programs and activities. The Forest Service Handbook is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the Forest Service Manual. The directives for all Agency programs are available on the Agency Web site (*www.fs.fed.us*).

Currently, the Forest Service uses the process set forth in the Administrative Procedure Act (APA) (5 U.S.C. 553) to notify the public of, and obtain comments on, changes to the Forest Service Directive System. This entails publication of notice in the **Federal Register** and solicitation of comments through Regulations.gov. This process was established and is primarily used to facilitate public participation in the promulgation of rules in the CFR. The Forest Service will continue to exclusively use the APA process to involve the public in rulemaking. The Agency is seeking to expand options for involving interested parties in the formulation of directives to be more responsive and accessible to the public.

Dated: November 23, 2015.

Lenise Lago,

Deputy Chief of Business Operations, U. S. Forest Service.

[FR Doc. 2015–30347 Filed 11–27–15; 8:45 am]

BILLING CODE 3411–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2016–3; Order No. 2836]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Twelve). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 4, 2015. *Reply Comments are due:* December 9, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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I. Introduction

On November 20, 2015, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to the Postal Service's periodic reports.[1] Proposal Twelve is attached to the Petition and identifies the proposed analytical method change that relates to the treatment of costs for vehicles used on city carrier letter routes within various cost components of the Cost and Revenue Analysis (CRA) report. *Id.* The Postal Service concurrently filed two library references, along with an application for non-public treatment for one.[2]

II. Summary of Proposal

The Postal Service requests this rulemaking to re-align certain calculations within the CRA report to be consistent with the methodology approved by the Commission in Proposal Thirteen.[3] Petition at 1. Acknowledging that the Postal Service will soon submit the FY 2015 Annual Compliance Report, the Postal Service emphasizes that immediate consideration of Proposal Twelve is necessary to avoid a mismatch between the current methodology for the treatment of ancillary vehicle cost matters and the framework approved in Proposal Thirteen. *Id.* at 1–2. Under Proposal Twelve, the Postal Service proposes two methodological changes:

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Twelve), November 20, 2015, at 1 (Petition).

[2] Notice of Filing of USPS–RM2016–3/1, USPS–RM2016–3/NP1, and Application for Nonpublic Treatment, November 20, 2015 (Notice). Library Reference USPS–RM2016–3/1 contains workbooks displaying the calculation and cost impacts of implementing the proposed methodology. Library Reference USPS–RM2016–3/NP1 contains supporting non-public material. The Notice incorporates by reference the Application for Non-Public Treatment of Materials contained in Attachment Two to the December 29, 2014, United States Postal Service Fiscal Year 2014 Annual Compliance Report. Notice at 1. *See* 39 CFR part 3007 for information on access to non-public material.

[3] Docket No. RM2015–7, Order No. 2792, Order Approving Analytical Principles Used in Periodic Reporting (Proposal Thirteen), October 29, 2015.

Attribution of city carrier letter route vehicle costs and calculation of office and street proportions that are used in the calculation of costs relating to city carrier labor. Petition, Proposal Twelve at 1.

A. Attributing City Carrier Letter Route Vehicle Costs

The Postal Service proposes to change the methodology for attributing costs relating to vehicles used on city carrier letter routes, including Motor Vehicle Service (MVS) Labor in Cost Segment 12.1, MVS Supplies and Materials in Cost Segment 12.2, and Vehicle Depreciation in Cost Segment 20. *Id.*

Current methodology: The Postal Service explains that currently city carrier letter route vehicle costs are divided into two pools: Delivery Activities and Network Travel for motorized letter routes. *Id.* at 2. The Postal Service reports that ''[i]n FY 2014, these respective proportions were approximately 42 and 58 percent.'' *Id.* The Postal Service states that the current methodology multiplies each cost pool by the appropriate variability to determine attributable costs and that these ''attributable costs are assigned to products in the same proportions as Cost Segment 7 letter route Delivery Activities costs.'' *Id.*

Proposed Methodology: Building upon the new methodology approved by the Commission in Proposal Thirteen for the treatment of labor costs on city delivery letter routes, the Postal Service proposes to ''calculate the attributable vehicle costs by multiplying the letter route vehicle costs by the new overall letter route street variability'' and to assign the attributable costs to products using the proportions based on all letter route street costs. *Id.* The Postal Service represents that Proposal Twelve would also change the component structure of the CRA for Cost Segments 12 and 20. *Id.* at 4. Specifically, in Cost Segment 12, the Network Travel components 86 and 95 would be removed and components 83 and 92, currently named Delivery Activities, would be renamed City Delivery Letter Routes. *Id.* In Cost Segment 20, components 222 and 225 for Delivery Activities and Network Travel would be removed. *Id.* Component 223 would be established as City Delivery Special Purpose Routes (SPR) to assign SPR vehicle depreciation costs. *Id.* Finally, component 221 would be reactivated and named City Delivery Letter Routes. *Id.*

Rationale: The Postal Service represents that Proposal Twelve would align the calculation of vehicle use costs with the new street time methodology. *Id.* at 5. The Postal Service claims that this treatment of city carrier vehicle costs is consistent with the long-standing practice of linking the treatment with the direct labor that uses these vehicles. *Id.* The Postal Service asserts that the ''proposed methodology for vehicle use cost[s] recognizes that letter route carriers use their vehicles throughout their time on the street, while delivering mail, traversing the route, and while traveling to and from the route.'' *Id.*

Impact: The Postal Service anticipates that under Proposal Twelve higher proportions of MVS Labor, MVS Supplies, and Vehicle Depreciation costs for city carriers will be attributed to products. *Id.* The Postal Service states that currently ''Network Travel is not attributed and letter route Delivery Activities costs has a variability of 43 percent, which results in a combined variability of 18 percent.'' *Id.* Under Proposal Twelve, the Postal Service represents that ''the city carrier letter route costs for MVS Labor, MVS Supplies, and Vehicle Depreciation costs are attributed in the same proportion as all letter route street activities in Cost Segment 7, which results in an attribution level of 36 percent.'' *Id.* at 5–6. For FY 2014, the Postal Service projects that Proposal Twelve would increase attributable costs by $185 million. *Id.* at 6. The Postal Service illustrates the cost impact by product for Proposal Twelve in Table 1. *Id.* at 7.

B. Calculating Office and Street Proportions

The Postal Service proposes a minor change to the methodology for calculating office and street proportions that are used in the calculation of costs relating to city carrier labor for Vehicle Hire in Cost Segment 12.3 and Carfare and Driveout in Cost Segment 13.2. *Id.* at 1.

Current methodology: The Postal Service explains that it currently ''develops office and street proportions for foot and motorized routes using [In-Office Cost System] IOCS office costs by route type and street costs by delivery mode.'' *Id.* at 2.

Proposed Methodology: Building upon the new methodology approved by the Commission in Proposal Thirteen, the Postal Service proposes to develop office and street proportions for foot and motorized routes using Delivery Operations Information System workhours. *Id.* The Postal Service would also use city carrier costs for Delivery Activities and Network Travel to further divide the street proportions among these components. *Id.* at 4.

Rationale: The Postal Service claims that ''Proposal Twelve would also align the calculation of office and street proportions with the new street time methodology.'' *Id.* at 5.

Impact: The Postal Service illustrates the change in office and street proportions for Proposal Twelve in Table 2. *Id.* at 8.

III. Initial Commission Action

The Commission establishes Docket No. RM2016–3 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Twelve no later than December 4, 2015. Reply comments are due no later than December 9, 2015. Pursuant to 39 U.S.C. 505, Jennaca D. Upperman is designated as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2016–3 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Twelve), filed November 20, 2015.

2. Comments are due no later than December 4, 2015. Reply comments are due no later than December 9, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Jennaca D. Upperman to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–30319 Filed 11–27–15; 8:45 am]

BILLING CODE 7710–FW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2 and 15

[ET Docket No. 13–44; Report No. 3030]

Petitions for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's rulemaking proceeding by: Chuck Powers, on behalf of Motorola Solutions, Inc., and Brian Scarpelli, on behalf of Telecommunications Industry Association.

DATES: Oppositions to the Petitions must be filed on or before December 15, 2015. Replies to an opposition must be filed on or before December 28, 2015.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology Bureau, (202) 418–2702, email: *Brian.Butler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 3030, released October 22, 2015. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/.* The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment; Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies, published at 80 FR 33425, June 12, 2015, in ET Docket No. 13–44; RM–11652, FCC 14–208. This *Notice* is published pursuant to 47 CFR 1.429(e) of the Commission's rules. *See also* 47 CFR 1.4(b)(1).

Number of Petitions Filed: 2.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2015–30238 Filed 11–27–15; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket No. PHMSA–2015–0173]

Pipeline Safety: Notice of Gas Pipeline Advisory Committee Meeting

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of gas pipeline advisory committee meeting.

SUMMARY: This document announces a public meeting of the Gas Pipeline Advisory Committee (GPAC). The committee will meet to consider and vote on the proposed rule, ''Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences'' published in the **Federal Register** on July 15, 2015.

DATES: The meeting will be held on Thursday, December 17, 2015, from 1:00 p.m. to 4:00 p.m. EST.

ADDRESSES: The public may attend the meeting at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Please register for the meeting or contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by December 1, 2015.

The GPAC will take part in the meeting by telephone conference call. Attendees should register in advance at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=108* and indicate whether you will attend in person or by telephone. PHMSA will post the call-in information and room number on the meeting page and on the PHMSA, Pipeline Safety Advisory Committee Web page: *http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-commmeeting* about 15 days before the meeting takes place.

Comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal Holidays.

Instructions: Identify the docket numbers, PHMSA–2011–0009 and PHMSA–2015–0173 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that 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.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2011–0009 and PHMSA 2015–0173.'' The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (70 FR 19477) or visit *http://dms.dot.gov.*

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to seek special assistance at the meeting, please contact Cheryl Whetsel at 202–366–4431 by December 1, 2015.

FOR FURTHER INFORMATION CONTACT: For information about the meetings, contact Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov* or for technical contents about the proposed rule contact Mike Israni by phone at 202–366–4595 or by email at *mike.israni@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details

Members of the public may attend and make a statement during the advisory committee meetings. For a better chance to speak at the meetings, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT** by December 1, 2015.

II. Committee Background

The GPAC is a statutorily mandated committee that advises PHMSA on proposed safety standards, risks assessments, and safety policies for natural gas pipelines. The committee falls under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and is mandated by the pipeline safety law (49 U.S.C. Chap. 601). The committee consists of 15 members—with membership evenly divided among the federal and state government, the regulated industry, and the public. The committee advises PHMSA on technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard. PHMSA staff may also provide an update on several regulatory and policy initiatives if time allows.

III. Preliminary Agenda

The agenda will include the committee's discussion and vote on the proposed rule, ''Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences'' published in the **Federal Register** on July 15, 2015 (80 FR 41460) and on the associated regulatory analysis and environmental assessment.

The NPRM proposes to expand requirements for the use of excess flow valves beyond certain single-family homes to include additional homes and small commercial natural gas customers. Further, the NPRM proposes that manual service line shut-off valves (*e.g.,* curb valves) be installed on new or replaced service lines servicing customers that use large quantities of natural gas, such as industrial facilities. Excess flow valves or curb valves are used in natural gas distribution pipelines to restrict the flow of gas if a line is broken or damaged, limiting the impact of a leak or explosion.'' An informational presentation on EFVs was given to the advisory committee at a meeting held on August 26, 2015. The presentation (day 2, agenda item 8b) may be found on the Web site: *http://www.phmsa.dot.gov/pipeline/regs/technical-advisory-comm/meeting/august-25-and-26-2015-joint-meeting-gas-and-liquid.*

Issued in Washington, DC, on November 23, 2015, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2015–30208 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 151029999–5999–01]

RIN 0648–BF50

Control Date for Trawl Groundfish Fisheries in the Aleutian Islands

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

ACTION: Advance notice of proposed rulemaking (ANPR); control date.

SUMMARY: At the request of the North Pacific Fishery Management Council (Council), this document announces a control date of December 31, 2015, that may be used as a reference date for a future management action to limit future access to the offshore sector of the trawl groundfish fisheries in the Aleutian Islands. This date corresponds to the end of the 2015 fishing season in these fisheries. In October 2015, the Council announced its intent to evaluate participation and effort in the offshore sector of the trawl groundfish fisheries in the Aleutian Islands fisheries in response to a public request to consider further limits on access to the fisheries. This document is intended to promote awareness of possible rulemaking and provide notice to the public that any participation in the offshore sector of the trawl groundfish fisheries in the Aleutian Islands after the control date may not ensure continued access to those fisheries under a future management action. This document is also intended to discourage speculative entry into the fisheries while the Council considers whether and how access to the fisheries may be further limited under a future management action.

DATES: December 31, 2015, shall be known as the control date for the offshore sector of the trawl groundfish fisheries in the Aleutian Islands and may be used as a reference date for participation in a future management action that is consistent with the Council's objectives and applicable Federal laws.

ADDRESSES: Please consult the Council's Web site at *http://www.npfmc.org/* for information on public participation in the Council's decision-making process.

FOR FURTHER INFORMATION CONTACT: Rachel Baker: 907–586–7228 or *rachel.baker@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This advance notice of proposed rulemaking would apply to owners and operators of vessels that participate in Federal groundfish fisheries with trawl gear in the Aleutian Islands subarea (AI). The AI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679. Vessels that participate in the AI trawl groundfish fisheries harvest Pacific cod, Atka mackerel, and Pacific Ocean perch.

Vessels that participate in the offshore sector of the AI trawl groundfish fisheries include catcher vessels, catcher/processors, and motherships. Catcher vessels participate in the offshore sector by delivering groundfish to catcher/processors or motherships for processing. Catcher/processors participate in the offshore sector by catching and processing groundfish or by receiving and processing deliveries of groundfish from catcher vessels. Motherships participate in the offshore sector by receiving and processing deliveries of groundfish from catcher vessels. This advance notice of proposed rulemaking would not apply to owners and operators of trawl catcher vessels that participate in the inshore sector of the BSAI trawl groundfish fisheries (*i.e.,* vessels that deliver groundfish to shoreside processors rather than to catcher/processors or motherships).

The Council and NMFS annually establish biological thresholds and annual total allowable catch limits for

groundfish species to sustainably manage the groundfish fisheries in the AI. To achieve these objectives, NMFS requires vessel operators participating in AI groundfish fisheries to comply with various regulatory restrictions, such as fishery closures, to maintain catch within specified total allowable catch limits.

The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the license limitation program (LLP), which limits access to the groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska. The LLP is intended to limit entry into federally managed fisheries. For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

In October 2015, the Council received public testimony from participants in the offshore sector of the AI trawl groundfish fisheries. These participants indicated that new vessels have entered the fisheries in recent years. The testimony indicated that this new entry may negatively impact the ability of historical participants to maintain groundfish harvests in the AI. After considering this public testimony, the Council stated its intent to evaluate methods for further limiting access to the offshore sector of the AI trawl groundfish fisheries in a future management action. To dampen the effect of speculative entry into the offshore sector of the AI trawl groundfish fisheries in anticipation of potential future action to limit access to the fisheries, the Council announced a control date of December 31, 2015. The control date may be used as a reference date for a future management action to further limit access to the offshore sector of the AI trawl groundfish fisheries. The Council clarified that the control date would not obligate the Council to use this control date in any future management action. Further, the control date would not obligate the Council to take any action or prevent the Council from selecting another control date. Accordingly, this document is intended to promote awareness that the Council may develop a future management action to achieve its objectives for the offshore sector of the AI trawl groundfish fisheries; to provide notice to the public that any current or future access to the offshore sector of the AI trawl groundfish fisheries may be affected or restricted; and to discourage speculative participation and behavior in the fisheries while the Council considers whether to initiate a management action to further limit access to the fisheries. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

NMFS encourages public participation in the Council's consideration of a management action to further limit access to the offshore sector of the AI trawl groundfish fisheries. Please consult the Council's Web site at *http://www.npfmc.org/* for information on public participation in the Council's decision-making process.

This notification and control date do not impose any legal obligations, requirements, or expectations.

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

Dated: November 24, 2015.

Eileen Sobeck,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2015–30302 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 80, No. 229

Monday, November 30, 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

Food and Nutrition Service

Announcement of Competition under the America COMPETES, Reauthorization Act of 2010

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice of prize competition

SUMMARY: The goal of the prize competition (also described as ''the hackathon'') is to produce an open source electronic school meal application that States and school districts can adapt for their own use. FNS hopes to develop a prototype that incorporates the best ideas from the innovation community at large. The application will contain a minimum FNS-defined package of design features that target applicant error and reduce applicant burden. FNS looks to innovators in design, human behavior, and software development to build upon these goals and give life to a model application that is visually appealing, easy to use, fast and efficient, and technically sound.

Prize Competition Sponsor: The prize competition is being sponsored by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), 3101 Park Center Drive, Alexandria, VA 22302. The Contest Sponsor, and only the Contest Sponsor, makes all decisions related to the development, management, and implementation of the Contest.

Prize Competition Administrator: Devpost, Inc. (''Devpost''), 433 W. 14th Street, #3F, New York, NY 10014, will be administering the prize competition. The Administrator will be the official timekeeper for the prize competition.

Dates and Timing

Prize Competition Submission Period: December 1, 2015 (10:00 a.m. Eastern Time)–March 1, 2016 (5:00 p.m. Eastern Time) (the ''Hackathon Submission Period'')

Judging Period: March 16, 2016 (10:00 a.m. Eastern Time)—March 25, 2016 (5:00 p.m. Eastern Time) (the ''Judging Period'')

Public Voting Period: March 16, 2016 (10:00 a.m. Eastern Time)—March 25, 2016 (5:00 p.m. Eastern Time) (the ''Public Voting Period'')

Winner Announcement Date: On or around March 31, 2016 (2:00 p.m. Eastern Time)

FOR FURTHER INFORMATION CONTACT: Edward Harper, Director, Office of Program Integrity, Food and Nutrition Service, USDA. (703) 305–2340.

SUPPLEMENTARY INFORMATION:

NAME: E.A.T. School Lunch UX Challenge

Tagline: Electronic Application Transformation—Create a model electronic application for the National School Lunch Program and help millions of American students access school meals.

Background

An overwhelming majority of America's school children—roughly 50 million elementary and secondary school students—attend institutions that participate in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). Most consume school meals on a regular basis. In total, about 100,000 schools and institutions serve more than 5 billion meals through NSLP and 2 billion via the SBP to America's children each school year. Traditionally, households have applied for free or reduced price meal benefits by submitting paper or online applications through their local schools. Millions of these applications are filed every year and as of 2014, nearly 10 million low income children were certified by application for these benefits. However, due to issues with reporting, calculating, and processing, many applications contain errors that result in incorrect eligibility decisions for children.

FNS currently offers a prototype paper application on its Web site, and thousands of school districts have adopted or modified that application for their own use. Many districts also offer online applications, but FNS does not have an electronic prototype for them to use as a model. FNS recognizes that a well-designed electronic application holds promise as a tool to both facilitate access to program benefits and reduce certification error. Electronic applications have the potential to reduce applicant error by providing prompts and feedback to the user during the application process. For example, an electronic application can be designed to:

- Guide applicants through a process that prompts for all includable income types,
- Alert applicants to missing information, and
- Prompt applicants to confirm the accuracy of a final monthly income total.

The agency believes that inviting ideas from a broad community of design experts and programmers may be the best way to develop the most effective final product. Through this challenge, FNS hopes to develop a prototype that incorporates the best ideas from the innovation community at large. The challenge model gives the agency access to the talents of individuals that we are unlikely to reach through the traditional contracting process.

Summary of How To Enter and Judging Criteria

Eligibility—Who can participate?

- Individuals who are at least 18 years of age or older, and who are citizens or permanent residents of the United States, at the time of entry (''Eligible Individuals'').
- Teams of Eligible Individuals (''Teams'').
- Organizations (including corporations, not-for-profit corporations and other nonprofit organizations, limited liability companies, partnerships, and other legal entities) that exist and have been organized or incorporated at the time of entry, are domiciled in the United States, and employ no more than 50 people (''Small Organizations'').
- Organizations (including corporations, not-for-profit corporations and other nonprofit organizations, limited liability companies, partnerships, and other legal entities) that employ more than 50 people and are domiciled in the United States (''Large Organizations''). Please note, however, that Large Organizations will only be eligible to win the Large Organization Recognition Award, which

carries no monetary value. Large Organizations will not be eligible to receive any other prize in connection with this Hackathon.

(The above are collectively, ''Makers.'')

An individual may join more than one Team, Small Organization, or Large Organization and an Eligible Individual who is part of a Team, Small Organization, or Large Organization may also enter the Hackathon on an individual basis.

If a Team, Small Organization, or Large Organization is entering the Hackathon, they must appoint and authorize one *Eligible Individual* (the ''Representative'') to represent, act, and enter a Submission, on their behalf. The Representative must meet the eligibility requirements above for Eligible Individuals. By entering a Submission on the Hackathon Web site on behalf of a Team, Small Organization, or Large Organization, you represent and warrant that you are the Representative authorized to act on behalf of your Team, Small Organization, or Large Organization.

The Prize Competition IS NOT Open To

- Individuals who are residents of, or organizations domiciled in, a country, state, province or territory outside of the United States.
- Organizations involved with the design, production, paid promotion, execution, or distribution of the Hackathon, including USDA and Devpost (''Promotion Entities'').
- Employees, representatives and agents** of such organizations, and all members of their immediate family or household.*
- Any other individual involved with the design, production, promotion, execution, or distribution of the Hackathon, and each member of their immediate family or household.*
- Any Judge (defined below); any company or individual that employs a Judge; or any company for whom a Judge serves as an officer, director, or agent.
- Any parent company, subsidiary, or other affiliate*** of any organization described above.
- Any individual, teams of individuals, or organizations that have a familial or financial relationship with any judge.
- Any Federal entity or Federal employee acting within the scope of their employment, or as may otherwise be prohibited by Federal law (employees should consult their agency ethics officials).
- Any individual, Team, Small Organization, or Large Organization that used Federal facilities or consulted with Federal employees to develop their Submission (as defined below), unless the facilities and employees were made available to all Makers participating in the Hackathon on an equitable basis.
- Any individual, Team, Small Organization, or Large Organization that used Federal funds to develop their Submission, unless such use is consistent with the grant award, or other applicable Federal funds awarding document. If a grantee using Federal funds enters and wins this Hackathon, the prize monies will need to be treated as program income for purposes of the original grant in accordance with applicable Office of Management and Budget Circulars. Federal contractors may not use Federal funds from a contract to develop a Submission for this Hackathon.
- Any other individual or organization whose participation in the Hackathon would create, in the sole discretion of the Sponsor and/or Administrator, a real or apparent conflict of interest.

* The members of an individual's immediate family include the individual's spouse, children and stepchildren, parents and stepparents, and siblings and stepsiblings. The members of an individual's household include any other person that shares the same residence as the individual for at least three (3) months out of the year.

** Agents include individuals or organizations that in creating a Submission to the Hackathon, are acting on behalf of, and at the direction of, a Promotion Entity through a contractual or similar relationship.

*** An affiliate is: (a) an organization that is under common control, sharing a common majority or controlling owner, or common management; or (b) an organization that has a substantial ownership in, or is substantially owned by the other organization.

Additional Prize specific eligibility requirements for students are stated below under Prize Specific Eligibility Requirements.

Submission Requirements

A. How to Enter

Makers must do the following to participate in the Hackathon:

(1) Registration: Register for the Hackathon on the Hackathon Web site by clicking the ''Register for this hackathon'' button. To complete registration, sign up to create a Devpost account, or log in with an existing Devpost account. There is no charge for creating a Devpost account. Registration will enable you to receive important updates and access the ''Enter a Submission'' page.

(2) Submission:

- Web-based Form: Build a functioning, web-based form that runs in a desktop web browser, and collects data required for the National School Lunch Program application, while improving applicant user experience and reducing applicant errors (each a ''Web-based Form''). The Web-based Form refers both to the design elements of the form (the user interface) as well as the underlying program code. Your Web-based Form must:
  - Include and collect required fields necessary for application consideration by local school districts. A list of the required fields can be found below in Section 4C, and on the Resources & Requirements page of the Hackathon Web site Makers should include all required fields, however, the Sponsor may, at their discretion, deem a Web-based Form eligible, if it includes a substantial majority of the required fields.
  - Be open-sourced and provided under MIT license.
  - Include a way to capture, save, and export the completed Web-based Form responses.
  - Include user interface question prompting, to assist with form completion.
- Demonstration Video: Create a demonstration video walking through the main features of the Web-based Form via a step-by-step visual demonstration of the user flow involved in completing the form. The video should speak to how the Maker's design of the Web-based Form improves the user experience for applicants and reduces error.
- Additional Submission Requirements: Complete and enter all of the required fields on the ''Enter a Submission'' page of the Hackathon Web site (each a ''Submission'') during the Hackathon Submission Period. Required fields include:
  - Uploaded image(s) of the Web-based Form design
  - A text description of the Web-based Form including the Maker's approach to the design and user experience
  - A link to the working Web-based Form
  - A link to an open source code repository (on Github or Bitbucket, for example)
- Follow the additional requirements described below.

B. Language Requirements

All Submission materials must be in English or, if not in English, the Maker must provide an English translation of the demonstration video, text

description, and testing instructions as well as all other materials submitted.

C. Additional Web-based Form Requirements & Recommendations

(1) Functionality: The Web-based Form must be capable of running consistently on the web, and must function as depicted in the demonstration video and/or expressed in the text description.

(2) Platform: A submitted Web-based Form must be hosted on the web and must run on a desktop web browser.

(3) Required Fields: A Maker's Web-based Form should prompt users for the following (Please visit the Resources and Requirements pages of the Hackathon Web site for background and context on the School Lunch Program application requirements):

- A list of the names (first, middle initial, last) of all household members, both children (students and non-students) and adults.
- Place to indicate each child's status as foster, homeless, migrant or runaway, as applicable
- Income and frequency for each household member.
- The last four digits of the social security number of the adult household member
- If the adult member signing the application does not possess a social security number, the household must be able to indicate so.
- Prompted to enter or confirm the total number of household members.
- Field for a case number for Assistance Programs (SNAP, TANF, FDPIR).
- Electronic signature by an adult member of the household (signatures do not need to be government certified for the purpose of this competition).
- The date the application was signed.
- Address, phone number and email address (and an indication that these fields are optional).
- City, state and zip code
- All required statements (ex. USDA Non-Discrimination Statement, Use of Information Statement, Attesting Statement, and Children's Racial & Ethnic Identities Question).

(4) User Testing: Makers should demonstrate that user testing of their Web-based Form was completed and feedback was provided. To do so, Makers may utilize and complete the sample user-testing questionnaire to describe testing provided on the Hackathon Web site, or may address user testing in the demonstration video. While user testing is not required for eligibility, Makers are strongly encouraged to conduct user testing to improve the user experience of their Web-based Form. Submissions will be evaluated on the extent to which user testing was conducted, as set forth below in the Judging section.

(5) Testing: The Maker must make their working Web-based Form available online; make it open source under MIT license; and provide it free of charge, and without any restriction, for testing, evaluation and use by the Sponsor, Administrator and judges during the Hackathon and for 90 days following the Winner Announcement Date. Makers will be required to provide a link for accessing the Web-based Form on the ''Testing Instructions'' field on the Enter a Submission form.

(6) Multiple Submissions: A Maker may submit more than one Submission; however, each Submission must be unique and substantially different from any other Submission entered by the Maker. Whether a Maker's multiple Submissions are unique will be determined at the discretion of the Sponsor and/or the Administrator.

(7) Third Party Tools: Web-based Forms may integrate third party technologies, tools, database solutions, APIs, and libraries provided the Maker is authorized to use them and the use of such third party tools is consistent with making the Web-based Form open source under MIT license.

(8) Intellectual Property: Your Submission (including all design elements, functionality, and program code) must: (a) Be your (or your Team, Small Organization, or Large Organization's) original work product; (b) be solely owned by you, your Team, your Small Organization, or your Large Organization with no other person or entity having any right or interest in it; (c) not violate the intellectual property rights or other rights including but not limited to copyright, trademark, patent, contract, and/or privacy rights, of any other person or entity; and (d) be publicly available and open source under MIT license. A Maker may contract with a third party for technical assistance to create the Submission provided the Submission components are solely the Maker's work product and the result of the Maker's ideas and creativity, and the Maker owns all rights to them. A Maker may submit a Submission that includes the use of open source software, provided the Maker complies with applicable open source licenses and, as part of the Submission, creates software that enhances and builds upon the features and functionality included in the underlying open source product. By entering the Hackathon you represent, warrant, and agree that your Submission meets these requirements.

(9) Financial or Preferential Support: A Submission must not have been developed, or derived from work developed, with financial or preferential support from the Sponsor or Administrator. Such Submissions include, but are not limited to, those that received funding or investment for their development, were developed under contract, or received a commercial license, from the Sponsor or Administrator any time prior to the end of Hackathon Submission Period. The Sponsor, at their sole discretion, may disqualify a Submission, if awarding a prize to the Submission would create a real or apparent conflict of interest.

D. Text Description, Image, and Video Requirements

(1) Text Description: The text description should explain the features and functionality of your Web-based Form and how the design improves user experience for applicants and reduces error.

(2) Images: The image(s) should be photographs or screenshots of your working Web-based Form.

(3) Video: The video portion of the Submission:

(a) Should be less than five (5) minutes;

(b) Must include footage that clearly explains the Web-based Form's features and functionality through a comprehensive, step by step demonstration;

(c) Should address how the design improves user experience for applicants and reduces error;

(d) Must be uploaded to YouTube.com or Vimeo.com, and a link to the video must be provided on the submission form on the Hackathon Web site; and

(e) Must not include third party trademarks, or copyrighted music or other material unless the Maker has permission to use such material.

Submission Rights

A. Maker Rights: The Maker will be credited with their work on the Submission on the Hackathon Web site, but will make the Web-based Form available open source, under MIT license.

B. Sponsor Rights: By entering the Hackathon, you grant to the Sponsor, Administrator, and any other third parties Sponsor, a royalty-free, non-exclusive, worldwide perpetual license to display publicly and use for promotional purposes the Submission, in perpetuity. This license includes, but is not limited to, posting or linking to

the Submission on Sponsor's, or Administrator's, and partners' Web sites and applications, including the Hackathon Web site, and display and promotion of the Submission in any other media, worldwide.

C. Submission Display: The following Submission components may be displayed to the public: Name, description, images, video URL, Web site URL (open source repo), and Team members. Other Submission materials may be viewed by the Sponsor, Administrator, and Judges for screening and evaluation.

D. Third Party Rights: By entering the Hackathon, you grant free and unlimited use of all design elements, functionality, and program code by all parties, public and private including for-profit commercial entities. This includes use or modification of your submission by any party in the development of an application for use by, or for sale to, any school or school district that participates in the National School Lunch Program or the School Breakfast Program.

E. Makers represent and warrant that the Sponsor, Administrator, and Hackathon partners are free to use Makers' Submission in the manner described above, as provided or as modified by Administrator, without obtaining permission or license from any third party and without any compensation to Makers.

Judging

A. Judges: Eligible Submissions will be evaluated by a panel of judges selected by the Sponsor (the ''Judges''). Judges may be employees of the Sponsor or external, may or may not be listed individually on the Hackathon Web site, and may change before or during the Judging Period. Judging may take place in one or more rounds with one or more panels of Judges, at the discretion of the Sponsor.

B. Criteria: The Judges will score eligible Submissions using the following, equally weighted criteria (the ''Judging Criteria''):

(1) UX and Design Appeal (Includes the degree to which the design reinvents the user experience of the form—focusing on usability, intuitiveness, and design appeal.)

(2) Effectiveness & Efficiency of Behavioral Prompts (Does the design keep the user engaged through user prompts? Does the design guide the applicants through all required fields and reduce mistakes?)

(3) Implementation of Form Requirements (Includes the extent to which the design adheres to the set of form and field requirements presented.)

(4) Application Code Documentation & Implementation (Includes the completeness and efficiency of the application documentation and code.)

(5) Demonstration of Testing and Debugging (Includes the extent to which user testing and debugging was performed and demonstrated within the submission.)

The Judging Criteria above may not apply to every Prize. See the Prizes section below for the Judging Criteria that apply for each Prize. The Maker(s) that are eligible for a Prize, and whose Submissions earn the highest overall scores based on the applicable Judging Criteria, will become potential winners of that Prize.

C. Submission Review: JUDGES ARE NOT REQUIRED TO TEST THE APPLICATION AND MAY CHOOSE TO JUDGE BASED SOLELY ON THE TEXT DESCRIPTION, IMAGES AND VIDEO PROVIDED IN THE SUBMISSION.

D. Tie Breaker: For each Prize listed below, if two or more Submissions are tied, the tied Submission with the highest score in the first applicable criterion listed above will be considered the higher scoring Submission. In the event any ties remain, this process will be repeated, as needed, by comparing the tied Submissions' scores on the next applicable criterion. If two or more Submissions are tied on all applicable criteria, the panel of Judges will vote on the tied Submissions.

PRIZES

Winner	Prize	Quantity	Eligible makers	Applicable judging criteria
First Prize	US$20,000	1	All except Large Organizations	i, ii, iii, iv, v.
Second Prize	US$10,000	1	All except Large Organizations	i, ii, iii, iv, v.
Third Prize	US$5,000	1	All except Large Organizations	i, ii, iii, iv, v.
Honorable Mention	US$2,000	5	All except Large Organizations	i, ii, iii, iv, v.
Student Award	US$1,000	1	Students (see Section on prize eligibility requirements below).	i, ii, iii, iv, v.
Best Creative Design Aesthetic.	US$1,000	1	All except Large Organizations	Bonus prize awarded to the Submission with the highest score on Judging Criterion (i) ''UX and Design Appeal''.
Best Technical Implementation.	US$1,000	1	All except Large Organizations	Submission with the highest combined score on Judging Criteria (iii) ''Implementation of Form Requirements'' and (iv) ''Application Code Documentation & Implementation''.
Best Behavioral Element	US$1,000	1	All except Large Organizations	Submission with the highest score on Judging Criterion (ii) ''Effectiveness & Efficiency of Behavioral Prompts''.
Popular Choice Award	US$1,000	1	All except Large Organizations	Determined by public voting **.
Large Organization Recognition Award.	Recognition only	1	Only Large Organizations	i, ii, iii, iv, v.

** Please review the Devpost Terms of Service at *http://Devpost.com/terms* for voting rules.

Prize Specific Eligibility Requirements

Best Student App Eligibility Requirements

In addition to the requirements in the Eligibility Section, Makers (including all members, if a Team submission) must:

- Be currently enrolled in at least nine credits or three courses, or the equivalent at the time of entry (or must have been enrolled in such credits or courses within the past three months); OR
- Have graduated in the three months prior to the date of entry from either a secondary school or functional equivalent, or an accredited post-secondary institution (*e.g.,* university, community college, technical college).

Verification of Potential Winners

A. Verification Requirement: THE AWARD OF A PRIZE TO A POTENTIAL WINNER IS SUBJECT TO VERIFICATION OF THE IDENTITY, QUALIFICATIONS AND ROLE OF THE POTENTIAL WINNER IN THE CREATION OF THE SUBMISSION. The final decision to designate a winner shall be made by the Sponsor and/or Administrator.

B. Required Forms: Potential winners will be notified using the email address associated with the Devpost account used to enter the Submission (the submitter is the ''Representative'' in the case of a Team, Small Organization, or Large Organization). In order to receive a Prize, the potential winner (including all participating team members in the case of a Team, Small Organization, or Large Organization) will be required to sign and return to the Sponsor or Administrator, affidavit(s) of eligibility (or a similar verification document) and liability/publicity release(s), and any applicable tax forms (''Required Forms'').

Deadline for Returning Required Forms: Ten (10) business days after the Required Forms are sent.

C. Disqualification: The Sponsor and/or Administrator may deem a potential winner (or participating Team members) ineligible to win if:

(1) The potential winner's Representative or any participating member does not respond to multiple emails or fails to sign and return the Required Forms by the deadline listed above, or responds and rejects the Prize;

(2) The Prize or Prize notification is returned as undeliverable; or

(3) The Submission or the potential winner, or any member of a potential winner's Team, Small Organization, or Large Organization, is disqualified for any other reason.

In the event of a disqualification, the Sponsor and/or Administrator may award the applicable Prize to an alternate potential winner.

Prize Distribution

A. Substitutions & Changes: The Sponsor has the right to make a Prize substitution of equivalent or greater value. The Sponsor will not award a Prize if there are no eligible Submissions entered in the Hackathon, or if there are no eligible Makers or Submissions for a specific Prize.

B. Prize Delivery: A monetary Prize will be mailed to the winning Maker's address (if an individual) or the Representative's address (if a Team or Small Organization) after receipt of the Required Forms. Prizes will be payable to the Maker, if an individual, to the Maker's Representative, if a Team, or to the Small Organization, if the Maker is a Small Organization. It will be the responsibility of the winning Maker's Representative to allocate the Prize among their Team or Small Organization's participating members, as the Representative deems appropriate.

C. Prize Delivery Timeframe: Within 45 days of the Sponsor or Administrator's receipt of the Required Forms

D. Fees & Taxes: Winners (and in the case of Team or Small Organization, all participating members) are responsible for any fees associated with receiving or using a prize, including but not limited to, wiring fees. Winners (and in the case of Team or Small Organization, all participating members) are responsible for reporting and paying all applicable taxes in their jurisdiction of residence (federal, state/provincial/territorial and local). Winners may be required to provide certain information to facilitate receipt of the award; including completing and submitting any tax or other forms necessary for compliance with applicable withholding and reporting requirements. United States residents are required to provide a completed form W–9. THE SPONSOR, ADMINISTRATOR, AND/OR PRIZE PROVIDER RESERVE THE RIGHT TO WITHHOLD A PORTION OF THE PRIZE AMOUNT TO COMPLY WITH THE TAX LAWS OF THE UNITED STATES.

Entry Conditions and Release

A. By entering the Hackathon, you (and, if you are entering on behalf of a Team or Small Organization, each participating members) agree(s) to the following:

(1) The relationship between you, the Maker, and the Sponsor and Administrator, is not a confidential, fiduciary, or other special relationship.

(2) You will be bound by and comply with these Official Rules and the decisions of the Sponsor, Administrator, and/or the Hackathon Judges which are binding and final in all matters relating to the Hackathon.

(3) You release, indemnify, defend and hold harmless the Sponsor, Administrator, Promotion Entities, and their respective parent, subsidiary, and affiliated companies, the Prize suppliers and any other organizations responsible for sponsoring, fulfilling, administering, advertising or promoting the Hackathon, and all of their respective past and present officers, directors, employees, agents and representatives (hereafter the ''Released Parties'') from and against any and all claims, expenses, and liabilities (including reasonable attorneys' fees), including but not limited to negligence and damages of any kind to persons and property, defamation, slander, libel, violation of right of publicity, infringement of trademark, copyright or other intellectual property rights, property damage, or death or personal injury arising out of or relating to a Maker's entry, creation of Submission or entry of a Submission, participation in the Hackathon, acceptance or use or misuse of the Prize (including any travel or activity related thereto) and/or the broadcast, transmission, performance, exploitation or use of the Submission as authorized or licensed by these Official Rules.

B. Without limiting the foregoing, the Released Parties shall have no liability in connection with:

(1) Any incorrect or inaccurate information, whether caused by the Sponsor or Administrator's electronic or printing error, or by any of the equipment or programming associated with or utilized in the Hackathon;

(2) Technical failures of any kind, including, but not limited to malfunctions, interruptions, or disconnections in phone lines, internet connectivity or electronic transmission errors, or network hardware or software or failure of the Hackathon Web site;

(3) Unauthorized human intervention in any part of the entry process or the Hackathon;

(4) Technical or human error which may occur in the administration of the Hackathon or the processing of Submissions; or

(5) Any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from the Maker's participation in the Hackathon or receipt or use or misuse of any Prize.

The Released Parties are not responsible for incomplete, late, misdirected, damaged, lost, illegible, or incomprehensible Submissions or for address or email address changes of the Makers. Proof of sending or submitting will not be deemed to be proof of receipt by the Sponsor or Administrator.

If for any reason any Maker's Submission is determined to have not been received or been erroneously deleted, lost, or otherwise destroyed or corrupted, the Maker's sole remedy is to request the opportunity to resubmit its Submission. Such request must be made promptly after the Maker knows or should have known there was a problem, and will be determined at the sole discretion of the Sponsor.

Publicity

By participating in the Hackathon you consent to the use of personal information about you, if you are a winner, by the Sponsor, Administrator, and third parties acting on their behalf. Such personal information includes, but is not limited to, your name, likeness, photograph, voice, opinions, comments and hometown and country of residence. It may be used in any existing or newly created media, worldwide without further payment or consideration or right of review, unless prohibited by law. Authorized use includes advertising and promotional purposes.

This consent applies, as applicable, to all members a Maker's Team or Small Organization or Large Organization that participated in the winning Submission.

General Conditions

A. Sponsor and Administrator reserve the right, in their sole discretion, to cancel, suspend and/or modify the Hackathon, or any part of it, in the event of a technical failure, fraud, or any other factor or event that was not anticipated or is not within their control.

B. Sponsor and Administrator reserve the right in their sole discretion to disqualify any individual or Maker it finds to be actually or presenting the appearance of tampering with the entry process or the operation of the Hackathon or to be acting in violation of these Official Rules or in a manner that is inappropriate, unsportsmanlike, not in the best interests of this Hackathon, or a violation of any applicable law or regulation.

C. Any attempt by any person to undermine the proper conduct of the Hackathon may be a violation of criminal and civil law. Should Sponsor or Administrator suspect that such an attempt has been made or is threatened, they reserve the right to take appropriate action including but not limited to requiring a Maker to cooperate with an investigation and referral to criminal and civil law enforcement authorities.

D. If there is any discrepancy or inconsistency between the terms and conditions of the Official Rules and disclosures or other statements contained in any Hackathon materials, including but not limited to the Hackathon Submission form, Hackathon Web site, advertising (including but not limited to television, print, radio or online ads), the terms and conditions of the Official Rules shall prevail.

E. The terms and conditions of the Official Rules are subject to change at any time, including the rights or obligations of the Maker, the Sponsor and the Administrator. The Sponsor and Administrator will post the terms and conditions of the amended Official Rules on the Hackathon Web site. To the fullest extent permitted by law, any amendment will become effective at the time specified in the posting of the amended Official Rules or, if no time is specified, the time of posting.

F. If at any time prior to the deadline, a Maker or prospective Maker believes that any Official Rule is or may be unclear or ambiguous, they must submit a written request for clarification.

G. The Sponsor or Administrator's failure to enforce any term of these Official Rules shall not constitute a waiver of that provision. Should any provision of these Official Rules be or become illegal or unenforceable in any jurisdiction whose laws or regulations may apply to a Maker, such illegality or unenforceability shall leave the remainder of these Official Rules, including the Rule affected, to the fullest extent permitted by law, unaffected and valid. The illegal or unenforceable provision shall be replaced by a valid and enforceable provision that comes closest and best reflects the Sponsor's intention in a legal and enforceable manner with respect to the invalid or unenforceable provision.

H. Excluding Submissions, all intellectual property related to this Hackathon, including but not limited to copyrighted material, trademarks, trade-names, logos, designs, promotional materials, Web pages, source codes, drawings, illustrations, slogans and representations are owned or used under license by the Sponsor and/or Administrator. All rights are reserved. Unauthorized copying or use of any copyrighted material or intellectual property without the express written consent of its owners is strictly prohibited. Any use in a Submission of Sponsor or Administrator intellectual property shall be solely to the extent provided for in these Official Rules.

Limitations of Liability

By entering, all Makers (including, in the case of a Team, Small Organization, or Large Organization, all participating members) agree to be bound by the Official Rules and hereby release the Released Parties from any and all liability in connection with the Prizes or Maker's participation in the Hackathon. Provided, however, that any liability limitation regarding gross negligence or intentional acts, or events of death or body injury shall not be applicable in jurisdictions where such limitation is not legal.

Disputes

A. Makers agree that, to the fullest extent permitted by law:

(1) Any and all disputes, claims and causes of action arising out of or connected with this Hackathon, or any Prizes awarded, other than those concerning the administration of the Hackathon or the determination of winners, shall be resolved individually, without resort to any form of class action;

(2) Any and all disputes, claims and causes of action arising out of or connected with this Hackathon or any Prizes awarded, shall be resolved exclusively by the United States District Court of New York or the appropriate New York State Court and Makers consent to the exclusive jurisdiction and venue of such courts; and

(3) Under no circumstances will Makers be entitled to, and Makers hereby waives all rights to claim, any punitive, incidental and consequential damages and any and all rights to have damages multiplied or otherwise increased.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATIONS OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE MAY NOT APPLY TO YOU.

B. All issues and questions concerning the construction, validity, interpretation and enforceability of these Official Rules, or the rights and obligations of the Makers and the Sponsor in connection with the Hackathon, shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules (whether of the State of New York or any other jurisdiction), which would cause the application of the laws of any jurisdiction other than the State of New York.

Additional Terms That Are Part of the Official Rules

Please review the Devpost Terms of Service at *http://devpost.com/terms* for additional rules that apply to your participation in the Hackathon and more generally your use of the Hackathon Web site. Such Terms of Service are incorporated by reference into these Official Rules. If there is a conflict between the Terms of Service and these Official Rules, the latter terms shall control with respect to this Hackathon only.

Participation in the Hackathon constitutes Maker's full and unconditional agreement to these Official Rules. By entering, a Maker agrees that all decisions related to the Hackathon that are made pursuant to these Official Rules are final and binding, and that all such decisions are at the sole discretion of the Sponsor and/or Administrator.

Devpost collects personal information from you when you enter the Hackathon. The information collected is subject to the privacy policy located here: *http://devpost.com/privacy*.

Contact

If you have any questions or comment, or wish to send us any notice regarding this Hackathon, please email us at *Support@Devpost.com*.

Authority

America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, 15 U.S.C. 3719.

Dated: November 23, 2015.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2015–30313 Filed 11–27–15; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; 2016 National Survey of Children's Health

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 the proposed 2016 National Survey of Children's Health, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before January 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Jason Fields, U.S. Census Bureau, ADDP, HQ–7H153, 4600 Silver Hill Road, Washington, DC 20233–0001 (301–763–2465 or via the Internet at *Jason.M.Fields@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by the U.S. Department of Health and Human Services' (HHS') Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB), the National Survey of Children's Health (NSCH) is designed to produce data on the physical and emotional health of American children under 18 years of age. The NSCH collects information on factors related to the well-being of children, including access to health care, in-home medical care, family interactions, parental health, school and after-school experiences, and neighborhood characteristics. In 2011–2012, the NSCH also collected information to assess parents' awareness of, experience with, and interest in enrolling in Medicaid and the State Children's Health Insurance Program (CHIP).

The NSCH project plan divides the sample into two groups of respondents to facilitate mailout procedures. We also include plans to test incentive efficacy (the relative benefit for reducing survey non-response by providing $0, $2, $5 incentives as a token of appreciation), contact materials, and modifications to data collection strategies based on modeled information about internet access. Preliminary results from the NSCH pretest (administered from June–December 2015) were used to inform the decisions made regarding this first year 2016 NSCH production survey project plan. First, the amount of respondent incentives to gain cooperation and participation in the survey will be tested with the initial mailing. From the NSCH pretest, the results showed that there was no statistically significant difference in the response rates when respondents were provided $5 or $10 as incentives to complete the survey. The cost of incentives are balanced against the reduction in follow-up effort and cost required to collect the required data. With the results from the pretest failing to show a substantial benefit for the larger $10 incentive, smaller amounts will be evaluated during the 2016 NSCH. In the 2016 NSCH, sampled addresses will receive either a $2 or a $5 cash incentive or they will be part of the control group that does not receive a cash incentive.

In addition to testing incentives and developing materials, the pretest also served as a platform to evaluate two options for the mode of data collection. The pretest included a mail only mode of data collection where respondents were mailed an advance letter, then a paper questionnaire to screen households with children into the survey and then a follow-up topical paper questionnaire to collect detailed information for only one of the children in the household. The second mode tested in the pretest was a self-administered internet/Web instrument. In this mode of data collection, the respondent was mailed an advance letter and then a letter inviting them to go to the Internet data collection portal for the Census Bureau and complete both the screener and topical sections through a single Web interview instrument. In the pretest, we observed a good Web response rate of over 70%. There are significant cost savings for Web data collection over paper data collection, and based on the pretest results, the decision was made to move to a data collection plan where Web is the primary data collection mode (Web push), and is followed by a mailing of paper screener and topical interviews (mail) for non-responding households. This ''Web push + mail'' data collection plan will be applied to the full sample, with alternative treatment paths to move either more quickly or more slowly to paper follow-up. The Web push + mail treatment is structured so that all households will first have the chance to complete the NSCH online, and only non-respondents or those who call in to request a hard copy will be mailed a paper questionnaire. Initially, all sampled households will receive a letter inviting them to complete the Web-based survey instrument.

The second data collection strategy being tested is one where non-respondents will receive follow-up mailings strategically organized to target households who are more likely to have Web access (High-Web Group), and separately, those households who are less likely to have Web access (Low-

Web Group). The High-Web Group will have additional attempts made to collect data using the online questionnaire before transitioning to paper follow-up, while the Low-Web Group will be mailed paper questionnaires after only the second Web invitation letter, in an attempt to acknowledge technological differences in respondent households, and expedite the collection of data from the full sample.

Third, we will test different branding preferences for the survey materials. The initial mailing will utilize standard U.S. Census Bureau formats and be signed by the Director of the Census Bureau. During the first follow-up mailing, we will test the efficacy of mail materials that use letterhead/logos from the U.S. Census Bureau and from the Health Resources Services Administration's Maternal and Child Health Bureau (HRSA MCHB). Before the third or fourth follow-up mailings, we plan to determine which branding was more effective and should be used in the future.

Finally, for respondents who experience technical problems with the Web instrument, have questions about the survey, or need other forms of assistance, the 2016 NSCH will have a telephone questionnaire assistance (TQA) line available. TQA staff will not only be able to answer respondent questions and concerns, but they will also have the ability to collect survey responses over the phone if the respondent calls in and would like to have interviewer assistance in completing the interview.

Regardless of collection mode, the survey design for the 2016 NSCH focuses on first collecting information about the children in the household and basic special health care needs, and then selecting a child from the household for follow-up to collect additional detailed topical information. We estimate that of the original 416,000 selected households, our target response rate of 70 percent will yield approximately 292,000 responses to the screener. We then estimate that 40 percent of households from the first phase of the screener will receive a topical questionnaire, and 70 percent of these households will complete the topical questionnaire, resulting in approximately 82,000 completed topical interviews. A household could be selected for one of three age-based topical surveys: 0 to 5 year old children, 6 to 11 year old children, or 12 to 17 year old children.

Census staff have developed a plan to select a production sample of approximately 416,000 households (addresses) from a Master Address File (MAF) based sampling frame, with split panels to test mode of administration (*i.e.*, High-Web and Low-Web), contact material branding, and the use of cash incentives (*i.e.*, treatments using $0, $2, or $5). From the pretest, we can expect a best-case overall response rate for the first-year production survey to be about 70 percent for the screener, and then 70 percent for the topical questionnaire.

The goal of the first-year production survey is to provide HRSA MCHB with the necessary data to produce national and state-based estimates on the health and well-being of children, their families, and their communities as well as estimates of the prevalence and impact of children with special health care needs.

II. Method of Collection

Web Push + Mail Treatment Groups

The production 2016 NSCH plan for a Web Push + Mail data collection design includes all 416,000 households receiving an initial invite with instructions on how to complete an English or Spanish language screening questionnaire via the Web. Those households who decide to complete the Web-based survey will be taken through the screening questionnaire to determine if they screen into one of the three topical instruments. If a household lists at least one child who is 0 to 17 years old in the screener, they will be directed into a topical questionnaire immediately after the last screener question. The Web Push + Mail production sample of 416,000 is broken out into three incentive groups: 104,000 household receiving no incentive, 104,000 households receiving a $2 incentive, and 208,000 households receiving a $5 incentive. No additional incentives are planned for subsequent follow-up reminders or paper questionnaire mailings Web Push + Mail treatment groups will not receive any additional incentives.

Follow-Up Reminder Design and Branding Evaluation

The NSCH historically was conducted in a partnership between the Health Services Resources Administration's Maternal and Child Health Bureau and the National Center for Health Statistics. As such, the survey information was sent to respondents under letterhead from the Department of Health and Human Services and the Centers for Disease Control and Prevention, with the Director of NCSH signing the letters to the respondent.

In the 2016 NSCH, we will test alternative branding to the standard contact utilized for Census Bureau surveys, which includes Census Bureau letterhead and the Census Director's signature. The first follow-up mailing, sent to non-responding households approximately three-weeks after their initial invitation to respond to the survey by Web, will be split into two groups. The first group will be sent a reminder to participate with their Web login and password under standard Census Bureau letterhead. The second group will be sent their reminder under a HRSA MCHB letterhead. The differential success of these reminder treatments will be evaluated during data collection and the program plans to responsively tailor future non-response follow-up correspondence. These results will also inform the design of contact strategies for future administrations of the NSCH.

Non-Response Follow-Up for the High-Web Group and Low-Web Group

Households that do not respond to the initial request or first follow-up request to complete the Web-based survey will then fall into one of two non-response follow-up groups: The High-Web group or Low-Web group. The High-Web group will receive three additional Web survey invitation letters requesting their participation in the survey prior to receiving their first paper screener questionnaire in the fourth follow-up mailing. The Low-Web Group will receive only one additional Web survey invitation letter prior to receiving their first paper screener questionnaire in the second follow-up mailing. Once a household receives a paper screener questionnaire, they will then have the option to either complete the Web-based survey or complete the mailed paper screener. If the household chooses to complete the mailed paper questionnaire, then they would then be considered part of the Mailout/Mailback Paper-and-Pencil Interviewing (PAPI) Treatment Group and would receive a paper topical questionnaire if there is at least one eligible child who is 0 to 17 years old listed on the screener. Non-response follow-up for the topical questionnaire will include three more mailings, each including the paper topical questionnaire.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): NSCH–P–S1 (English Screener),

NSCH–P–T1 (English Topical for 0- to 5-year-old children),

NSCH–P–T2 (English Topical for 6- to 11-year-old children),

NSCH–P–T3 (English Topical for 12- to 17-year-old children),

NSCH–PS–S1 (Spanish Screener),

NSCH–PS–T1 (Spanish Topical for 0- to 5-year-old children),
NSCH–PS–T2 (Spanish Topical for 6- to 11-year-old children), and
NSCH–PS–T3 (Spanish Topical for 12- to 17-year-old children).

Type of Review: Regular submission.

Affected Public: Parents, researchers, policymakers, and family advocates.

Estimated Number of Respondents: 292,000 for the Screener and 82,000 for the Topical.

Estimated Time per Response: 5 minutes per screener response and 30 minutes per topical response.

Estimated Total Annual Burden Hours: 65,333 hours.

Estimated Total Annual Cost to Public: $2,333,333 ($7,000,000 over 3 years—not an even annual distribution).

Respondent's Obligation: Voluntary.

Legal Authority: Census Authority: 13 U.S.C. Section 8(b), HRSA MCHB Authority: 42 U.S.C., Chapter 7, Title V (Social Security Act).

Confidentiality: The data collected under this agreement are confidential under 13 U.S.C. Section 9. All access to Title 13 data from this survey is restricted to those holding Census Bureau Special Sworn Status pursuant to 13 U.S.C. Section 23(c).

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 24, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–30287 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–07–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

[10/23/2015 through 11/23/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Amoskeag Woodworking, Inc	30 Elm Court, Colchester, VT 05446.	11/13/2015	The firm is an architectural millwork, cabinet, counter top, custom woodwork, wood-flooring, furniture and historic renovation trim and hardwood lumber manufacturer and installer; producing lumber, millwork and casework for commercial and institutional buildings and residential homes.
PSM Industries, Inc	14000 Aviation Blvd., Los Angeles, CA 90061.	11/13/2015	The firm manufactures a wide range of parts across multiple industry segments.
Connexion, Inc d/b/a KitchenHappy	74000 Cryderman Rd., Richmond Township, MI 48062.	11/23/2015	The firm is a service firm marketing kitchen and household tools and utensils of various materials, primarily plastic.
Leedon Webbing Co., Inc	86 Tremont Street, Central Falls, RI 02863.	11/23/2015	The firm manufactures narrow fabric webbing made from cotton, polyester, nylon and polypropylene.
WILCO Machine & Fab., Inc	1326 S. Broadway, Marlow, OK 73055.	11/23/2015	The firm manufactures fabricated and machine equipment, products, and tools for industries.

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: November 23, 2015.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2015–30286 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–53–2015]

Application for Additional Production Authority; The Coleman Company, Inc.; Subzone 119I; (Textile-Based Personal Flotation Devices) Notice of Postponement of Public Hearing

At the request of the applicant, a public hearing was scheduled to be held for the case referenced above on December 3, 2015 (see 80 FR 68504,

November 5, 2015). At the request of a party who may be materially affected by the zone activity in question, that hearing is now being postponed. Once a new date and time have been set for the hearing, notice will be given in the **Federal Register**. The open comment period for the case (currently scheduled to close on January 4, 2016) will be extended through a new date which will fall no less than 15 days after the hearing is held.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: November 25, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–30482 Filed 11–27–15; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 2015–28460, beginning on page 69193 in the issue of Monday, November 9, 2015, make the following correction:

On page 69197, in the table, in eighteenth and nineteenth rows,

''Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.(collectively Yücel)$_5$''

should read

''Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.(collectively Yücel)$_5$''.

[FR Doc. C1–2015–28460 Filed 11–27–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 151106999–5999–01]

Call for Applications for the International Buyer Program Calendar Year 2017

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and Call for Applications.

SUMMARY: In this notice, the U.S. Department of Commerce (DOC) International Trade Administration (ITA) announces that it will begin accepting applications for the International Buyer Program (IBP) for calendar year 2017 (January 1, 2017, through December 31, 2017). The announcement also sets out the objectives, procedures and application review criteria for the IBP. The purpose of the IBP is to bring international buyers together with U.S. firms in industries with high export potential at leading U.S. trade shows. Specifically, through the IBP, the ITA selects domestic trade shows which will receive ITA assistance in the form of global promotion in foreign markets, provision of export counseling to exhibitors, and provision of matchmaking services at the trade show. This notice covers selection for IBP participation during calendar year 2017.

DATES: Applications for the IBP must be received by Friday, January 8, 2016.

ADDRESSES: The application form can be found at *www.export.gov/ibp.* Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; (2) Facsimile: (202) 482–7800; or (3) email: *IBP2017@trade.gov.* Facsimile and email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting Director, International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–2311; Facsimile: (202) 482–7800; Email: *IBP2017@trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, ITA selects U.S. trade shows with participation by U.S. firms interested in exporting that ITA determines to be leading international trade shows, for promotion in overseas markets by U.S. Embassies and Consulates. The DOC is authorized to provide successful applicants with assistance in the form of overseas promotion of the show; outreach to show participants about exporting; recruitment of potential buyers to attend the events; and staff assistance in setting up international trade centers at the events. Worldwide promotion is executed through ITA officers at U.S. Embassies and Consulates in more than 70 countries representing the United States' major trading partners, and also in Embassies in countries where ITA does not maintain offices.

The International Trade Administration (ITA) is accepting applications from trade show organizers for the IBP for trade events taking place between January 1, 2017, and December 31, 2017. Selection of a trade show is valid for one event, *i.e.,* a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

For the IBP in calendar year 2017, the ITA expects to select approximately 20 events from among the applicants. The ITA will select those events that are determined to most clearly meet the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and the selection criteria articulated below.

There is no fee required to submit an application. If accepted into the program for calendar year 2017, a participation fee of $9,800 is required for shows of five days or fewer. For trade shows more than five days in duration, or requiring more than one International Trade Center, a participation fee of $15,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Trade Centers, the participation fee will be determined by DOC and stated in the written notification of acceptance. It would be calculated on a full cost recovery basis.

Successful applicants will be required to enter into a Memorandum of Agreement (MOA) with ITA within 10 days of written notification of acceptance into the program. The participation fee (by check or credit card) is due within 30 days of written notification of acceptance into the program.

The MOA constitutes an agreement between ITA and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by ITA as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include, but are not limited to, providing waived or reduced admission fees for international attendees who are participating in the IBP, the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. One of the most important commitments is for the trade show organizer to: Include in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); to have procedures in place at the trade show to address IPR infringement which, at a minimum, provide information to help U.S. exhibitors procure legal representation during the trade show; and to agree to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States. ITA responsibilities include, but are not limited to, the worldwide promotion of the trade show and, where feasible, recruitment of international buyers to that show, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP partner does not constitute a guarantee by DOC of the show's success. IBP partnership status is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for IBP partnership status should not be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: All 2017 U.S. trade events are eligible to apply for IBP participation through the show organizer.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered.

General Evaluation Criteria: The ITA will evaluate shows to be International Buyer Program partners using the following criteria:

(a) Export Potential: The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists and U.S. export statistics.

(b) Level of International Interest: The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator of such interest.

(c) Scope of the Show: The event offers a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors will be given priority.

(d) U.S. Content of Show Exhibitors: Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) Stature of the Show: The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) Level of Exhibitor Interest: U.S. exhibitors have expressed interest in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be seeking to begin exporting or to expand their sales into additional export markets.

(g) Level of Overseas Marketing: There has been a demonstrated effort by the applicant to market this event and prior related events. For this criterion, the applicant should describe in detail, among other information, the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance.

(h) Logistics: The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition (*i.e.* International Trade Center, interpreters) are capable of accommodating large numbers of attendees whose native language will not be English.

(i) Level of Cooperation: The applicant demonstrates a willingness to cooperate with the ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the FOR FURTHER INFORMATION CONTACT section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(j) Delegation Incentives: The IBP Office will be evaluating the level and/or range of incentives offered to delegations and/or delegation leaders recruited by U.S. overseas Embassies and Consulates. Examples of incentives to international visitors and to organized delegations include: Special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders (beyond those required in the MOA).

Review Process: ITA will evaluate all applications received based on the criteria set out in this notice. Vetting will include soliciting input from ITA industry analysts, as well as domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider scheduling and sector balance in terms of the need to allocate resources to support selected events.

Application Requirements: Show organizers submitting applications for the 2017 IBP are requested to submit: (1) A narrative statement addressing each question in the application, Form OMB 0625–0143 (found at *www.export.gov/ibp*); (2) a signed statement that ''The information submitted in this application is correct and the applicant will abide by the terms set forth in the Call for Applications for the 2017 International Buyer Program (January 1, 2017 through December 31, 2017);'' and (3) two copies of the application: one copy of the application printed on company letterhead, and one electronic copy of the application submitted on a CD–RW (preferably in Microsoft Word® format), on or before the deadline noted above. There is no fee required to apply. Applications for the IBP must be received by Friday, January 8, 2016. ITA

expects to issue the results of its review process in April 2016.

Legal Authority: The statutory program authority for the ITA to conduct the International Buyer Program is 15 U.S.C. 4724. The DOC has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C.s 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form OMB 0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Acting Director, International Buyer Program (*IBP2017@trade.gov*).

Frank Spector,

Trade Promotion Programs.

[FR Doc. 2015–30329 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–850]

Certain Oil Country Tubular Goods From Taiwan: Rescission of Antidumping Duty Administrative Review in Part; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review in part on certain oil country tubular goods from Taiwan for the period of review (POR) July 18, 2014, through August 31, 2015.

DATES: *Effective Date:* November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, we published a notice of opportunity to request an administrative review of the antidumping duty order on certain oil country tubular goods from Taiwan for the POR July 18, 2014, through August 31, 2015.[1] On November 9, 2015, in response to timely requests from the petitioners [2] and Taiwanese exporters of subject merchandise, Shin Yang Steel Co., Ltd. (Shin Yang) and Tension Steel Industries Co., Ltd. (Tension Steel), and in accordance with section 751(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on certain oil country tubular goods from Taiwan with respect to two companies: Shin Yang and Tension Steel.[3]

On November 10, 2015, Shin Yang withdrew its request for an administrative review.[4]

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because Shin Yang withdrew its review request in a timely manner, and because no other party requested a review of this company, we are partially rescinding the administrative review with respect to Shin Yang.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 52741 (September 1, 2015).

[2] Maverick Tube Corporation; Energex Tube, a division of JMC Steel Group; TMK IPSCO; Vallourec Star LP; Welded Tube USA Inc.; and United States Steel Corporation (collectively, the petitioners).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 69193 (November 9, 2015).

[4] *See* letter from Shin Yang to the Department, ''Oil country Tubular Goods from Taiwan: Withdrawal of Administrative Review Request'' (November 10, 2015). Shin Yang's November 10, 2015 letter referenced the countervailing duty proceeding. Accordingly, we confirmed with counsel for Shin Yang that its reference to the countervailing duty proceeding was inadvertent, and that its withdrawal request intended to reference the antidumping duty proceeding. *See* memorandum to the File dated November 19, 2015.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For Shin Yang, for which the review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP within 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: November 24, 2015.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2015–30342 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 23, 2015, the Department of Commerce (''the Department'') published the affirmative preliminary determination of circumvention of the antidumping duty order on uncovered innerspring units (''innerspring units'') from the People's Republic of China (''PRC'').[1] The Department invited interested parties to comment on the *Preliminary Determination.* No parties commented. Accordingly, our *Preliminary Determination* remains unchanged in this final determination.

DATES: *Effective Date:* November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On October 23, 2015, the Department published the *Preliminary Determination* finding that innerspring units completed or assembled in Malaysia by Goldon Bedding Manufacturing Sdn. Bhd. (''Goldon'') using components from the PRC, and exported to the United States, are circumventing the antidumping duty order on innerspring units from the PRC,[2] as provided in section 781(b) of the Tariff Act of 1930, as amended (''the Act''). We invited interested parties to comment on the *Preliminary Determination,* but no comments were received.

Scope of the Antidumping Duty Order

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.,* twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring. Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a ''pocket'' or ''sock'' of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are innerspring units, as described above, that are manufactured in Malaysia by Goldon with PRC-origin components and other direct materials, such as helical wires, and that are subsequently exported from Malaysia to the United States.

Final Determination

In the *Preliminary Determination,* the Department found, on the basis of adverse facts available, that innerspring units completed and assembled in Malaysia by Goldon using components from the PRC and exported from Malaysia to the United States are circumventing the *PRC Innerspring Units Order,*[3] pursuant to section 781(b) of the Act. Moreover, because we are unable to distinguish between those innerspring units Goldon is exporting to the United States which contain PRC-origin components and those that do not, the Department preliminarily determined that it is appropriate to instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of innerspring units produced in and/or exported from Malaysia by Goldon as subject to the *PRC Innerspring Units Order.*[4]

Because no party provided any additional information or comments regarding our *Preliminary Determination,* our final determination remains unchanged from our *Preliminary Determination.* Accordingly, the Department continues to determine that Goldon's merchandise is circumventing the *PRC Innerspring Units Order* within the meaning of section 781(b) of the Act and that it is appropriate to continue to instruct CBP to suspend all entries of innerspring units from Malaysia produced by Goldon. If Goldon would like to be reviewed under the PRC Innerspring Units Order, it must request a review of its exports. In such a review, the Department would determine Goldon's antidumping margin. Should the Department conduct an administrative review, and determine in the context of that review that Goldon did not produce for export innerspring units using PRC-origin innerspring components, the Department will consider initiating a changed circumstances review pursuant to section 751(b) of the Act to determine if the continued suspension of all innerspring units produced by Goldon is warranted.

Continuation of Suspension of Liquidation

In accordance with section 781(b) of the Act and 19 CFR 351.225(1)(3), the Department will continue to direct CBP to suspend liquidation and to require a

[1] *See Uncovered Innerspring Units from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 80 FR 64392 (October 23, 2015) (''*Preliminary Determination''*).

[2] *Id.*

[3] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order, 74 FR 7661* (February 19, 2009) (''*PRC Innerspring Units Order''*).

[4] For a complete discussion of our findings in the preliminary determination, *see* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination Memorandum for Goldon Bedding Manufacturing Sdn. Bhd., dated October 19, 2015 (''Preliminary Decision Memorandum''). The signed Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.*

cash deposit of estimated duties at the rate applicable to the exporter on all unliquidated entries of innerspring units from produced in and/or exported from Malaysia by Goldon that were entered, or withdrawn from warehouse, for consumption on or after December 22, 2014, the date of initiation of the anticircumvention inquiry.[5]

Notice to Parties

This notice serves as the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This final affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225(h).

Dated: November 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–30336 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Uncovered Innerspring Units from the People's Republic China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order,* 79 FR 78792 (December 31, 2014).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Brass Sheet and Strip From Italy; Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip (BSS) from Italy.[1] This review covers one company. The period of review (POR) is March 1, 2014, through February 28, 2015.

DATES: *Effective Date:* November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Joseph Shuler, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1293.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the antidumping duty order is brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Italy, which is currently classified under subheading 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS numbers are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[2] The written description is dispositive.

The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Methodology

In accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), we relied on facts available with an adverse inference with respect to KME Italy SpA (KME Italy), the only company for which a review was requested. Thus, we preliminarily assign a rate of 22.00 percent as the dumping margin for KME Italy. In making these findings, we relied on facts available because KME Italy failed to respond to the Department's antidumping duty questionnaire, and thus withheld requested information, failed to provide requested information by the established deadlines, and significantly impeded this proceeding. *See* sections 776(a)(2)(A)–(C) of the Act. Furthermore, because we preliminarily determine that KME Italy failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, we drew an adverse inference in selecting from among the facts otherwise available. *See* section 776(b) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following dumping margin on BSS from Italy exists for the period March 1, 2014, through February 28, 2015:

Exporter/Manufacturer	Dumping margin (percent)
KME Italy SpA	22.00 percent

Disclosure and Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4] Case and rebuttal briefs should be filed using ACCESS.[5]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety in ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 24233 (April 30, 2015).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of the 2014–2015 Antidumping Duty Administrative Review: Brass Sheet and Strip from Italy'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.303 (for general filing requirements).

[5] *See* 19 CFR 351.303.

will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the preliminary results are unchanged for the final results we will instruct CBP to apply an *ad valorem* assessment rate of 22.00 percent to all entries of subject merchandise during the POR which were produced and/or exported by KME Italy.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of BSS from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash deposit rate will be 5.44 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Notifications to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

A. Summary
B. Background
C. Scope of the Order
D. Discussion of the Methodology
1. Use of Facts Otherwise Available
a. Use of Facts Available
b. Application of Facts Available With an Adverse Inference
c. Selection and Corroboration of Information Used as Facts Available
E. Recommendation

[FR Doc. 2015–30340 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 151106999–5999–01]

Call for Applications for the International Buyer Program Select Service for Calendar Year 2017

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications.

SUMMARY: The U.S. Department of Commerce (DOC), International Trade Administration (ITA) announces that it will begin accepting applications for the International Buyer Program (IBP) Select service for calendar year 2017 (January 1, 2017, through December 31, 2017). This announcement sets out the objectives, procedures and application review criteria for IBP Select. Under IBP Select, ITA recruits international buyers to U.S. trade shows to meet with U.S suppliers exhibiting at those shows. The main difference between IBP and IBP Select is that IBP offers worldwide promotion, whereas IBP Select focuses on promotion and recruitment in up to five international markets. Specifically, through the IBP Select, the DOC selects domestic trade shows that will receive DOC assistance in the form of targeted promotion and recruitment in up to five foreign markets, export counseling to exhibitors, and export counseling and matchmaking services at the trade show. This notice covers selection for IBP Select participation during calendar year 2017.

DATES: Applications for IBP Select must be received by Friday, January 8, 2016.

ADDRESSES: The application form can be found at *www.export.gov/ibp.* Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Suite 800—Mezzanine Level—Atrium North, Washington, DC 20004; (2) Facsimile: (202) 482–7800; or (3) email: *IBP2017@trade.gov.* Facsimile and email applications will be accepted as interim applications, and must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting Director, International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave. NW., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington, DC 20004; Telephone (202) 482–2311; Facsimile: (202) 482–7800; Email: *IBP2017@ trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP Select will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, the DOC selects trade shows that DOC determines to be leading trade shows with participation by U.S. firms interested in exporting.

DOC provides successful applicants with assistance in the form of targeted overseas promotion of the show by U.S. Embassies and Consulates; outreach to show participants about exporting; recruitment of potential buyers to attend the events; and staff assistance in setting up and staffing international trade centers at the events. Targeted promotion in up to five markets can be executed through the overseas offices of ITA or in U.S. Embassies in countries where ITA does not maintain offices.

ITA is accepting applications for IBP Select from trade show organizers of trade events taking place between January 1, 2017, and December 31, 2017. Selection of a trade show for IBP Select is valid for one event. A trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. For events that occur more than once in a calendar year, the trade show organizer must submit a separate application for each event.

There is no fee required to submit an application. For IBP Select in calendar year 2017, ITA expects to select approximately 8 events from among the applicants. ITA will select those events that are determined to most clearly support the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Once selected, applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC, and submit payment of the $6,000 2017 participation fee (by check or credit card) within 30 days of written notification of acceptance into IBP Select. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by the DOC as part of the IBP Select and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application form and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely, as IBP Select participants are expected to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. ITA responsibilities include targeted promotion of the trade show and, where feasible, recruitment of international buyers to that show from up to five target markets identified, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP Select show does not constitute a guarantee by DOC of the show's success. IBP Select participation status is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for IBP Select status should not be viewed as a determination that the event will not be successful in promoting U.S. exports.

Eligibility: 2017 U.S. trade events with 1,350 or fewer exhibitors are eligible to apply, through the show organizer, for IBP Select participation. First-time events will also be considered.

Exclusions: U.S. trade shows with over 1,350 exhibitors will not be considered for IBP Select.

General Evaluation Criteria: ITA will evaluate applicants for IBP Select using the following criteria:

(a) Export Potential: The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists, and U.S. export analysis.

(b) Level of International Interest: The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator.

(c) Scope of the Show: The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(d) U.S. Content of Show Exhibitors: Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) Stature of the Show: The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) Level of Exhibitor Interest: There is significant interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export or seeking to expand their sales into additional export markets.

(g) Level of Overseas Marketing: There has been a demonstrated effort by the applicant to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance.

(h) Level of Cooperation: The applicant demonstrates a willingness to cooperate with ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(i) Delegation Incentives: Waived or reduced (by at least 50%) admission fees are required for international attendees who are participating in IBP Select. Delegation leaders also must be provided complimentary admission to the event. In addition, show organizers should offer a range of incentives to delegations and/or delegation leaders recruited by the DOC overseas posts. Examples of incentives to international visitors and to organized delegations include: Special organized events, such as receptions, meetings with association executives, briefings, and site tours; or complimentary accommodations for delegation leaders.

Review Process: ITA will vet all applications received based on the criteria set out in this notice. Vetting will include soliciting input from ITA industry analysts, as well as domestic and international field offices, focusing primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider sector and calendar diversity in terms of the need to allocate resources to support selected events. Application Requirements: Show organizers submitting applications for 2017 IBP Select are required to submit: (1) A narrative statement addressing each question in the application, OMB 0625–0143 (found at *www.export.gov/ibp*); and (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the International Buyer Program Select (January 1, 2017 through December 31, 2017);'' on or before the deadline noted above. Applications for IBP Select must be received by Friday, January 8, 2016. There is no fee required to apply. ITA

expects to issue the results of this process in April 2016.

Legal Authority: The statutory program authority for ITA to conduct the IBP is 15 U.S.C. 4724. ITA has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C.s 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Acting Director, International Buyer Program (*IBP2017@trade.gov*).

Frank Spector,

Trade Promotion Programs.

[FR Doc. 2015–30328 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Travel and Tourism Advisory Board (Board) will hold an open meeting via teleconference on Wednesday, December 16, 2015. The Board was re-chartered in August 2015 and advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry. The purpose of the meeting is for Board members to review and deliberate on a recommendation focused on expanding and protecting the Visa Waiver Program (VWP). The final agenda will be posted on the Department of Commerce Web site for the Board at *http://trade.gov/ttab*, at least one week in advance of the meeting.

DATES: Wednesday, December 16, 2015, 1:00 p.m.–2:00 p.m. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EST on December 9, 2015.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: U.S. Travel and Tourism Advisory Board, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230; email: *archana.sahgal@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Archana Sahgal, the United States Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–4501, email: *archana.sahgal@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board advises the Secretary of Commerce on matters relating to the U.S. travel and tourism industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the call. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. on December 9, 2015, for inclusion in the meeting records and for circulation to the members of the Travel and Tourism Advisory Board.

In addition, any member of the public may submit pertinent written comments concerning the Board's affairs at any time before or after the meeting. Comments may be submitted to Archana Sahgal at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EST on December 9, 2015, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Board meeting minutes will be available within 90 days of the meeting.

Dated: November 23, 2015.

Archana Sahgal,

Executive Secretary, United States Travel and Tourism Advisory Board.

[FR Doc. 2015–30284 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the United States Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Manufacturing Council (Council) will hold an open meeting via teleconference on Wednesday, December 16, 2015. The Council was established in April 2004 to advise the Secretary of Commerce on matters relating to the U.S. manufacturing industry. The purpose of the meeting is for Council members to review and deliberate on a recommendation by the Energy Subcommittee focused on trade missions. The final agenda will be posted on the Department of Commerce Web site for the Council at *http://www.trade.gov/manufacturingcouncil/*, at least one week in advance of the meeting.

DATES: Wednesday, December 16, 2015, 12:00 p.m.–1:00 p.m. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EST on December 9, 2015.

ADDRESSES: The meeting will be held by conference call. The call-in number and passcode will be provided by email to registrants. Requests to register (including to speak or for auxiliary aids) and any written comments should be

submitted to: U.S. Manufacturing Council, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230; email: *archana.sahgal@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Archana Sahgal, U.S. Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *archana.sahgal@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council advises the Secretary of Commerce on matters relating to the U.S. manufacturing industry.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the call. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. on December 9, 2015, for inclusion in the meeting records and for circulation to the members of the U.S. Manufacturing Council.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Archana Sahgal at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EST on December 9, 2015, to ensure transmission to the Board prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered on the call. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: November 23, 2015.

Archana Sahgal,

Executive Secretary, U.S. Manufacturing Council.

[FR Doc. 2015–30283 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–2A004]

Export Trade Certificate of Review

ACTION: Notice of Application for an Amended Export Trade Certificate of Review by DFA of California (''DFA''), Application No. 14–2A004.

SUMMARY: The Secretary of Commerce, through the International Trade Administration, Office of Trade and Economic Analysis (OTEA), has received an application for an amended Export Trade Certificate of Review (''Certificate'') from DFA. This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325 (2015). Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application. Under 15 CFR 325.6 (a), interested parties may, within twenty days after the date of this notice, submit written comments to the Secretary through OTEA on the application.

Request for Public Comments: Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 14–2A004.''

Summary of the Application

Applicant: DFA of California

Contact: c/o Gilbert Associates, Inc., 2880 Gateway Oaks Drive, Suite 100, Sacramento, California 95833.

Application No.: 14–2A004.

Date Deemed Submitted: November 24, 2015.

Proposed Amendments:

1. Add as new Members with respect to the covered products listed below:

a. Walnuts: Chico Nut Company; Pearl Crop, Inc.; Omega Walnut, Inc.; O–G Nut Company; California Walnut Company, Inc.; and Morada Nut Company, LP.

2. Change the name of existing Member Linden Nut Company to Pearl Crop, Inc.

DFA's proposed amendment of its Export Trade Certificate of Review would result in the following entities as Members under the Certificate:

1. Alpine Pacific Nut Company, Hughson, CA
2. Andersen & Sons Shelling, Vina, CA
3. Avanti Nut Company, Inc., Stockton, CA
4. Berberian Nut Company, LLC, Chico, CA
5. Carriere Family Farms, Inc., Glenn, CA
6. California Almond Packers and Exporters (CAPEX), Corning CA
7. California Walnut Company, Inc., Los Molinos, CA

8. Chico Nut Company, Chico, CA
9. Continente Nut LLC, Oakley, CA
10. C. R. Crain & Sons, Inc., Los Molinos, CA
11. Crain Walnut Shelling, Inc., Los Molinos, CA
12. Crisp California Walnuts, Stratford, CA
13. Diamond Foods, Inc., Stockton, CA
14. Empire Nut Company, Colusa, CA
15. Fig Garden Packing, Inc., Fresno, CA
16. Gold River Orchards, Inc., Escalon, CA
17. Grower Direct Nut Company, Hughson, CA
18. GSF Nut Company, Orosi, CA
19. Guerra Nut Shelling Company, Hollister, CA
20. Hill View Packing Company Inc., Gustine, CA
21. Mariani Nut Company, Winters, CA
22. Mariani Packing Company, Inc., Vacaville, CA
23. Mid Valley Nut Company Inc., Hughson, CA
24. Morada Nut Company, LP, Stockton, CA
25. National Raisin Company, Fowler, CA
26. O–G Nut Company, Stockton, CA
27. Omega Walnut, Inc., Orland, CA
28. Pearl Crop, Inc., Stockton, CA
29. Poindexter Nut Company, Selma, CA
30. Prima N oce Packing, Linden, CA
31. RPC Packing Inc., Porterville, CA
32. Sacramento Packing, Inc., Yuba City, CA
33. Sacramento Valley Walnut Growers, Inc., Yuba City, CA
34. San Joaquin Figs, Inc., Fresno, CA
35. Shoei Foods USA, Inc., Olivehurst, CA
36. Stapleton-Spence Packing, Gridley, CA
37. Sun-Maid Growers of California, Kingsburg, CA
38. Sunsweet Growers Inc., Yuba City, CA
39. Taylor Brothers Farms, Inc., Yuba City, CA
40. T.M. Duche Nut Company, Inc., Orland, CA
41. Wilbur Packing Company, Inc., Live Oak, CA
42. Valley Fig Growers, Fresno, CA

Dated: November 23, 2015.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131, etca@trade.gov.

[FR Doc. 2015–30285 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–843, A–570–029, A–533–865, A–588–873, A–580–881, A–821–822, A–412–824]

Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom: Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

DATES: *Effective Date:* November 30, 2015.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla at (202) 482–3477 (Brazil); Scott Hoefke at (202) 482–2947 (the People's Republic of China (PRC)); Patrick O'Connor at (202) 482–0989 (India and Japan); Steve Bezirganian at (202) 482–1131 (the Republic of Korea (Korea)); Eve Wang at (202) 482–6231 (the Russian Federation (Russia)); and Thomas Schauer at (202) 482–0410 (the United Kingdom), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 2015, the Department of Commerce (the Department) initiated antidumping duty (AD) investigations of imports of certain cold-rolled steel flat products (cold-rolled steel) from Brazil, the PRC, India, Japan, Korea, Russia, and the United Kingdom.[1] The notice of initiation stated that, in accordance with section 733(b)(l)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), we would issue our preliminary determinations no later than 140 days after the date of initiation, unless postponed. Currently, the preliminary determinations in these investigations are due no later than January 4, 2016.

[1] *See Certain Cold-Rolled Steel Flat Products From Brazil, the People's Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations,* 80 FR 51198 (August 24, 2015). The investigation on cold-rolled steel from the Netherlands was terminated as a result of a negative preliminary injury determination by the International Trade Commission. *See Cold-Rolled Steel Flat Products From Brazil, China, India, Japan, Korea, Netherlands, Russia, and the United Kingdom,* 80 FR 55872 (September 17, 2015).

Postponement of Preliminary Determinations

Sections 733(c)(1)(B)(i) and (ii) of the Act permit the Department to postpone the time limit for the preliminary determination if it concludes that the parties concerned are cooperating and determines that the case is extraordinarily complicated by reason of the number and complexity of the transactions to be investigated or adjustments to be considered, the novelty of the issues presented, or the number of firms whose activities must be investigated, and additional time is necessary to make the preliminary determination. Under this section of the Act, the Department may postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation.

The Department determines that the parties involved in the cold-rolled steel AD investigations on Brazil, India, Japan, the Republic of Korea, the Russian Federation, and the United Kingdom are cooperating, and that the investigations are extraordinarily complicated. Additional time is required to analyze the questionnaire responses and issue appropriate requests for clarification and additional information. With regard to the PRC investigation, this case has necessitated multiple rounds of quantity and value questionnaires, independent research into respondent locations, and ongoing analysis. As with the other investigations, we consider this case to be extraordinarily complicated and will require additional time to explore our options moving forward.

Therefore, in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1), the Department is postponing the time period for the preliminary determinations of these investigations by 50 days, to February 23, 2016. Pursuant to section 735(a)(l) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: November 20, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2015–30343 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE330

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet December 17, 2015.

DATES: The meeting will be held on Thursday, December 17, 2015, from 12 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Bering Sea Crabbers' office 4005 20th Ave. W, Suite 102, Seattle, WA 98188. Please call 1–800–920–7487, passcode is 88696426#.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809, or Lance Farr, (206) 669–7163.

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, December 17, 2015

The Committee will discuss issues to recommend for the Bering Sea Aleutian Island Crab 10-year review.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 24, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–30290 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD248

Endangered Species; File No. 18526

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Coonamessett Farm Foundation, Inc., 277 Hatchville Road, East Falmouth, MA 02536 [Responsible Party: Ronald Smolowitz], has been issued a permit to take sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 22, 2014, notice was published in the **Federal Register** (79 FR 22479) that a request for a scientific research permit to take endangered and threatened sea turtles has been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Mr. Smolowitz has been issued a five-year permit to continue ongoing research assessing and reducing sea turtle bycatch in sea scallop fisheries in the Mid-Atlantic Bight. The research will aid in estimating abundance estimates, evaluating scallop harvesting strategies to minimize harm to sea turtles, and defining critical habitat of loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and green (*Chelonia mydas*) sea turtles. Sea turtles may be captured by hoop net, weighed and measured, blood and tissue sampled, and tagged with flipper tags, passive integrated transponders, and satellite tags. Turtles will also be tracked and monitored with a remotely operated vehicle.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 24, 2015.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–30297 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE331

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Northeast Trawl Advisory Panel (NTAP) will hold a public meeting.

DATES: The meeting will be held on Wednesday, December 16, 2015 for the Advisory Panel from 8 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will held at the Radisson Hotel Providence Airport, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The NTAP is a joint advisory panel of the Mid-Atlantic and New England Fishery Management Councils. It is composed of Council members, fishing industry, academic, and government and non-government fisheries experts who will provide advice and direction on the conduct of trawl research. The NTAP was established to bring commercial fishing, fisheries science, and fishery management professionals in the northeastern U.S. together to identify concerns about regional research survey performance and data, to identify

methods to address or mitigate these concerns and to promote mutual understanding and acceptance of the results of this work among their peers and in the broader community. Topics to be discussed at the meeting include: Review trawl survey design, gear, implementation, operations, and performance; review survey inputs to stock assessments; identify opportunities to complement/supplement trawl survey and calibration requirements; and discuss next steps for the NTAP.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: November 24, 2015.

Tracey L. Thompson,

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

[FR Doc. 2015–30291 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority; First Responder Network Authority Board Meetings

AGENCY: First Responder Network Authority (FirstNet), U.S. Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Board of the First Responder Network Authority (FirstNet) will convene an open public meeting on December 9, 2015, preceded by open public meetings of the Board Committees on December 8, 2015.

DATES: On December 8, 2015 between 8:00 a.m. and 3:30 p.m. CST, there will be a joint meeting of FirstNet's four Board Committees. The meeting of the Governance and Personnel, Finance, Technology, and Consultation and Outreach Committees and will be open to the public from 8:00 a.m. to 10:00 a.m. CST. The FirstNet Committees will then go into a closed session from 10:00 a.m. to 3:30 p.m. The full FirstNet Board will hold an open public meeting on December 9, 2015 between 8:00 a.m. and 10:30 a.m. CST.

ADDRESSES: The meetings on December 8 and December 9, 2015 will be held at Hyatt Regency Houston, 1200 Louisiana Street, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Eli Veenendaal, Board Secretary (Acting), FirstNet, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (571) 665–6143; email: *elijah.veenendaal@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (571) 665–6186.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Board of FirstNet will convene an open public meeting on December 9, 2015, preceded by a joint open public meeting of the Board Committees on December 8, 2015.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), established FirstNet as an independent authority within the National Telecommunications and Information Administration that is headed by a Board. The Act directs FirstNet to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board held its first public meeting on September 25, 2012.

Matters to be Considered: FirstNet will post detailed agendas of each meeting on its Web site, *http://www.firstnet.gov,* prior to the meetings. The agenda topics are subject to change. Please note that the subjects that will be discussed by the Committees and the Board may involve commercial or financial information that is privileged or confidential, personnel matters, or other legal matters affecting FirstNet. As such, the Committee chairs and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Times and Dates of Meetings: On December 8, 2015 between 8:00 a.m. and 3:30 p.m. CST, there will be a joint meeting of FirstNet's four Board Committees. The meeting of the Governance and Personnel, Finance, Technology, and Consultation and Outreach Committees will be open to the public from 8:00 a.m. to 10:00 a.m. CST. The FirstNet Committees will then go into a closed session from 10:00 a.m. to 3:30 p.m. The full FirstNet Board will hold an open public meeting on December 9, 2015 between 8:00 a.m. and 10:30 a.m. CST.

Place: The meetings on December 8 and December 9, 2015 will be held at Hyatt Regency Houston, 1200 Louisiana Street, Houston, TX 77002.

Other Information: These meetings are open to the public and press on a first-come, first-served basis. Space is limited. In order to get an accurate headcount, all expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@firstnet.gov.* If the number of RSVPs indicates that expected attendance has reached capacity, FirstNet will respond to all subsequent notices indicating that capacity has been reached and that in-person viewing may no longer be available but that the meeting may still be viewed by webcast as detailed below. For access to the meetings, valid government issued photo identification may be requested for security reasons.

The meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Monica Welham, Executive Assistant, FirstNet, at (571) 665–6144 or *monica.welham@firstnet.gov,* at least five (5) business days before the applicable meeting(s).

The meetings will also be webcast. Please refer to FirstNet's Web site at *www.firstnet.gov* for webcast instructions and other information. Viewers experiencing any issues with the live webcast may email *support@sparkstreetdigital.com* or call 202–684–3361 x9 for support. A variety of automated troubleshooting tests are also available via the ''Troubleshooting Tips'' button on the webcast player. The meetings will also be available to interested parties by phone. To be connected to the meetings in listen-only mode by telephone, please dial 888–968–4305 and passcode 7898932.

Records: FirstNet maintains records of all Board proceedings. Minutes of the Board Meeting and the Committee meetings will be available at *www.firstnet.gov.*

Dated: November 23, 2015.

Eli Veenendaal,

Attorney Advisor, First Responder Network Authority.

[FR Doc. 2015–30273 Filed 11–27–15; 8:45 am]

BILLING CODE 3510–TL–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0084, Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery) 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations).

DATES: Comments must be submitted on or before January 29, 2016.

ADDRESSES: You may submit comments, identified by ''Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants,'' and Collection Number 3038–0084 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/.* Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Kezsbom, Special Counsel, 202–418–5372, *akezsbom@cftc.gov;* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (OMB Control No. 3038–0084). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012 the Commission adopted Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery) 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations) [1] pursuant to section 4s(j) [2] of the Commodity Exchange Act (''CEA''). The above regulations adopted by the Commission would, among other things, require swap dealers (''SD'') [3] and major swap participants (''MSP'') [4] to develop a risk management program (including a plan for business continuity and disaster recovery and policies and procedures designed to ensure compliance with applicable position limits). The Commission believes that the information collection obligations imposed by the above regulations are essential to ensuring that swap dealers and major swap participants maintain adequate and effective risk management programs and policies and procedures to ensure compliance with position limits. 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.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[5]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of registered SDs and MSPs. The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 106.

Estimated Average Burden Hours per Registrant: 1,148.5.

Estimated Aggregate Burden Hours: 121,741.

Frequency of Recordkeeping: As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

[1] 17 CFR 23.600, 23.601, 23.602, 23.603, 23. 606, 23.607.

[2] 7 U.S.C. 6s(j).

[3] For the definition of SD, *see* section 1a(49) of the CEA and Commission regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg).

[4] For the definitions of MSP, *see* section 1a(33) of the CEA and Commission regulation 1.3(hhh). 7 U.S.C. 1a(33) and 17 CFR 1.3(hhh).

[5] 17 CFR 145.9.

Dated: November 23, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–30235 Filed 11–27–15; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0087, Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collections of information mandated by Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants).

DATES: Comments must be submitted on or before January 29, 2016.

ADDRESSES: You may submit comments, identified by ''Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants,'' and Collection Number 3038–0087 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the Web site.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/*. Follow the instructions for submitting comments through the Portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*.

FOR FURTHER INFORMATION CONTACT: Adam Kezsbom, Special Counsel, 202–418–5372, *akezsbom@cftc.gov*; Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA,[1] 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 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants (OMB Control No. 3038–0087). This is a request for an extension of a currently approved information collection.

Abstract: On April 3, 2012, the Commission adopted Commission regulations 23.201 through 23.205 (Reporting, Recordkeeping, and Daily Trading Records Requirements For Swap Dealers and Major Swap Participants) [2] pursuant to sections 4s(f) [3] and 4s(g) [4] of the Commodity Exchange Act (''CEA'').[5] Commission regulations 23.201 through 23.205 require, among other things, swap dealers (''SD'') [6] and major swap participants (''MSP'') [7] to maintain transaction and position records of their swaps (including daily trading records) and to maintain specified business records (including records related to the governance and financial status of the swap dealer or major swap participant, complaints received by such SD or MSP and such SD or MSP's marketing and sales materials). They also require SDs and MSPs to report certain swap transaction data to swap data repositories, to satisfy certain real time public reporting requirements, and to maintain records of information reported to swap data depositories and for real time reporting purposes.[8] The Commission believes that the information collection obligations imposed by Commission regulations 23.201 through 23.205 are necessary to implement sections 4s(f) and 4s(g) of the CEA, including ensuring that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. 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.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[9]

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 23.201–23.205.

[3] 7 U.S.C. 4s(f).

[4] 7 U.S.C. 4s(g).

[5] 77 FR 20128.

[6] For the definition of SD, *see* section 1a(49) of the CEA and Commission regulation 1.3(ggg). 7 U.S.C. 1a(49) and 17 CFR 1.3(ggg).

[7] For the definitions of MSP, *see* section 1a(33) of the CEA and Commission regulation 1.3(hhh). 7 U.S.C. 1a(33) and 17 CFR 1.3(hhh).

[8] *See* 17 CFR 23.201–23.205.

[9] 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of registered SDs and MSPs. The respondent burden for this collection is estimated to be as follows:

Number of Registrants: 106.

Estimated Average Burden Hours per Registrant: 2,096.

Estimated Aggregate Burden Hours: 222,176.

Frequency of Recordkeeping/Third Party Disclosure: Daily, or as applicable.

There are no new capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: November 23, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–30236 Filed 11–27–15; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Charter Amendment of a Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is amending the charter for the Board of Regents, Uniformed Services University of the Health Sciences (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended pursuant to 10 U.S.C. 2113a and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a).

The Board is a statutory Federal advisory committee that assists the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences (''the University''). The Board shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the University.

The DoD, through the Office of the USD(P&R), provides support for the performance of the Board's functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

Under the provisions of 10 U.S.C. 2113a(b), the Board shall be composed of 15 members, appointed or designated as follows:

a. Nine persons outstanding in the field of health care, higher education administration, or public policy, who shall be appointed from civilian life by the Secretary of Defense;

b. The Secretary of Defense, or his designee, who shall be an *ex-officio* member;

c. The Surgeons General of the Uniformed Services, who shall be *ex-officio* members; and

d. The President of the University, who shall be a non-voting, *ex-officio* member. As directed by 10 U.S.C. 2113a(c), the term of office for each member of the Board (other than *ex-officio* members) shall be six years except that:

a. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and,

b. Any member whose term of office has expired shall continue to serve until his successor is appointed.

In accordance with 10 U.S.C. 2113a(d), one of the members of the Board (other than an *ex-officio* member) shall be designated as Chair by the Secretary of Defense and shall be presiding officer of the Board.

Board members that are not *ex-officio* members shall be appointed by the Secretary of Defense and their appointments will be renewed on an annual basis according to DoD policies and procedures.

Those members appointed by the Secretary of Defense from civilian life provide their best judgment on the matters before the Board, based upon each individual's professional experience. Board members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. Board members who are full-time or permanent part-time Federal officers or employees will serve as regular government employee (RGE) members pursuant to 41 CFR 102–3.130(a). No member may serve more than two consecutive terms of service without Secretary of Defense or Deputy Secretary of Defense approval.

Pursuant to 10 U.S.C. 2113a(e), Board members (other than *ex-officio* members), while attending conferences or meetings or while otherwise performing their duties as members, shall be entitled to receive compensation at a rate to be fixed by the Secretary of Defense. Each member is reimbursed for travel and per diem as it pertains to official business of the Board.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P&R), as the Board's Sponsor.

Such subcommittees will not work independently of the Board and will report all of their recommendations and advice solely to the Board for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Board, directly to the DoD or any Federal officers or employees. Each member, based upon his or her individual professional experience, provides his or her best judgment on the matters before the Board, and he or she does so in a manner that is free from conflict of interest. All subcommittee members will be appointed by the Secretary of Defense or the Deputy Secretary of Defense to a term of service of one-to-four years, with annual renewals, even if the individual is already a member of the Board. Subcommittee members will not serve more than two consecutive terms of service, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Subcommittee members who are not full-time or permanent part-time Federal

officers or employees will be appointed as an expert or consultant pursuant to 5 U.S.C. 3109, to serve as a SGE member. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a), to serve as a RGE member. With the exception of reimbursement of official travel and per diem related to the Board or its subcommittees, subcommittee members will serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Board's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD officer or employee, designated in accordance with established DoD policies and procedures. The Board's DFO is required to be in attendance at all meetings of the Board and any subcommittees for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO duly designated to the Board according to established DoD policies and procedures, must attend the entire duration of all meetings of the Board and any subcommittees.

The DFO, or the Alternate DFO, calls all meetings of the Board and its subcommittees; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: November 24, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–30311 Filed 11–27–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–OS–0133]

Proposed Collection; Comment Request

AGENCY: Consolidated Adjudications Facility, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DoD Consolidated Adjudications Facility Privacy Act Office 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 January 29, 2016.

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 Department of Defense Consolidated Adjudications Facility, Attn: E. A. Foster, Fort George Meade, Maryland 20755, or call the DoD CAF Privacy Act Office, at 301–833–3790.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: DoD Consolidations Facility Request for Records; OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to ensure needed information is collected to positively identify individuals who request records regarding themselves that are maintained by the DoD Consolidated Adjudications Facility. These records will also be used in any Privacy Act appeals or related litigation. The Law Enforcement, Congressional Inquiries, Department of Justice for Litigation, National Archives and Records Administration, and Data Breach Remediation, and Routine Uses found at *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.* The DoD Consolidated Adjudications Facility Request for Records form will also be used to refer records under the release authority of another Federal Agency.

Affected Public: Individuals or Households.

Annual Burden Hours: 10.

Number of Respondents: 120.

Responses per Respondent: 1.

Annual Responses: 120.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Respondents are DoD Consolidated Adjudications Facility employees who collect records maintained in available databases, based on information provided on the DoD Consolidated Adjudications Facility Request for Records form by the requester. The completed form is included in the Privacy Act case file, and documents the validity of the request and the records provided for anyone reviewing the case file. If the form is not included in the case file, individuals reviewing the file

cannot be readily assured of the records requested or that the requester provided all the required elements of a Privacy Act request.

Dated: November 24, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–30306 Filed 11–27–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Table Rock Lake Shoreline Management Plan Report and Environmental Impact Statement To Investigate Potential Significant Impacts, Either Positive or Negative, to Table Rock Lakes' Authorized Purposes of Flood Risk Management, Hydropower, Water Supply, Recreation, and Fish and Wildlife

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The Environmental Impact Statement (EIS) is being prepared pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR, 1500–1517), and the USACE implementing regulation, Policy and Procedures for Implementing NEPA, Engineer Regulation (ER) 200–2–2 (1988). The study is being conducted in accordance with the requirements of 36 CFR 327.30, dated 27 July 1990 and ER 1130–2–406, dated 31 October 1990. The EIS will evaluate potential impacts (beneficial and adverse) to socioeconomic conditions, cultural and ecological resources, public access and safety, impacts to lake use, public parks and recreation, aesthetics, infrastructure, lake water quality, terrestrial and aquatic fish and wildlife habitats, federally-listed threatened and endangered species, and cumulative impacts associated with past, current, and reasonably foreseeable future actions at Table Rock Lake.

ADDRESSES: Submit written comments to Mr. Bob Singleton, Biologist, U.S. Army Corps of Engineers, Planning and Environmental Division, Environmental Branch, Little Rock District, P.O. Box 867, Little Rock, AR 72203–0867. Comments will be accepted through December 31, 2015.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding the Draft Table Rock Lake Shoreline Management Plan EIS, please contact Mr. Bob Singleton, (501) 324–5018 or email: *Robert.Singleton@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. *Table Rock Lake:* Table Rock Lake is a multiple purpose water resource development project primarily for flood risk management and hydropower generation. Additional purposes include providing water storage to supply a fish hatchery (Pub. L. 86–93 of 1959); recreation and fish and wildlife mitigation, to the extent that those additional purposes do not adversely affect flood risk management, power generation, or other authorized purposes of the project (Flood Control Act of 1944 as amended in 1946, 1954, 1962, 1965 and 1968 and the Water Resources Act of 1996). Table Rock Lake is a major component of a comprehensive plan for water resource development in the White River Basin of Missouri and Arkansas. Additional beneficial uses include increased power output of downstream power stations resulting from the regulated flow from the Table Rock Lake project.

2. *Study Location:* The Table Rock Lake Civil Works project on the White River is bordered by two States: southwest Missouri (Stone, Taney, and Barry counties) and northwest Arkansas (Boone and Carroll counties). The total area contained in the Table Rock project, including both land and water surface, consists of 62,207 acres. Of this total, 2,576 acres are in flowage easement. The region is characterized by narrow ridges between deeply cut valleys that are well wooded with deciduous trees and scattered pine and cedar. When the lake is at the top of the conservation pool, the water area comprises 42,560 acres and 742 miles of shoreline within fee. The shoreline is irregular with topography ranging from steep bluffs to gentle slopes.

3. *Study History:* The original Table Rock Lake Shoreline Management Plan (also known as the Lakeshore Management Plan) was approved in April 1976. The SMP was reviewed, updated, and approved by the Division Engineer in May 1982. The SMP was supplemented in January 1988 and April 1989. The SMP was once again reviewed, updated, and approved by the Division Engineer in July 1990. The SMP was supplemented in August 1991 and in September 1992, the official conversion of a Lakeshore Management Plan to a SMP was approved by the District Engineer. The last review, update, and approval process of the Table Rock Lake SMP took place in March 1996.

4. *Scoping/Public Involvement.* The Public Scoping process provides information about the study to the public, serves as a mechanism to solicit agency and public input on alternatives and issues of concern, and ensures full and open participation in Scoping and review of the Draft EIS. Comments received as a result of this notice and news releases will be used to assist the preparers in identifying potential impacts to the quality of the human or natural environment. The Corps invites other Federal agencies, Native American Tribes, State and local agencies and officials, private organizations, and interested individuals to participate in the Scoping process by forwarding written comments to (see **ADDRESSES**). Interested parties may also request to be included on the mailing list for public distribution of announcements and documents.

5. *Issues/Alternatives:* The EIS will evaluate effects from a range of alternatives developed to address potential environmental concerns of the area. Anticipated significant issues to be addressed in the EIS include impacts on: (1) hydropower, (2) flooding, (3) recreation, (4) water supply, (5) fish and wildlife resources and habitats, and (6), other impacts identified by the public, agencies or USACE studies.

6. *Availability of the Draft EIS:* The Draft Environmental Impact Statement is anticipated to be available for public review in the spring of 2017, subject to the receipt of Federal funding.

Courtney W. Paul,

Colonel, US Army, District Engineer.

[FR Doc. 2015–30155 Filed 11–27–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0110]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Pell for Students Who Are Incarcerated Experimental Site Initiative

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2015.

ADDRESSES: To access and review all the documents related to the information

collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2015–ICCD–0110. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Pell for Students who are Incarcerated Experimental Site Initiative.

OMB Control Number: 1845–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector, State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 7,500.

Abstract: Through the Pell for Students who are Incarcerated experiment (also known as Second Chance Pell) the Department of Education will provide selected eligible postsecondary institutions with a waiver to the current statutory ban on incarcerated individuals, who are otherwise eligible, from receiving Federal Pell Grant funds to attend eligible postsecondary programs. The experiment aims to test whether participation in high-quality educational opportunities increases after access to financial aid for incarcerated adults is expanded and to examine how waiving the restriction influences individual academic and life outcomes.

Dated: November 24, 2015.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–30257 Filed 11–27–15; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 2015.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Child's Disclaimer Trust, Dolph Briscoe IV Trust and James Leigh Briscoe Trust; Janey B. Marmion, Uvalde, Texas, individually and as trustee of the Janey B. Marmion Revocable Trust and the Janey B. Marmion Child's Trust No. 2; Cele B. Carpenter, Dallas, Texas, individually and as trustee of the Cele B. Carpenter Child's Disclaimer Trust and Cele B. Carpenter 2008 Trust; John W. Carpenter, III, Dallas, Texas, trustee of the Benjamin H. Carpenter 2012 Legacy Trust, Austin W. Carpenter 2012 Legacy Trust and Bonner B. Carpenter 2012 Legacy Trust; Dolph Briscoe, IV, Austin, Texas; James Leigh Briscoe, Uvalde, Texas; Benjamin H. Carpenter, II, Dallas, Texas; Austin W. Carpenter, Dallas, Texas; and Bonner B. Carpenter, Dallas, Texas;* collectively acting as a group in concert, to retain voting shares of Briscoe Ranch, Inc., Uvalde, Texas, and indirectly acquire voting shares of First State Bank of Uvalde, Uvalde, Texas and Security State Bank, Pearsall, Texas.

Board of Governors of the Federal Reserve System, November 24, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–30289 Filed 11–27–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1649–N]

Medicare Program; Announcement of the Advisory Panel on Hospital Outpatient Payment (HOP Panel) Meeting on March 14–15, 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces a meeting of the Advisory Panel on Hospital Outpatient Payment (the Panel) for March 14–15, 2016. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) on the clinical integrity of the Ambulatory Payment Classification (APC) groups and their associated weights and hospital outpatient therapeutic services supervision issues.

DATES: *Meeting Dates:* The first semi-annual meeting in 2016 is scheduled for the following dates and times. The times listed in this notice are Eastern Daylight Time (EDT) and are approximate times;

consequently, the meetings may last longer or shorter than the times listed in this notice, but will not begin before the posted times:

- Monday, March 14, 2016, 9 a.m. to 5 p.m. EDT
- Tuesday, March 15, 2016, 9 a.m. to 5 p.m. EDT

Meeting Information Updates:

The actual meeting hours and days will be posted in the agenda. The Panel meeting will be conducted only via teleconference and webcast. The teleconference agenda, dial-in instructions, and related webcast and webinar details will be posted on the CMS Web site approximately 1 week prior to the meeting at: *http://cms.hhs.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

We note that this is a teleconference-only meeting. There will not be an in-person meeting location for this public Panel meeting.

Deadlines:

Deadline for Presentations and Comments:

Presentations and comments may be submitted by email to the Designated Federal Official's (DFO's) email inbox (*APCPanel@cms.hhs.gov*). If necessary, presentations and comments can instead be mailed to the Designated Federal Official at the address provided below. Presentations or comments and form CMS–20017, (located at *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf*) must be received by 5 p.m. EDT, Friday, January 29, 2016. Presentations and comments that are not received by the due date will be considered late and will not be included on the agenda. In commenting, please refer to file code CMS–1638–N. For this teleconference, we are aiming to have all presentations and comments available on the CMS Web site. Materials on the CMS Web site must be 508 compliant to ensure access to federal employees and members of the public with and without disabilities. We therefore encourage presenters and commenters to refer to guidance on making documents Section 508 compliant as they draft their submissions, and, whenever possible, to submit their presentations and comments in a 508 compliant form. Such guidance is available at *http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/Section508/508-Compliant-doc.html.* CMS will review presentations and comments for 508 compliance, and place compliant materials on its Web site. As resources permit, CMS will also convert non-compliant submissions to 508 compliant forms, and offer assistance to submitters who wish to make their submissions 508 compliant. All non-compliant materials will be available to the public upon request. Those wishing to access such materials should contact the Designated Federal Official and her address, email and phone number are provided below.

Meeting Registration Timeframe:

Registration is not required to participate in this teleconference public meeting. Interested participants will be able to access the teleconference, webcast, and webinar by following the instructions on the above referenced CMS Web site.

Meeting Webinar, Webcast, and Teleconference:

The public may participate in this meeting via webinar, webcast or by teleconference. During the scheduled meeting, webcasting is accessible online at: *http://cms.gov/live.* Webinar and teleconference dial-in information will appear on the final meeting agenda, which will be posted on the CMS Web site about 1 week prior to the meeting at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

FOR FURTHER INFORMATION CONTACT:

Designated Federal Official (DFO):

Carol Schwartz, DFO, 7500 Security Boulevard, Mail Stop: C4–04–25, Woodlawn, MD 21244–1850. Phone: (410) 786–3985. Email: *APCPanel@cms.hhs.gov.*

Send email copies to the following address: Email: *APCPanel@cms.hhs.gov.*

News Media:

Representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines:

The phone number for the CMS Federal Advisory Committee Hotline is (410) 786–3985.

Web sites:

For additional information on the Panel and updates to the Panel's activities, we refer readers to view our Web site at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html.*

Information about the Panel and its membership in the Federal Advisory Committee Act (FACA) database are also located at: *http://facadatabase.gov/.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Department of Health and Human Services (DHHS) (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act) and is allowed by section 222 of the Public Health Service Act (PHS Act) to consult with an expert outside panel, that is, the Advisory Panel on Hospital Outpatient Payment (the Panel) regarding the clinical integrity of the Ambulatory Payment Classification (APC) groups and relative payment weights and hospital outpatient therapeutic services supervision issues. The Panel is governed by the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), to set forth standards for the formation and use of advisory panels.

The Charter provides that the Panel shall meet up to 3 times annually. We consider the technical advice provided by the Panel as we prepare the proposed and final rules to update the outpatient prospective payment system (OPPS).

II. Agenda

The agenda for the March 14, 2016 through March 15, 2016, meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient-only list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.
- Recommending the appropriate supervision level (general, direct, or personal) for individual hospital outpatient therapeutic services.

The Agenda will be posted on the CMS Web site at *http://cms.hhs.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonAmbulatoryPaymentClassificationGroups.html* approximately 1 week before the meeting.

III. Presentations

The subject matter of any presentation and/or comment matter must be within the scope of the Panel designated in the Charter. Any presentations or comments outside of the scope of this Panel will be returned or requested for amendment. Unrelated topics include, but are not limited to, the conversion factor, charge compression, revisions to the cost report, pass-through payments,

correct coding, new technology applications (including supporting information/documentation), provider payment adjustments, supervision of hospital outpatient diagnostic services and the types of practitioners that are permitted to supervise hospital outpatient services. The Panel may not recommend that services be designated as nonsurgical extended duration therapeutic services.

The Panel may use data collected or developed by entities and organizations other than DHHS and CMS in conducting its review. We recommend organizations submit data for CMS staff and the Panel's review.

All presentations are limited to 5 minutes, regardless of the number of individuals or organizations represented by a single presentation. Presenters may use their 5 minutes to represent either one or more agenda items. All 508 compliant presentations and comments will be placed on the CMS Web site. For guidance on making documents Section 508 compliant, we refer readers to *http://www.cms.gov/Research-Statistics-Data-and-Systems/CMS-Information-Technology/Section508/508-Compliant-doc.html.* All non-508 compliant presentations and comments will be available to the public upon request. Those wishing to access such materials should contact the Designated Federal Official and her address, email and phone number are provided above in the section that provides contact information.

In order to consider presentations and/or comments, we will need to receive the following:

1. An *email copy* of the presentation or comments sent to the DFO mailbox, *APCPanel@cms.hhs.gov* or, if unable to submit by email, a hard copy sent to the Designated Federal Official at the address noted under **FOR FURTHER INFORMATION CONTACT**.

2. Form *CMS–20017* with complete contact information that includes name, address, phone number, and email addresses for all presenters and commenters and a contact person that can answer any questions and or provide revisions that are requested for the presentation. Presenters and commenters must clearly explain the actions that they are requesting CMS to take in the appropriate section of the form. A presenter's/commenter's relationship with the organization that they represent must also be clearly listed.

- The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*
- We encourage presenters to make efforts to ensure that their presentations and comments are 508 compliant.

IV. Oral Comments

In addition to formal oral presentations, which are limited to 5 minutes total per presentation, there will be an opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

V. Meeting Participation

This is a teleconference-only meeting. The Panel meeting format is teleconference, webcast, and webinar. There will not be an in-person meeting location for this public Panel meeting. In addition, no meeting registration is required to access the meeting.

VIII. Panel Recommendations and Discussions

The Panel's recommendations at any Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day of the meeting, before the final adjournment. These recommendations will be posted to our Web site after the meeting.

IX. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: November 12, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–30315 Filed 11–27–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1634–N]

Medicare Program; Town Hall Meeting on the FY 2017 Applications for New Medical Services and Technologies Add-On Payments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a Town Hall meeting in accordance with section 1886(d)(5)(K)(viii) of the Social Security Act (the Act) to discuss fiscal year (FY) 2017 applications for add-on payments for new medical services and technologies under the hospital inpatient prospective payment system (IPPS). Interested parties are invited to this meeting to present their comments, recommendations, and data regarding whether the FY 2017 new medical services and technologies applications meet the substantial clinical improvement criterion.

DATES: *Meeting Date:* The Town Hall Meeting announced in this notice will be held on Tuesday, February 16, 2016. The Town Hall Meeting will begin at 9:00 a.m. Eastern Standard Time (e.s.t.) and check-in will begin at 8:30 a.m. e.s.t.

Deadline for Registration for Participants (not Presenting) at the Town Hall Meeting and Submitting Requests for Special Accommodations: The deadline to register to attend the Town Hall Meeting and submit requests for special accommodations is 5:00 p.m., e.s.t. on Tuesday, February 2, 2016.

Deadline for Registration of Presenters at the Town Hall Meeting: The deadline to register to present at the Town Hall Meeting is 5:00 p.m., e.s.t. on Monday, February 1, 2016.

Deadline for Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Written comments and agenda items for discussion at the Town Hall Meeting, including agenda items by presenters, must be received by 5:00 p.m. e.s.t. on Monday, February 1, 2016. In addition to materials submitted for discussion at the Town Hall Meeting, individuals may submit other written comments after the Town Hall Meeting, as specified in the **ADDRESSES** section of this notice, on whether the service or technology represents a substantial clinical improvement. These comments must be received by 5:00 p.m. e.s.t. on Friday, February 26, 2016, for consideration in the FY 2017 IPPS proposed rule.

ADDRESSES: *Meeting Location:* The Town Hall Meeting will be held in the main Auditorium in the central building of the Centers for Medicare and Medicaid Services located at 7500 Security Boulevard, Baltimore, MD 21244–1850.

In addition, we are providing two alternatives to attending the meeting in person—(1) there will be an open toll-free phone line to call into the Town Hall Meeting; or (2) participants may

view and participate in the Town Hall Meeting via live stream technology or webinar. Information on these options is discussed in section II.B. of this notice.

Registration and Special Accommodations: Individuals wishing to participate in the meeting must register by following the on-line registration instructions located in section III. of this notice or by contacting staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individuals who need special accommodations should contact staff listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Submission of Agenda Item(s) or Written Comments for the Town Hall Meeting: Each presenter must submit agenda item(s) regarding whether a FY 2017 application meets the substantial clinical improvement criterion. Agenda items, written comments, questions or other statements must not exceed three single-spaced typed pages and may be sent via email to *newtech@cms.hhs.gov*.

FOR FURTHER INFORMATION CONTACT:
Michael Treitel, (410) 786–4552, *michael.treitel@cms.hhs.gov*, or Noel Manlove, (410) 786–5161, *noel.manlove@cms.hhs.gov.*

Alternatively, you may forward your requests via email to *newtech@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Add-On Payments for New Medical Services and Technologies Under the IPPS

Sections 1886(d)(5)(K) and (L) of the Social Security Act (the Act) require the Secretary to establish a process of identifying and ensuring adequate payments to acute care hospitals for new medical services and technologies under Medicare. Effective for discharges beginning on or after October 1, 2001, section 1886(d)(5)(K)(i) of the Act requires the Secretary to establish (after notice and opportunity for public comment) a mechanism to recognize the costs of new services and technologies under the hospital inpatient prospective payment system (IPPS). In addition, section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered ''new'' if it meets criteria established by the Secretary (after notice and opportunity for public comment). (See the fiscal year (FY) 2002 IPPS proposed rule (66 FR 22693, May 4, 2001) and final rule (66 FR 46912, September 7, 2001) for a more detailed discussion.)

In the September 7, 2001 final rule (66 FR 46914), we noted that we evaluated a request for special payment for a new medical service or technology against the following criteria in order to determine if the new technology meets the substantial clinical improvement requirement:

- The device offers a treatment option for a patient population unresponsive to, or ineligible for, currently available treatments.
- The device offers the ability to diagnose a medical condition in a patient population where that medical condition is currently undetectable or offers the ability to diagnose a medical condition earlier in a patient population than allowed by currently available methods. There must also be evidence that use of the device to make a diagnosis affects the management of the patient.
- Use of the device significantly improves clinical outcomes for a patient population as compared to currently available treatments. Some examples of outcomes that are frequently evaluated in studies of medical devices are the following:

++ Reduced mortality rate with use of the device.

++ Reduced rate of device-related complications.

++ Decreased rate of subsequent diagnostic or therapeutic interventions (for example, due to reduced rate of recurrence of the disease process).

++ Decreased number of future hospitalizations or physician visits.

++ More rapid beneficial resolution of the disease process treatment because of the use of the device.

++ Decreased pain, bleeding or other quantifiable symptoms.

++ Reduced recovery time.

In addition, we indicated that the requester is required to submit evidence that the technology meets one or more of these criteria.

Section 503 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1886(d)(5)(K)(viii) of the Act to revise the process for evaluating new medical services and technology applications by requiring the Secretary to do the following:

- Provide for public input regarding whether a new service or technology represents an advance in medical technology that substantially improves the diagnosis or treatment of Medicare beneficiaries before publication of a proposed rule.
- Make public and periodically update a list of all the services and technologies for which an application is pending.
- Accept comments, recommendations, and data from the public regarding whether the service or technology represents a substantial improvement.
- Provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS as to whether the service or technology represents a substantial improvement before publication of a proposed rule.

The opinions and presentations provided during this meeting will assist us as we evaluate the new medical services and technology applications for FY 2017. In addition, they will help us to evaluate our policy on the IPPS new technology add-on payment process before the publication of the FY 2017 IPPS proposed rule.

II. Town Hall Meeting and Conference Calling/Live Streaming Information

A. Format of the Town Hall Meeting

As noted in section I. of this notice, we are required to provide for a meeting at which organizations representing hospitals, physicians, manufacturers and any other interested party may present comments, recommendations, and data to the clinical staff of CMS concerning whether the service or technology represents a substantial clinical improvement. This meeting will allow for a discussion of the substantial clinical improvement criteria for each of the FY 2017 new medical services and technology add-on payment applications. Information regarding the applications can be found on our Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.*

The majority of the meeting will be reserved for presentations of comments, recommendations, and data from registered presenters. The time for each presenter's comments will be approximately 10 to 15 minutes and will be based on the number of registered presenters. Presenters will be scheduled to speak in the order in which they register and grouped by new technology applicant. Therefore, individuals who would like to present must register and submit their agenda item(s) via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

In addition, written comments will also be accepted and presented at the meeting if they are received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice. Written comments may also be submitted after the meeting for our consideration. If the comments are to be considered before the publication of the

proposed rule, the comments must be received via email to *newtech@cms.hhs.gov* by the date specified in the **DATES** section of this notice.

B. Conference Call, Live Streaming, and Webinar Information

For participants who cannot attend the Town Hall Meeting in person, an open toll-free phone line, (877) 267–1577, has been made available. The Meeting Place meeting ID is 998–698–471.

Also, there will be an option to view and participate in the Town Hall Meeting via live streaming technology or a webinar. Information on the option to participate via live streaming technology or a webinar will be provided through an upcoming listserv notice and posted on the New Technology Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Continue to check the Web site for updates.

C. Disclaimer

We cannot guarantee reliability for live streaming technology or a webinar.

III. Registration Instructions

The Division of Acute Care in CMS is coordinating the meeting registration for the Town Hall Meeting on substantial clinical improvement. While there is no registration fee, individuals planning to attend the Town Hall Meeting in person must register to attend.

Registration may be completed on-line at the following Web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/AcuteInpatientPPS/newtech.html.* Select the link at the bottom of the page ''Register to Attend the New Technology Town Hall Meeting''. After completing the registration, on-line registrants should print the confirmation page(s) and bring it with them to the meeting(s).

If you are unable to register on-line, you may register by sending an email to *newtech@cms.hhs.gov.* Please include your name, address, telephone number, email address and fax number. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

IV. Security, Building, and Parking Guidelines

Because this meeting will be located on Federal property, for security reasons, any persons wishing to attend this meeting must register by the date specified in the **DATES** section of this notice. Please allow sufficient time to go through the security checkpoints. It is suggested that you arrive at 7500 Security Boulevard no later than 8:30 a.m. e.s.t. if you are attending the Town Hall Meeting in person so that you will be able to arrive promptly for the meeting.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. The Real ID Act of 2005 (Pub. L. 109–13), establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits Federal agencies from accepting an official driver's license or ID card from a state unless the Department of Homeland Security determines that the state is in compliance with the Real ID Act. (For information regarding the states or territories that are not in compliance with the Real ID Act see *http://www.dhs.gov/real-id-enforcement-brief.*) If a state or territory is listed on the *http://www.dhs.gov/real-id-enforcement-brief* Web site as non-compliant, a photographic ID (such as a driver's license) issued by one of those states or territories will not be accepted as identification to enter Federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a passport) to gain entrance into Baltimore-based CMS buildings.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: *Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.*

All visitors must be escorted in all areas other than the lower level lobby and cafeteria area and first floor auditorium and conference areas in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Section 503 of Pub. L. 108–173.

Dated: November 12, 2015.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2015–30314 Filed 11–27–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 3, 2016, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the

appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: During the morning session, the committee will discuss cognitive dysfunction in major depressive disorder (MDD). This is an evolving concept and experts in the field have not yet reached consensus as to whether cognitive dysfunction in MDD is a distinct entity. The committee will consider the clinical presentation of cognitive dysfunction in MDD, as well as methods for assessing this condition.

During the afternoon session, the committee will discuss new drug application 204447/supplemental new drug application 006, for the effectiveness of vortioxetine for the treatment of cognitive dysfunction in MDD, submitted by Takeda Development Center Americas, Inc.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before January 20, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 11, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 12, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 23, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–30296 Filed 11–27–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters, who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on October 1, 2015, through October 31, 2015. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, Room 11C–26, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: November 19, 2015.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Maria Crespo on behalf of N. S., Cooper City, Florida, Court of Federal Claims No: 15–1100V
2. Loraine Herod, Cleveland, Ohio, Court of Federal Claims No: 15–1101V
3. Linda Gusky, Mt. Pleasant, Pennsylvania, Court of Federal Claims No: 15–1102V
4. David Helton, McKinney, Texas, Court of Federal Claims No: 15–1105V
5. Joanne Falk, Gaithersburg, Maryland, Court of Federal Claims No: 15–1106V
6. Karen Jehlen, Sussex, New Jersey, Court of Federal Claims No: 15–1107V
7. Galen L. Strong, Charlottesville, Virginia, Court of Federal Claims No: 15–1108V
8. Dennis Vivians, Chicago, Illinois, Court of Federal Claims No: 15–1111V
9. Dorothy Handel, Sterling, Illinois, Court of Federal Claims No: 15–1112V
10. Glenda Neher, Oklahoma City, Oklahoma, Court of Federal Claims No: 15–1114V
11. James A. Gustafson, El Jebel, Colorado, Court of Federal Claims No: 15–1115V
12. Jeanette Phillips, Boston, Massachusetts, Court of Federal Claims No: 15–1118V
13. Conception Plevak, Milwaukee, Wisconsin, Court of Federal Claims No: 15–1119V
14. Rachal P. LaPrairie, Alexandria, Louisiana, Court of Federal Claims No: 15–1120V
15. Seth Burk, Danville, Pennsylvania, Court of Federal Claims No: 15–1123V
16. Ashley House, Jacksonville, Florida, Court of Federal Claims No: 15–1124V
17. Ellyson Ostrovsky, Beachwood, Ohio, Court of Federal Claims No: 15–1125V
18. Thomas Simkiss, Newtown, Pennsylvania, Court of Federal Claims No: 15–1127V
19. Kathleen Heyer, Cedar Rapids, Iowa, Court of Federal Claims No: 15–1128V
20. Jamie Saracino, Dade City, Florida, Court of Federal Claims No: 15–1129V
21. James Woodward, Baltimore, Maryland, Court of Federal Claims No: 15–1130V
22. Susanne Whirley, Baxter, Minnesota, Court of Federal Claims No: 15–1131V
23. Denise Guzman, Whittier, California, Court of Federal Claims No: 15–1133V
24. Marvin Bradley Knight, Springfield, Missouri, Court of Federal Claims No: 15–1134V
25. Robert Leonard, Napa, California, Court of Federal Claims No: 15–1135V
26. Andrew Elefant, Lafayette, California, Court of Federal Claims No: 15–1136V
27. Pitey Morgan, Boston, Massachusetts, Court of Federal Claims No: 15–1137V
28. Janice DeWall, St. Louis Park, Minnesota, Court of Federal Claims No: 15–1138V
29. Ana Tan, Humble, Texas, Court of Federal Claims No: 15–1141V
30. Ashok Patel, Alexandria, California, Court of Federal Claims No: 15–1143V
31. Lacy Miron on behalf of M. M., Eugene, Oregon, Court of Federal Claims No: 15–1144V
32. Jessica Reape, Fort Drum, New York, Court of Federal Claims No: 15–1146V
33. Sharon Nathans, Encinitas, California, Court of Federal Claims No: 15–1147V
34. Alyce Schwenn, Milwaukee, Wisconsin, Court of Federal Claims No: 15–1148V
35. John Scannell, Oak Lawn, Illinois, Court of Federal Claims No: 15–1149V
36. Albert Arias, Orange, Connecticut, Court of Federal Claims No: 15–1150V
37. Mazie Lawson, Versailles, Kentucky, Court of Federal Claims No: 15–1152V
38. Juana Olga Durand on behalf of Jorge Antonio Durand, Deceased, Hollywood, Florida, Court of Federal Claims No: 15–1153V
39. Maurice Hoss, Meridian, Idaho, Court of Federal Claims No: 15–1154V
40. Debra Daniels, Newport Beach, California, Court of Federal Claims No: 15–1155V
41. Allison Villafane, Stoney Brook, New York, Court of Federal Claims No: 15–1156V
42. Lisa Stuffle, Boston, Massachusetts, Court of Federal Claims No: 15–1159V
43. Robert Boyer, Boston, Massachusetts, Court of Federal Claims No: 15–1160V
44. Christina Coffey and James Coffey on behalf of E. C., Lakeland, Florida, Court of Federal Claims No: 15–1161V
45. Dione Mitchell, Brandon, Florida, Court of Federal Claims No: 15–1162V
46. David Powell, Seneca, South Carolina, Court of Federal Claims No: 15–1164V
47. Kathryn S. Leffler, Elgin, Illinois, Court of Federal Claims No: 15–1165V
48. Richard C. Zug and Laura C. Zug on behalf of T. E. Z., Raleigh, North Carolina, Court of Federal Claims No: 15–1166V
49. Ramona Knorr, Knoxville, Tennessee, Court of Federal Claims No: 15–1169V

50. Audrey M. Abbott, Elgin, Illinois, Court of Federal Claims No: 15–1170V
51. Carol A. Marsyla, Stillwater, Minnesota, Court of Federal Claims No: 15–1172V
52. Maheshchan Inamdar, Wellesley Hills, Massachusetts, Court of Federal Claims No: 15–1173V
53. Colt Sanders, Dallas, Texas, Court of Federal Claims No: 15–1174V
54. Jeffrey Jarvis and Jessica Tomei on behalf of S. C. G. J., Berkeley, California, Court of Federal Claims No: 15–1176V
55. Marlene M. Nottage, Lakewood, Ohio, Court of Federal Claims No: 15–1177V
56. Joni Marco, El Cajon, California, Court of Federal Claims No: 15–1178V
57. Mary Radhakrishnan, Orange Park, Florida, Court of Federal Claims No: 15–1179V
58. Cinthia Van Alst on behalf of J. V., Phoenix, Arizona, Court of Federal Claims No: 15–1180V
59. Diane Odean Patrick, Scottsdale, Arizona, Court of Federal Claims No: 15–1181V
60. Joseph Grimaudo, Odessa, Florida, Court of Federal Claims No: 15–1182V
61. Ronny Dean Linebarger, Fort Worth, Texas, Court of Federal Claims No: 15–1185V
62. Mandy Bangerter on behalf of D. B., Cheyenne, Wyoming, Court of Federal Claims No: 15–1186V
63. Roosevelt Harper, Boston, Massachusetts, Court of Federal Claims No: 15–1188V
64. Alicia Lusk, Jacksonville, Florida, Court of Federal Claims No: 15–1190V
65. Victoria Thompson, La Plata, Maryland, Court of Federal Claims No: 15–1192V
66. Huest Swilley, Pensacola, Florida, Court of Federal Claims No: 15–1193V
67. William Smith, Middleburg Heights, Ohio, Court of Federal Claims No: 15–1194V
68. Deborah Bohm, Grovetown, Georgia, Court of Federal Claims No: 15–1195V
69. Justin Diaz on behalf of D. J. D., Panama City, Florida, Court of Federal Claims No: 15–1196V
70. Mark Thomann, Chicago, Illinois, Court of Federal Claims No: 15–1199V
71. Gary Willingham, Houston, Texas, Court of Federal Claims No: 15–1204V
72. Shirley Epps, Trappe, Pennsylvania, Court of Federal Claims No: 15–1205V
73. Kelly Tavano, Boston, Massachusetts, Court of Federal Claims No: 15–1206V
74. Roxanna Sarver, Littleton, New Hampshire, Court of Federal Claims No: 15–1207V
75. Sondra Ritchie-Coppler, Visalia, California, Court of Federal Claims No: 15–1208V
76. Erin Martinelli, Galt, California, Court of Federal Claims No: 15–1209V
77. Diann Alexander, Lebanon, Ohio, Court of Federal Claims No: 15–1211V
78. Adam Jack Kinder, Fort Benning, Georgia, Court of Federal Claims No: 15–1212V
79. Tadek Towpik and Renata Towpik on behalf of A. T., Chicago, Illinois, Court of Federal Claims No: 15–1213V
80. Kelly michelle Izell, Chattanooga, Tennessee, Court of Federal Claims No: 15–1214V
81. Christina Marshall, Forest Hill, Maryland, Court of Federal Claims No: 15–1215V
82. Jerome Unick, Wethersfield, Connecticut, Court of Federal Claims No: 15–1216V
83. John Rajotte, Washington, District of Columbia, Court of Federal Claims No: 15–1218V
84. Lindsey Johnsen, Baraboo, Wisconsin, Court of Federal Claims No: 15–1219V
85. Troy Sweatt and Brittany Sweatt on behalf of E. S., Dyersburg, Tennessee, Court of Federal Claims No: 15–1222V
86. Jessica Williams on behalf of E. W. H., Cheyenne, Wyoming, Court of Federal Claims No: 15–1224V
87. Debra Kelly, Hampstead, North Carolina, Court of Federal Claims No: 15–1225V
88. Connie M. Johns, Philipsburg, Pennsylvania, Court of Federal Claims No: 15–1226V
89. Lea Lydon, Lakeland, Florida, Court of Federal Claims No: 15–1227V
90. Diane Riddle, Bend, Oregon, Court of Federal Claims No: 15–1228V
91. Cynthia Bassett, Dallas, Georgia, Court of Federal Claims No: 15–1231V
92. Nancy Meramo on behalf of Glenn Meramo, Deceased, Vienna, Virginia, Court of Federal Claims No: 15–1234V
93. Barbara Stanley, Woodland Hills, California, Court of Federal Claims No: 15–1235V
94. Cathy Wesloskie, Baden, Pennsylvania, Court of Federal Claims No: 15–1237V
95. Paul R. Rodgers, Memphis, Tennessee, Court of Federal Claims No: 15–1238V
96. Jessica Jones, Vienna, Virginia, Court of Federal Claims No: 15–1239V
97. Kathleen Killea, Staten Island, New York, Court of Federal Claims No: 15–1240V
98. James Young, Chicago, Illinois, Court of Federal Claims No: 15–1241V
99. Kalli Kline, Ketchikan, Alaska, Court of Federal Claims No: 15–1243V
100. Steven Totten, Terre Haute, Indiana, Court of Federal Claims No: 15–1246V
101. Heather Chapell on behalf of G. R. C., Lithia, Florida, Court of Federal Claims No: 15–1247V
102. Bertha Hixson, Hixson, Tennessee, Court of Federal Claims No: 15–1248V
103. Bruce Miller, Highlands Ranch, Colorado, Court of Federal Claims No: 15–1251V
104. Stacey Spossey, Mooresville, North Carolina, Court of Federal Claims No: 15–1254V
105. Louai Salim, Phoenix, Arizona, Court of Federal Claims No: 15–1255V
106. Linda St. George, Kennewick, Washington, Court of Federal Claims No: 15–1257V
107. Taylor Lee Reynolds, Reno, Nevada, Court of Federal Claims No: 15–1258V
108. James D. Ellis, Firestone, Colorado, Court of Federal Claims No: 15–1259V
109. Deborah Kaiser, Pleasant Prairie, Wisconsin, Court of Federal Claims No: 15–1261V
110. Sirna Kyles, Las Vegas, Nevada, Court of Federal Claims No: 15–1262V
111. Linda K. Schupp, Tonawanda, New York, Court of Federal Claims No: 15–1264V
112. Kathleen Romero, Bridgewater, Massachusetts, Court of Federal Claims No: 15–1265V
113. Michael Crist, Phoenix, Arizona, Court of Federal Claims No: 15–1267V
114. Frederick J. Kruger, D.P.M., Fresno, California, Court of Federal Claims No: 15–1270V
115. Ricardo Gascon, Honolulu, Hawaii, Court of Federal Claims No: 15–1272V
116. Helene Quintana, Boston, Massachusetts, Court of Federal Claims No: 15–1273V
117. Estate of Cindy Bernardini, Rochester, New York, Court of Federal Claims No: 15–1274V
118. Janice Elliot, Hampton, Virginia, Court of Federal Claims No: 15–1276V
119. Kathy Jo Neverve, Kansas City, Missouri, Court of Federal Claims No: 15–1277V

120. Debra Allen, Wellesley Hills, Massachusetts, Court of Federal Claims No: 15–1278V
121. Paul McKenzie, Beverly Hills, California, Court of Federal Claims No: 15–1280V
122. Toni Boom, Dresher, Pennsylvania, Court of Federal Claims No: 15–1282V
123. Anna Hitt, Vienna, Virginia, Court of Federal Claims No: 15–1283V
124. Bonita Reeves, Vienna, Virginia, Court of Federal Claims No: 15–1284V
125. Alfred Altmiller, Denton, Texas, Court of Federal Claims No: 15–1285V
126. Carla Grivna on behalf of M G, Beverly Hills, California, Court of Federal Claims No: 15–1286V
127. Mary Clare Smith on behalf of C L S, Ormond Beach, Florida, Court of Federal Claims No: 15–1287V
128. Tressa J. Nelson, New London, Wisconsin, Court of Federal Claims No: 15–1288V
129. Alfred Anderson, Neptune, New Jersey, Court of Federal Claims No: 15–1289V
130. Susan Cottingham on behalf of K C, Phoenix, Arizona, Court of Federal Claims No: 15–1291V
131. Jennifer Soghomonian on behalf of K S, Lakewood, California, Court of Federal Claims No: 15–1292V
132. Ana Yuricek on behalf of Jeremy Yuricek, New York, New York, Court of Federal Claims No: 15–1293V
133. Lisa Santoroski, New York, New York, Court of Federal Claims No: 15–1294V

[FR Doc. 2015–30259 Filed 11–27–15; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–0302–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for revision of the approved information collection assigned OMB control number 0990–0302, scheduled to expire on December 31, 2015. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before December 30, 2015.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the OMB control number 0990–0302–30D for reference. *Proposed Project:* Medical Reserve Corps Unit Profile and Reports (Revision)–OMB No. 0990–0302—Office of the Secretary/Office of the Assistant Secretary for Health/Office of the Surgeon General/Division of Civilian Volunteer Medical Reserve Corps (OS/OASH/OSG/DCVMRC) is changed to Office of the Secretary/Office of the Assistant Secretary for Preparedness and Response/Office of Emergency Management/Division of the Civilian Volunteer Medical Reserve Corps. This reorganization was effective as of 26 November 2014 as published in the **Federal Register** [FR Doc. 2014–28030 Filed 11–25–14; 8:45am].

Abstract: Medical Reserve Corps units are currently located in almost 1,000 communities across the United States, and represent a resource of more than 205,000 volunteers. In order to continue supporting the MRC units in communities across the United States, and to continue planning for future emergencies that are national in scope, detailed information about the MRC units, including unit demographics, contact information (regular and emergency), volunteer numbers, and information about activities is needed by the Division of Civilian Volunteer Medical Reserve Corps (DCVMRC). MRC Unit Leaders are asked to update this information on the MRC Web site at least quarterly, and to participate in a Technical Assistance Assessment at least annually. The MRC unit data collected has expanded to include a self-assessment tool for use by unit leaders to aid in developing their MRC unit. This OMB revision request is for 3 years.

ESTIMATED ANNUALIZED BURDEN TABLE

Collection tool	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Unit Profile	MRC Unit Leader	1,000	4	30/60	2,000
TA Assessment	MRC Unit Leader	1,000	1	1	1,000
Factors for Success	MRC Unit Leader	1,000	4	30/60	2,000
Unit Activity Reporting	MRC Unit Leader	1,000	4	15/60	1,000
Total					6,000

Terry S. Clark,

Office of the Secretary, Asst Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2015–30272 Filed 11–27–15; 8:45 am]

BILLING CODE 4150–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council

on HIV/AIDS (PACHA) will hold a conference call to discuss and vote on a letter to President Obama and Secretary Burwell asking for support of PACHA's recommendations to address persistent disparities in HIV-related clinical outcomes through the implementation of standardized HIV clinical performance measures. The call will be open to the public.

DATES: The call will be held on Monday, December 14, 2015, at 4:30 p.m. (ET) to approximately 5:30 p.m. (ET).

ADDRESSES: The conference call-in number for members of the public in the United States or Canada is (888) 390–3967 and the International dial-in number is (862) 255–5351.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue SW., Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 205–1178. More detailed information about PACHA can be obtained by accessing the Council's Web site *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs, policies, and research to promote effective treatment, prevention, and cure of HIV disease and AIDS, including considering common co-morbidities of those infected with HIV as needed to promote effective prevention and treatment and quality services to persons living with HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at *www.aids.gov/pacha.*

Pre-registration for the call is advisable and can be accomplished by contacting Caroline Talev at *caroline.talev@hhs.gov.* Members of the public will have the opportunity to listen in on the conference call.

Dated: November 16, 2015.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2015–30260 Filed 11–27–15; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Cures Acceleration Network Review Board.

The meeting will be open to the public, viewing virtually by WebEx.

Individuals can register to view and access the meeting by the link below.

https://nih.webex.com/nih/onstage/g.php?MTID=e75f38f731121aae102c9a0e75cabdaf9

1. Go to ''Event Status'' on the left hand side of page, then click ''Register''. On the registration form, enter your information and then click ''Submit'' to complete the required registration.

2. You will receive a personalized email with the live event link.

Name of Committee: Cures Acceleration Network Review Board.

Date: December 11, 2015.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: The CAN Review Board will meet virtually to discuss updates regarding CAN programs and next steps.

Place: National Institutes of Health, One Democracy Plaza, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, One Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to finalizing the agenda and scheduling of meeting topics.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: November 23, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–30230 Filed 11–27–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2015–0077]

Privacy Act of 1974; Department of Homeland Security U.S. Citizenship and Immigration Services-010 Asylum Information and Pre-Screening System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Citizenship and Immigration Services-010 Asylum Information and Pre-Screening System of Records.'' This system of records allows the Department of Homeland Security/U.S. Citizenship Immigration Services to collect and maintain records pertaining to asylum applications, credible fear and reasonable fear screening processes, and applications for benefits provided by section 203 of the Nicaraguan Adjustment and Central American Relief Act.

As a result of a biennial review of this system, Department of Homeland Security/U.S. Citizenship and Immigration Services is updating this system of records notice to: (1) Clarify that data originating from this system of records may be stored in a classified network; (2) provide an updated system location; (3) include follow-to-join (derivative) asylum information as a category of records; (4) expand the categories of records for benefit requestors, beneficiaries, derivatives, accredited representatives (including attorneys), form preparers, and interpreters; (5) remove routine use K because it was duplicative; (6) add two new routine uses K and L to permit the sharing of information with the Departments of State and Health and Human Services, respectively; (7) update the retention schedules to include additional systems; (8) add name and date of birth combination and receipt number to retrieve records; and

(9) update record source categories to include accredited representatives (including attorneys), interpreters, preparers, and USCIS personnel. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 30, 2015. This updated system will be effective December 30, 2015.

ADDRESSES: You may submit comments, identified by docket number DHS–2015–0077 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Donald K. Hawkins, (202) 272–8000, Privacy Officer, U.S. Citizenship and Immigration Services, 20 Massachusetts Avenue NW., Washington, DC 20529. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) proposes to update and reissue a current DHS system of records titled, ''DHS/USCIS–010 Asylum Information and Pre-Screening System of Records.''

As set forth in section 451(b) of the Homeland Security Act of 2002, Congress charged USCIS with the administration of the asylum program, which provides protection to qualified individuals in the United States who have suffered past persecution or have a well-founded fear of future persecution in their country of origin as outlined under Title 8, Code of Federal Regulations (8 CFR) section 208. USCIS is also responsible for adjudicating the benefit program established by Section 203 of the Nicaraguan Adjustment and Central American Relief Act (Pub. L. 105–100, hereinafter ''NACARA''), in accordance with 8 CFR part 241, and maintaining and administering the credible fear and reasonable fear screening processes, under 8 CFR 208.30 and 208.31.

Asylum

Every year people come to the United States seeking protection because they have suffered persecution or fear that they will suffer persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The two ways to obtain asylum in the United States are through the affirmative process and defensive process. To obtain asylum, the individual must be physically present in the United States. An individual may apply for affirmative asylum status regardless of how he or she arrived in the United States or his or her current immigration status. An individual may include his or her spouse and/or unmarried children present in the United States as derivatives on his or her asylum application. A defensive application for asylum occurs when an individual requests asylum as a defense against removal from the United States. In defensive asylum cases, the individual is currently in removal proceedings in immigration court with the Department of Justice's Executive Office for Immigration Review (EOIR). USCIS is responsible for the administration and adjudication of the affirmative asylum process. Individuals granted asylum status possess this status indefinitely, may work in the United States, may request derivative status for immediate family members within two years of the grant of asylum status, and may apply for permanent residence after one year.

Follow-to-Join or Derivative Asylum Status

An individual who entered the United States and was granted asylum status within the past two years may petition to have his or her spouse and/or unmarried children ''follow-to-join'' him or her in the United Sates and obtain derivative asylum status under 8 CFR 208.21. The derivatives may be in the United States or outside the United States.

Nicaraguan Adjustment and Central American Relief Act (NACARA Section 203)

Section 203 of NACARA applies to certain individuals from Guatemala, El Salvador, and the former Soviet bloc countries (the Soviet Union or any republic of the former Soviet Union, such as Russia, Latvia, Lithuania, Estonia, Albania, Bulgaria, the former Czechoslovakia, the former East Germany, Hungary, Poland, Romania, or Yugoslavia or any state of the former Yugoslavia) who entered the United States and applied for asylum by specified dates or registered for benefits. Section 203 of NACARA allows qualified individuals to apply for suspension of deportation or for special rule cancellation of removal under the standards similar to those in effect before the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. If granted, individuals receive lawful permanent resident status.

Credible Fear Screenings

Section 235 of Immigration and Nationality Act (INA), as amended, and its implementing regulations provide that certain categories of individuals are subject to expedited removal without a hearing before an immigration judge. These include: arriving stowaways; certain arriving aliens at ports of entry who are inadmissible under section 212(a)(6)(C) of the INA (because they have presented fraudulent documents or made a false claim to USCIS or other material misrepresentations to gain admission or other immigration benefits) or 212(a)(7) of the INA (because they lack proper documents to gain admission); and certain designated aliens who have not been admitted or paroled into the United States.

Individuals subject to expedited removal who indicate an intention to apply for asylum, express a fear of persecution or torture, or a fear of return to their home country are referred to USCIS asylum officers to determine whether they have a credible fear of persecution or torture. Individuals found to have a credible fear of persecution or torture may apply for asylum or withholding of removal as a defense to removal before an immigration judge.

Reasonable Fear Screenings

Sections 238(b) and 241(a)(5) of the INA provide for streamlined removal procedures that prohibit certain individuals (*i.e.,* subject to a final administrative removal order under section 238(b) or subject to reinstatement of a prior order of

exclusion, deportation, or removal under section 241(a)(5) of the INA) from contesting removability before an immigration judge and from seeking any relief from removal. If an individual ordered removed under either section 238(b) or section 241(a)(5) of the INA expresses a fear of return to the country to which he or she has been ordered removed, the case must be referred to a USCIS asylum officer, who determines whether the individual has a reasonable fear of persecution or torture. Individuals found to have a reasonable fear of persecution or torture may seek withholding or deferral of removal before an immigration judge.

In order to carry out its statutory obligations in administering these benefit programs, USCIS has established the Asylum Information and Pre-Screening System of Records to facilitate every aspect of intake, adjudication, and review of the specified programs. The Asylum Information and Pre-Screening System records are used to track case status, facilitate scheduling appointments, issue notices throughout the process, and generate decision documents. These records are also used to initiate, facilitate, and track security and background check screening, and to prevent the approval of any benefit prior to the review and completion of all security checks. Finally, these records are used by USCIS to generate statistical reports to assist with oversight of production and processing goals.

Information contained in DHS/USCIS–010 Asylum Information and Pre-Screening is afforded the confidentiality protections contained in 8 CFR 208.6, which strictly limits the disclosure of information to third parties. 8 CFR 208.6 specifically covers the confidentiality of asylum applicants and individuals in the credible fear and reasonable fear screening processes. Information may not be disclosed without the written consent of the applicant, except as permitted by 8 CFR 208.6 or at the discretion of the Secretary of Homeland Security or the Attorney General of the United States.

Consistent with DHS's information sharing mission, information stored in the DHS/USCIS–010 Asylum Information and Pre-Screening may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCIS may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the confidentiality provisions of 8 CFR 208.6 and with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

DHS/USCIS is updating this system of records notice to: (1) Clarify that data originating from this system of records may be stored in a classified network; (2) provide an updated system location; (3) include follow-to-join (derivative) asylum information as a category of records; and (4) expand the categories of records for benefit requestors, beneficiaries, derivatives, accredited representatives (including attorneys), form preparers, and interpreters. The categories of records for benefit requestors, beneficiaries, and derivatives are being updated to include: date of birth; receipt number; Social Security number; foreign residency history; detention center location; phone number; gender; place of marriage; education history; government identification number; notices and communication; records regarding membership or affiliation with organizations; personal background information; description of foreign travel; supporting documentation; and photographs. The category of records for attorneys and accredited representatives include: name; law firm/recognized organization; physical and mailing addresses; phone and fax numbers; email address; attorney bar card number or equivalent; bar membership and accreditation date; Board of Immigration Appeals representative accreditation and expiration date; law practice restriction explanation; and signature. The category of records for preparers and interpreters is being updated to include: name; organization name; business state ID number; physical and mailing addresses; email address; phone and fax numbers; relationship to benefit requestor; and signature.)

DHS/USCIS is also updating this system of records to (1) remove routine use K since it was duplicative of routine use E; (2) add two new routine uses K and L to permit the sharing of information with the Departments of State and Health and Human Services; (3) update the retention schedules to include additional systems; (4) add name and date of birth combination and receipt number to retrieve records; and (5) update record source categories to include accredited representatives (including attorneys), interpreters, preparers, and USCIS personnel.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. 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 from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCIS–010 Asylum Information and Pre-Screening System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)–010

SYSTEM NAME:

DHS/USCIS–010 Asylum Information and Pre-Screening

SECURITY CLASSIFICATION:

Unclassified. The data originating from this system may be retained on classified DHS networks but this does not change the nature and character of the data until it is combined with classified information.

SYSTEM LOCATION:

The operational information technology (IT) systems that support the Asylum Information Pre-Screening System include: Refugees, Asylum, and Parole System (RAPS), Asylum Pre-Screening System (APSS), Case and Activity Management for International Operations (CAMINO), and the Computer Linked Information Application Management System 3 (CLAIMS 3). Affirmative asylum and cases under section 203 of NACARA cases are processed in RAPS. Reasonable fear and credible fear screenings are processed in APSS. Asylee Relative Petitions are processed in CLAIMS 3 and CAMINO.

Records are maintained in the respective USCIS case management systems and associated electronic and paper files located at USCIS

Headquarters in Washington, DC and in USCIS service centers, national records center, asylum offices, and domestic and international field offices. Records are replicated from the operational system and maintained on the DHS unclassified and classified networks.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by Asylum Information and Pre-Screening System include:

- Individuals covered by provisions of section 208 of the INA, as amended, who have applied with USCIS for asylum on Form I–589 (Application for Asylum and for Withholding of Removal);
- The spouse and children of a principal asylum applicant properly included in an asylum application as beneficiaries;
- Individuals who have applied for suspension of deportation/special rule cancellation of removal under section 203 of NACARA on Form I–881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to section 203 of Public Law 105–100 (NACARA)));
- Individuals who were referred to a USCIS asylum officer for a credible fear or reasonable fear screening determination under 8 CFR 208, Subpart B, after having expressed a fear of return to the intended country of removal because of fear of persecution or torture, during the expedited removal process under 8 § U.S.C. 1225(b), the administrative removal processes under 8 U.S.C. 1228(b) (removal of certain aliens convicted of aggravated felonies), or 8 U.S.C. 1231(a)(5) (reinstatement of certain prior removal orders);
- Individuals who have petitioned for follow-to-join (derivative) asylum status for their spouse and children on Form I–730 (Refugee/Asylee Relative Petition); and
- Persons who complete asylum, Section 203 of NACARA, or follow-to-join applications, or participate in the credible fear or reasonable fear processes on behalf of the applicant (*e.g.,* attorneys, form preparers, accredited representatives, and interpreters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about benefit requestor, beneficiaries, and family members includes:

- Name;
- Alias names;
- Dates of birth;
- Alien number (A-number);
- Receipt Number;
- Social Security number (if available);
- Address/residence in the United States;
- Foreign residence history;
- Detention location (if detained by U.S. Immigration and Customs Enforcement);
- Phone number;
- Gender;
- Marital status;
- Place of marriage;
- Date of birth;
- Country of birth;
- Country of nationality (or nationalities);
- Ethnic origin;
- Religion;
- Port(s), date(s) of entry, and status at entry(ies);
- Filing date of asylum, Section 203 of NACARA, or follow-to-join application;
- Education history;
- Work history;
- Results of security checks;
- Languages spoken;
- Claimed basis of eligibility for benefit(s) sought;
- Case status;
- Case history;
- Employment authorization eligibility and application history;
- Government-issued identification (*e.g.,* passport):
  - Document type;
  - Issuing organization;
  - Document number;
  - Expiration date; or
  - Benefit requested.
- Notices and communications, including:
  - Appointment notices;
  - Receipt notices;
  - Requests for evidence;
  - Notices of Intent to Deny (NOID);
  - Decision notices and assessments; or
  - Proofs of benefit.
- Records regarding organization membership or affiliation;
- Personal background information (*e.g.,* arrests/detentions, involvement with national security threats, criminal offenses, persecution, torture, genocide, killing, injuring, forced sexual contact, limiting or denying others religious beliefs, service in military or other armed groups, work in penal or detention systems, weapons distribution, combat training);
- Tax records;
- Explanation/description of foreign travel;
- Signature;
- Supporting documentation as necessary (*e.g.,* birth, marriage, and/or divorce certificates, licenses, explanatory statements, and unsolicited information submitted voluntarily by the applicant or family members in support of a benefit request);
- Photographs; and
- Criminal and national security background check information.

Information about Attorneys, Accredited Representatives, and Form Prepares includes:

- Name;
- Law firm/recognized organization;
- Physical and mailing addresses;
- Phone and fax numbers;
- Email address;
- Attorney bar card number or equivalent;
- Bar membership;
- Accreditation date;
- Board of Immigration Appeals representative accreditation;
- Expiration date;
- Law practice restriction explanation; and
- Signature.

Information about Preparers and Interpreters may include:

- Name;
- Organization;
- Business state ID number;
- Physical and mailing addresses;
- Email address;
- Phone and fax numbers;
- Relationship to benefit requestor; and
- Signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system is in 8 U.S.C. 1101, 1103, 1158, 1225, 1228, and 1522.

PURPOSE(S):

The purpose of Asylum Information and Pre-Screening System is to manage, control, and track the following types of adjudications:

A. Affirmative asylum applications (Form I–589);

B. Applications filed with USCIS for suspension of deportation/special rule cancellation of removal pursuant to Section 203 of NACARA (Form I–881);

C. Credible fear screening cases under 8 U.S.C. 1225(b)(1)(B);

D. Reasonable fear screening cases under 8 CFR 208.31; and

E. Follow-to-join derivative asylum/refugee cases (Form I–730) under 8 CFR 208.21.

DHS maintains a replica of some or all of the data in the operating system on unclassified and classified DHS networks to allow for analysis and vetting consistent with the above stated purposes and this published notice.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3). Even when a valid routine use permits the disclosure of information from this system of records to a third party, in some cases such disclosure may not be permissible because of confidentiality laws and policies that limit the sharing of information regarding individuals applying for asylum or in credible fear or reasonable fear processes.

Information in this system of records contains information relating to persons who have pending or approved asylum applications, follow-to-join applications, or in the credible fear or reasonable fear process and should not be disclosed pursuant to a routine use unless disclosure is otherwise permissible under 8 CFR 208.6. These confidentiality provisions do not prevent DHS from disclosing information to the U.S. Department of Justice and Offices of the U.S. Attorneys as part of an ongoing criminal or civil investigation. These provisions permit disclosure to courts under certain circumstances as well, as provided under 8 CFR 208.6(c)(2). Subject to these restrictions, DHS may disclose:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS 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 DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations of 8 CFR 208.6 on disclosure as are applicable to DHS officers and employees. 8 CFR 208.6 prohibits the disclosure to third parties information contained in or pertaining to asylum applications, credible fear determinations, and reasonable fear determinations except under certain limited circumstances.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure as limited by the terms and conditions of 8 CFR 208.6 and any waivers issued by the Secretary pursuant to 8 CFR 208.6.

H. To any element of the U.S. Intelligence Community, or any other federal or state agency having a counterterrorism function, provided that the need to examine the information or the request is made in connection with its authorized intelligence or counterterrorism function or functions and the information received will be used for the authorized purpose for which it is requested.

I. To other federal, state, tribal, and local government agencies, foreign governments, intergovernmental organizations and other individuals and organizations as necessary and proper during the course of an investigation, processing of a matter, or during a proceeding within the purview of U.S. or foreign immigration and nationality laws, to elicit or provide information to enable DHS to carry out its lawful functions and mandates, or to enable the lawful functions and mandates of other federal, state, tribal, and local government agencies, foreign governments, or intergovernmental organizations as limited by the terms and conditions of 8 CFR 208.6 and any waivers issued by the Secretary.

J. To a federal, state, tribal, or local government agency or foreign government seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law as limited by the terms and conditions of 8 CFR 208.6 and any waivers issued by the Secretary pursuant to 8 CFR 208.6.

K. To the Department of State for the purpose of assisting in the processing of petitions or applications for benefits under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements.

L. To the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) and the Centers for Disease Control and Prevention (CDC) to provide emergency relief to qualified asylees, meet congressional reporting requirements, provide post-decisions services, and generate statistical reports for allocating funding for asylee social benefits.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically in the operational system as well as on the unclassified and classified network or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

Records may be retrieved by name and date of birth, A-number, or receipt number.

SAFEGUARDS:

DHS/USCIS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCIS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCIS stores the physical documents and supplemental documentation in the Alien File and processes asylum, NACARA and follow-to-join applications, and credible fear or reasonable fear determinations in the respective case management system. The A-File records are permanent whether hard copy or electronic. USCIS transfers the A-Files to the custody of NARA 100 years after the individual's date of birth.

NARA approved the RAPS [N1–563–04–06], APSS [N1–563–04–07], CAMINO [N1–566–12–06] and CLAIMS 3 [N1–566–08–12] Retention Schedule. RAPS, APSS, and CAMINO Master File automated records are maintained for 25 years after the case is closed and then destroyed. CLAIMS 3 records are destroyed after the data is transferred to the electronic master file and verified. Information in the master file is destroyed 15 years after the last completed action with respect to the benefit. USCIS is proposing to update the CLAIMS 3 Retention Schedule to destroy records 25 years after the last completed action.

Records replicated on the unclassified and classified networks will follow the same retention schedule.

SYSTEM MANAGER AND ADDRESS:

The Chief of the Asylum Division, Refugee, Asylum, and International Operations Directorate, U.S. Citizenship and Immigration Services, Suite 3300, 20 Massachusetts Avenue NW., Washington, DC, 20529.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the National Records Center (NRC) FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO, 64064–8010. The NRC's contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, Department of Homeland Security, Washington, DC 20528–0655.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which Component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

In processing requests for access to information in this system, USCIS will review not only the records in the operational system but also the records that were replicated on the unclassified and classified networks, and based on this notice provide appropriate access to the information.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from the applicant orhis or her accredited representative, preparer, or interpreter. Information contained in this system may also be supplied by DHS, other U.S. federal, state, tribal, or local government agencies, foreign government agencies, and international organizations. USCIS personnel may input information as they process a case, including information from internal and external sources to verify whether a benefit requestor or family is eligible for the benefit requested. Information from other systems of records (or their successor systems) such as Alien File, Index, and National File Tracking System of Records (DHS/USCIS/ICE/CBP–001, 78 FR 69983, November 22, 2013); USCIS Benefits Information System (BIS) (DHS/USCIS–007, 73 FR 56596, September 29, 2008); ICE Removable Alien Records System (DHS/ICE–011, 75 FR 23274, May 3, 2010); U.S. Customs and Border Protection (CBP) TECS (DHS/CBP–011, 73 FR 77778, December 19, 2008); DHS Automated Biometric Identification System (IDENT) (DHS/USVISIT–004, 72 FR 31080, June 5, 2007); Department of Justice (DOJ) Records and Management Information System (JUSTICE/EOIR–001, 72 FR 3410, January 25, 2007;) Department of Defense (DOD) Defense Biometric Services, 74 FR 48237, (September 22, 2009); DOD Detainee Biometric Information System, 72 FR 14534, (March 28, 2007); and DOD Defense Biometric Identification Records System, 74 FR 17840, (April 17, 2009).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: November 16, 2015.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2015–30270 Filed 11–27–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0053, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections of information that make up this ICR include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSFs); (2) personally identifiable information to allow TSA to conduct security threat assessments on certain individuals employed by the CCSFs; (3) standard security program or submission of a proposed modified security program or amendment to a security program; and (4) recordkeeping requirements for CCSFs. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft carrying cargo.

DATES: Send your comments by January 29, 2016.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0053, Certified Cargo Screening Program, 49 CFR parts 1515, 1540, 1544, 1546, 1548, and 1549. Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, 121 Stat. 266, 278 (Aug. 3, 2007), required the development of a system to screen 50 percent of the cargo transported on a passenger aircraft by February 2009, and to screen 100 percent of such cargo by August 2010. In September 2009, TSA issued an interim final rule (IFR) amending 49 CFR to implement this statutory requirement. See 74 FR 47672 (Sept. 16, 2009). In August 2011, TSA issued the Air Cargo Screening final rule (Final Rule) to finalize the statutory requirement for 100 percent screening of air cargo. See 76 FR 51848 (Aug. 18, 2011). TSA received approval from OMB for the collections of information contained in the IFR and the Final Rule, and now seeks to extend this approval. Accordingly, TSA must proceed with this ICR for this program in order to continue to meet the Congressional mandate. The ICR allows TSA to collect several categories of information as explained below.

Data Collection

TSA certifies qualified facilities as Certified Cargo Screening Facilities (CCSFs). Companies seeking to become CCSFs are required to submit an application for a security program and for certification to TSA at least 90 days before the intended date of operation. All CCSF applicants submit applications and related information either electronically through email, through the online Air Cargo Document Management System, or by postal mail.

TSA regulations (49 CFR parts 1540 and 1549) require CCSFs to ensure that individuals performing screening and related functions, and those who have unescorted access to cargo, have successfully completed a security threat assessment (STA) conducted by TSA. In addition, the senior manager or representative in control of the CCSF operations, and the CCSF Security Coordinators and their alternates, must all undergo STAs. CCSFs must submit personally identifiable information on these individuals to TSA so that TSA can conduct an STA. TSA also requires CCSFs to accept and implement a standard security program provided by TSA or to submit a proposed modified security program to the designated TSA official for approval. The CCSF must also submit to an assessment of its facility by TSA. Once TSA approves the security program and determines that the applicant is qualified to be a CCSF, TSA will send the applicant a written notice of approval and certification to operate as a CCSF.

Once approved, CCSFs must maintain screening, training, and other security-related records of compliance with their security program and make them available for TSA inspectors.

The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), and the Security Threat Assessment Application (TSA Form 419F).

Estimated Burden Hours

As noted above, TSA has identified several separate information collections under this ICR. Collectively, these four information collections represent an estimated average of 18,290 responses annually, for an average annual hour burden of 7125.24 hours.

1. *CCSF Application.* The CCSP section of the TSA Office of Security Operations estimates that it will receive 180 applications in 3 years, for an average of 60 applications annually. TSA further estimates that these applications will require an average of 3 hours each to complete, resulting in an annual hour burden of approximately 180 hours (60×3).

2. *STA Applications.* All CCSP participants subject to 49 CFR parts 1548 and 1549 will be required to have certain employees undergo security threat assessments (STAs). Approximately 6,600 STAs were purchased from TSA for CCSP participants between January and September 2015, which is about 733 STAs per month (6,600 STAs/9 months = 733.33). Thus, TSA estimates it will receive a total of 8,800 applications per year (733.33×12 months), or 26,400 applications in 3 years. TSA further estimates that STA applications will require approximately 15 minutes each to complete, resulting in an annual hour burden of approximately 2,200 hours ($8,800 \times 0.25$ hours).

3. *Security Programs.* As discussed in section 1, CCSF Application, TSA estimates that 60 entities will apply for CCSF every year. All CCSFs are required to maintain records of compliance with TSA regulations and its security program. For a new entity to compile these records, complete the required training, and complete the security program process, TSA estimates that the

annual burden is 40 hours. TSA estimates the annual hour burden associated with the initial application of entities requesting to be approved as CCSFs is 2,400 (60 new applicants × 40 hours).

In addition, TSA currently has 950 CCSFs that must recertify every 3 years. According to the CCSP Section of the TSA Office of Security Operations (OSO), about half of these, or 475, will renew their certification or will relocate annually. TSA estimates that a renewal of the CCSF or relocation update to the CCSF will take 3 hours per entity. A site visit to approve the renewal of the CCSF will take an additional 2 hours for each entity. TSA estimates that a site visit takes place for approximately 20 percent of renewals, or 95 entities (475 × .20). Thus, TSA estimates that the annual hour burden associated with the renewal applications of existing CCSFs is 1,615 (475 renewals × 3 hours + 95 site visits × 2 hours).

4. *Recordkeeping Requirements.* TSA estimates a time burden of approximately five minutes (0.083 hours) annually per employee who is required to have an STA for each CCSF to prepare and file the training records and other records of compliance. TSA estimates it will receive a total of 26,400 STA applications in 3 years, for an average of 8,800 STA applications annually. TSA estimates an annual hour burden of approximately 730.4 hours (8,800 STA applicants × 0.083 hours).

Dated: November 23, 2015.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2015–30261 Filed 11–27–15; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5835–N–25]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email to *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Ivery Himes at *Ivery.W.Himes@hud.gov* or telephone 202–708–1672. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Himes.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from the OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Program.

OMB Approval Number: 2502–0589.

Type of Request: Information collection renewal including revision of PFS forms and Request for Occupied Conveyance form HUD–9539.

Form Number: HUD–90035, 90041, 90045, 90051, 90052, 9539, 27011, 91022, 50002, 50012, HUD–PA–426, HUD–1 Settlement Statement.

Description of the need for the information and proposed use: Pre-Foreclosure Sale and Deed in Lieu of Foreclosure policy changes outlined in Mortgagee Letter 2013–23 require significant changes to the forms and documents for consumers to align the disclosures with stated policies.

Respondents: Businesses or other for-profits.

Estimated Number of Respondents: 415,425.

Estimated Number of Responses: 1,283,879.

Frequency of Response: On occasion.

Average Hours per Response: 1.5 hours.

Total Estimated Burden Hours: 1,947,929.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 18, 2015.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2015–30264 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5800–N–26]

Announcement of Funding Award for Fiscal Year 2014 Research and Evaluation, Demonstrations and Data Analysis and Utilization

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD. ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2014 as included in the Consolidated Appropriations Act, 2014 (Pub. L. 113–

76, approved January 17, 2014) and the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113–6, approved March 26, 2013). This document notifies the public of funding awards for Fiscal Year (FY) 2014 and announces the names, addresses and the amount awarded to the winners to conduct research and evaluation of the following projects: Moving To Work Evaluation, Jobs Plus Evaluation, and Small Area Fair Market Rent Demonstration Evaluation.

FOR FURTHER INFORMATION CONTACT: Ophelia Wilson, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8226, Washington, DC 20410, telephone (202) 402–4390. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Relay Service on (800) 877–8339 or (202) 708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: The Catalog of Federal Domestic Assistance number for the Research and Evaluation, Demonstrations and Data Analysis and Utilization initiative is: 14.536. On March 12, 2015, HUD posted a Notice of Funding Availability (NOFA) on Grants.gov announcing the availability of approximately $5.20 million for the Research and Evaluation, Demonstrations and Data Analysis and Utilization initiative. Under this initiative, HUD awarded cooperative agreements to three entities to conduct research and evaluation of the following projects: Moving to Work Evaluation, Jobs Plus Evaluation, and Small Area Fair Market Rent Demonstration Evaluation.

The Department reviewed, evaluated, and scored the applications received based on the criteria in the NOFA. As a result, HUD has funded the applications below, in accordance with section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2014 as included in the Consolidated Appropriations Act, 2014 (Public Law 113–76, approved January 17, 2014) and the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6, approved March 26, 2013). More information about the winners can be found at *www.hud.gov.*

Applicant/Address	Project	Amount of award
MDRC, 16 East 34th Street, 19th Floor, New York, NY 10016–4326, Contact: David Greenberg.	Jobs Plus Evaluation	$1,474,920
Urban Institute, 2100 M Street, Washington, DC 20037–1207, Contact: Diane Levy.	Moving to Work Evaluation	$2,171,076
Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 02138–1168, Contact: Mary Holin.	Small Area Fair Market Rent, Demonstration Evaluation	$849,737

Dated: November 16, 2015.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2015–30265 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5775–FA–01]

Announcement of Funding Award for Fiscal Year 2015 Authority To Accept Unsolicited Proposals for Research Partnerships

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD

ACTION: Announcement of Funding Awards.

SUMMARY: The Consolidated Appropriations Act, 2014, (Pub. L. 113–76, approved January 18, 2014) (FY 2014 appropriation) authorizes the Office of Policy Development and Research (PD&R) to enter into noncompetitive cooperative agreements for research projects that are aligned with PD&R's research priorities and where HUD can gain value by having substantial involvement in the research activity. Research projects must be funded at least 50 percent by philanthropic entities or other Federal, state or local government agencies. This document announces the names, addresses and the amount awarded to entities selected to undertake research projects for PD&R.

FOR FURTHER INFORMATION CONTACT: Madlyn Wohlman Rodriguez, Office of University Partnerships, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8226, Washington, DC 20410, telephone (202) 402–5939. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by Dialing the Federal Information Relay Service on 800–877–8339 or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free).

SUPPLEMENTARY INFORMATION: On March 21, 2014 at 79 FR 15766, HUD announced Authority to Accept Unsolicited Proposals for Research Partnerships. The authority that Congress provided HUD to enter into noncompetitive cooperative agreements for research is a central tool for research collaborations that informs important policy and program objectives. Under this authority, HUD awarded cooperative agreements to nine entities to undertake the following research projects:

Applicant/Address	Project	Amount of award
Region I:		
Abt Associates, Inc., 55 Wheeler Street, Cambridge, MA 02138–1168, Contact: Jeffrey Lubell.	Evaluation of Compass FSS Programs	$191,396.00
Region II:		
Columbia University, 615 West 131st Street, Room 254, Mail Code 872, New York, NY 10027–7922, Contact: Christopher Mayer.	Understanding the Market for Reverse Mortgages	257,288.00
New York University, 665 Broadway Suite 801, New York, 10012, Contact: Ingrid Gould Ellen.	High Cost Cities, Gentrification, and Voucher Use: Exploring Access to Quality Homes and Neighborhoods.	102,901.00
Region III:		

Applicant/Address	Project	Amount of award
Old Dominion University, 4111 Monarch Way, Norfolk, VA 23508, Contact: Joshua Behr.	Modeling Temporary, Interim and Permanent Housing Demand & Capacity for Medically Fragile and Vulnerable Populations.	175,000.00
Urban Institute, 2100 M Street, Washington, DC 20037–1207, Contact: Susan Popkin.	Housing Opportunity and Services Together Demonstration (HOST II).	201,259.00
Region IV:		
Policy and Economic Council, 6409 Fayetteville Road #240, Durham, NC 27713, Contact: Michael Turner.	Rental Payment Data: Improving Renter's Financial Security Through Credit Reporting Payment Data.	18,000.00
Region V:		
Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106–7015, Contact: Mark Joseph.	HOPE VI Data Compilation and Analysis	73,848.00
Region VI:		
University of Texas San Antonio, One UTSA Circle, San Antonio, TX 78249–1664, Contact: Harriet Romo.	Economic Boom in Eagle Ford Shale: Impacts on Accessible and Affordable Housing for Vulnerable Populations.	284,853.00
Region IX:		
University of California, San Diego, 9500 Gilman Drive #9034, La Jolla, CA 92093–0934, Contact: Tara Hutchinson.	Light Gauge Cold-Formed Steel Framed Building Shake Table Test Program.	200,000.00

Date: November 16, 2015.

Katherine M. O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2015–30266 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5835–N–26]

60-Day Notice of Proposed Information Collection: Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

FOR FURTHER INFORMATION CONTACT: Brian Siebenlist, Director, Office of Housing Counseling, Policy and Grants Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Brian Siebenlist at *brian.n.siebenlist@hud.gov* or call 202-402-5415. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Mr. Siebenlist.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Housing Counseling Program.

OMB Approval Number: 2502-0261.

Type of Request: Extension.

Form Numbers: SF–424, SF–424Suppl, SF–424CB, SF–LLL, HUD–27300, HUD–2880, HUD2990, HUD–2991, HUD–2994, JUD–96010, HUD–9902, HUD–9910.

Description of the need for the information and proposed use: Housing Counseling organizations submit information to HUD through Grants.gov when applying for grant funds to provide housing counseling assistance to eligible homebuyers to find and purchase affordable housing; Housing Counseling organizations also use grant funds to assist renters to avoid evictions; help the homeless find temporary or permanent shelter; report fair housing and discrimination. HUD uses the information collected to evaluate applicants competitively and then select qualified organizations to receive funding that supplement their housing counseling program. Post-award collection, such as quarterly reports, will all HUD to evaluate grantees' performance, This collection of information includes renewal of various HUD forms, including the HUD–9000 which is the Housing Counseling Approval Application, and form HUD–9902, Housing Counseling Agency Activity Report. Additionally, it covers the collection of client level activities, client financial leverage data, and agency profile information.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents: 2,873.

Estimated Number of Responses: 17,384.

Frequency of Response: On occasion.

Average Hours per Response: 15.

Total Estimated Burdens: 16,625.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who

are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 18, 2015.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2015–30263 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5835–N–27]

60-Day Notice of Proposed Information Collection: Revitalization Area Designation and Management

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

A. Overview of Information Collection

Title of Information Collection: Revitalization Area Designation and Management.

OMB Approval Number: 2502–0566.

Type of Request: Extension.

Form Number: 2502–0566.

Description of the need for the information and proposed use: The Department accepts requests from local governments or interested nonprofit organizations to designate specified geographic areas as revitalization areas. A request must describe the nominated area in terms of census block groups.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 42.

Estimated Number of Responses: 12.

Frequency of Response: On occasion.

Average Hours per Response: 2.

Total Estimated Burdens: 84.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 18, 2015.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2015–30262 Filed 11–27–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N177; FXES11120800000–156–FF08ECAR00]

Low-Effect Habitat Conservation Plan for Seven Covered Species, Los Angeles Department of Water and Power Land, Inyo and Mono Counties, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extending of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we are extending the public review and comment period for the draft low effect habitat conservation plan (draft HCP) for the Los Angeles Department of Water and Power's operations, maintenance, and management activities on its land in Inyo and Mono Counties, California, and draft Environmental Action Statement/Low Effect Screening Form.

DATES: To ensure consideration of your comments in our final determination regarding whether to issue an incidental take permit, we must receive your written comments by January 15, 2016.

ADDRESSES: You may obtain copies of the draft HCP and Environmental

Action Statement/Low Effect Screening Form online at *http://www.fws.gov/carlsbad/HCPs/HCP_Docs.html.* You may request copies of the documents by email, fax, or U.S. mail (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Please send your requests or written comments by any one of the following methods, and specify ''LADWP HCP'' in your request or comment.

Submitting Request for Documents/Comments: You may submit comments or requests for more information by any of the following methods:

Email: fw8cfwocomments@fws.gov. Include ''LADWP HCP'' in the subject line of your message. If you choose to submit comments via email, please ensure that the file size does not exceed 10 megabytes. Emails that exceed the maximum file size may not be properly transmitted to the Service.

Telephone: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–2070.

Fax: Kennon A. Corey, Palm Springs Fish and Wildlife Office, 760–322–4648, Attn.: LADWP HCP.

U.S. Mail: Kennon A. Corey, Palm Springs Fish and Wildlife Office, Attn.: LADWP HCP, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92262.

Suite 208, Palm Springs, CA 92262.

In-Person Viewing or Pickup of Documents, or Delivery of Comments: Call 760–322–2070 to make an appointment during regular business hours at the above address.

Public Availability of Comments

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

FOR FURTHER INFORMATION CONTACT: Kennon A. Corey, Assistant Field Supervisor, Palm Springs Fish and Wildlife Office; telephone 760–322–2070. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

In the October 7, 2015, **Federal Register** (80 FR 60669), we announced the availability of the draft HCP and draft Environmental Action Statement/Low Effect Screening Form. We solicited comments from the public on these draft documents until November 6, 2015. On November 4, 2015, we announced in the **Federal Register** (80 FR 68332) that we were extending the comment period to December 4, 2015.

Since we announced the availability of the draft documents and extended the comment period to November 4, we have received additional requests from the public to allow more time for public comment. Public involvement is an important part of the process in considering a draft HCP and application for an incidental take permit. Therefore, we are extending the comment period to January 15, 2016. All comments received by the date specified in **DATES** will be considered in making a final determination regarding whether to issue an incidental take permit.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

G. Mendel Stewart,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2015–30278 Filed 11–27–15; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900 253G]

Revision of Agency Information Collection for the Bureau of Indian Education Tribal Education Department Grant 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) has submitted to the Office of Management and Budget (OMB) a request for a revision to a currently approved collection of information for the Tribal Education Department Grant Program, authorized by OMB Control Number 1076–0185. The information collection will expire November 30, 2015.

DATE: Interested persons are invited to submit comments on or before December 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 Wendy Greyeyes, Bureau of Indian Education, Office of the BIE Director, 1849 C Street NW., MIB—Mail Stop 4657, Washington, DC 20240; email *Wendy.Greyeyes@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Wendy Greyeyes, (202) 208–5810. You may review the information collection requests online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under 25 U.S.C. 2020, Congress appropriated funding through the Bureau of Indian Education (BIE) for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe. All tribal education departments (TEDs) awarded will provide coordinating services and technical assistance to the school(s) they serve. As required under 25 U.S.C. 2020, for a Federally recognized tribe to be eligible to receive a grant, the tribe shall submit a grant application proposal. Once the grant has been awarded, each awardee will be responsible for quarterly and annual reports. All awardees shall comply with regulations relating to grants made under 25 U.S.C. 450h(a).

II. Request for Comments

On September 1, 2015, Bureau of Indian Education (BIE) published a notice announcing the renewal of this information collection and provided a 60-day comment period in the **Federal Register** (80 FR 52878). On October, 30, 2015, one tribe responded provided comments but they were not substantive to the collection. Therefore, the BIE did not make any adjustments based on the comment received.

The BIE requests your comments on these collections 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, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has 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: 1076–0185.

Title: Tribal Education Department Grant Program.

Brief Description of Collection: The Secretary of the Interior, through the Bureau of Indian Education, may solicit grant proposals from Federally-recognized tribes and their Tribal Education Departments (TEDs) for projects defined under 25 U.S.C. 2020. These funds are necessary to assist TEDs to improve educational outcomes for students and improve efficiencies and effectiveness by planning and coordinating all educational programs for Bureau-funded schools for the respondent to receive or maintain a benefit.

Type of Review: Revision to a currently approved collection.

Respondents: Federally-recognized tribes and their Tribal Education Departments (TEDs).

Number of Respondents: 13.

Total Number of Responses: 63.

Frequency of Response: One time proposal submission, quarterly, and annual reports.

Obligation to Respond: Response required to obtain or retain a benefit.

Estimated Time per Response: One time proposal submission is 111 hours, 1 hour to prepare a quarterly report, and 2 hours to prepare an annual report.

Estimated Total Annual Hour Burden: 1,503 hours.

Estimated Total Annual Non-Hour Dollar Cost: $5,359.

* * * * *

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–30305 Filed 11–27–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Leases and Permits

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 Leases and Permits. The information collection is currently authorized by OMB Control Number 1076–0155, which expires November 30, 2015.

DATES: Interested persons are invited to submit comments on or before December 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: Ms. Sharlene Round Face, Office of Trust Services, Bureau of Indian Affairs, 1849 C Street NW., Mailstop 3642—MIB, Washington, DC 20240; email: *Sharlene.Roundface@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Office of Trust Services, Bureau of Indian Affairs, 1849 C Street NW., Mailstop 3642—MIB, Washington, DC 20240; email: *Sharlene.Roundface@bia.gov.* 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 Bureau of Indian Affairs (BIA) is seeking renewal of the approval for information collection conducted under 25 CFR 162, Leases and Permits, for the review and approval of leases and permits on land the United States holds in trust or restricted status for individual Indians and Indian Tribes. This information collection allows BIA to review applications for leases and permits, modifications, and assignments, and to determine:

(a) Whether or not a lease may be approved or granted;

(b) The value of each lease;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of trespass.

A response is required to obtain or retain a benefit.

II. Request for Comments

On September 14, 2015, BIA published a notice announcing the renewal of this information collection and provided a 60-day comment period in the **Federal Register** (80 FR 55146). There were no comments received in response to this notice.

The BIA 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 has 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: 1076–0155.

Title: Leases and Permits, 25 CFR 162.

Brief Description of Collection: Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by statute. Submission of this information allows BIA to review applications for obtaining, modifying and assigning leases and permits of land that the United States holds in trust or restricted status for individual Indians and Indian Tribes. The information is used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. A response is required to obtain or retain a benefit.

Type of Review: Revision of a currently approved collection.

Respondents: Individual Indians and Indian Tribes seeking to lease their trust or restricted land and businesses that lease trust and restricted land.

Estimated Number of Respondents: 99,340.

Frequency of Response: In general, once per approval per lease. Some collections occur upon request for modification or assignment or upon a trespass violation, which occur, on average, fewer than once per lease. Additionally, rent payments occur, on average, once per month.

Obligation To Respond: Response required to obtain a benefit.

Estimated Time per Response: Ranges from 15 minutes to 3 hours.

Estimated Total Annual Hour Burden: 82,913 hours.

Estimated Total Annual Non-Hour Dollar Cost: $1,813,000.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2015–30330 Filed 11–27–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML03010 L51100000.GN0000 LVEMG11CG230 XXXL5017AR]

Notice of Availability of the Copper Flat Copper Mine Draft Environmental Impact Statement, Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (Draft EIS) for the Copper Flat Copper Mine and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Copper Flat Copper Mine Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Copper Flat Copper Mine by any of the following methods:

- *Email: BLM_NM_LCDO_Comments@blm.gov.*
- *Fax:* (575) 525–4412.
- *Mail:* BLM Las Cruces District Office, Attention: Doug Haywood, 1800 Marquess Street, Las Cruces, NM 88005.

Copies of the Copper Flat Copper Mine Draft EIS are available at the Las Cruces District Office at the above address and public libraries in Hillsboro, New Mexico, at 158 Elenora Street, and Truth or Consequences, New Mexico, at 325 Library Lane. The Draft EIS and supporting documents are also available electronically on the Copper Flat Project (Project) Web site at: *www.blm.gov/nm/copperflateis.*

FOR FURTHER INFORMATION CONTACT: Doug Haywood, telephone (575) 525–4498; address 1800 Marquess Street, Las Cruces, NM 88005; email *dhaywood@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 Copper Flat Copper Mine is the proposed reestablishment of a poly-metallic mine and processing facility located near Hillsboro, New Mexico, that would produces copper, gold, silver, and molybdenum. The Proposed Action is to approve the Project as proposed, consisting of an open pit mine, flotation mill, tailings impoundment, waste rock disposal areas, a low-grade ore stockpile, and ancillary facilities. In most respects, the facilities, disturbance, and operations would be similar to the former operation. The Project is owned and operated by the New Mexico Copper Corporation (Copper Corporation), a wholly owned subsidiary of THEMAC Resources Group Limited. The Project is comprised of 963 acres (841 acres of proposed disturbance and 122 acres undisturbed) of private land and 1,227 acres (745 acres of proposed disturbance and 482 acres undisturbed) of public land, for a total of 2,190 acres. The proposed mining plan of operations was submitted by the Copper Corporation to the BLM in June 2011and is based upon the plan of development that Quintana Mineral Corporation used in the previous operation of Copper Flat mining activities in 1982. The Project includes upgrades and modifications based on current engineering designs and regulations and was intentionally developed to re-use the existing foundations, production wells, and water pipeline that were employed by the previous Quintana operation. Four Alternatives are analyzed: No Action, Proposed Action, Alternative A, and Alternative B. The Preferred Alternative (Alternative B) is different than the Proposed Action in that ore would be processed at a faster rate, therefore shortening the mine life of the Project.

Under the Proposed Action, the BLM would approve the Copper Corporation's plan to process 17,500 tons per day of copper ore over a mine operations period of 16 years, resulting in 100 million tons of ore processed over the mine life. Alternative A would process 25,000 tons per day of copper ore over a mine operations period of 11 years, resulting in 103 million tons of ore processed over the mine life. Alternative B would process 30,000 tons per day of copper ore over a mine operations period of 12 years, resulting in 125 million tons of ore processed over the mine life.

Mitigation of impacts are proposed in the mining plan of operations for reducing water quality effects; reducing the effects of the spread of nonnative vegetation and noxious weeds; providing protection to special-status bird species; pre-development surveying for bat species; developing measures to avoid, minimize, or mitigate the adverse effects to historic properties; reducing adverse impacts on historic properties; informational signing for mining as a resource to reduce visual impacts; fencing to prevent injury or loss of livestock from mining operations; reducing ''boom and bust'' socioeconomic impacts; reducing public concerns about potential company bankruptcy; and reducing effects to environmental justice populations.

The scoping period began on January 9, 2012, and ended on March 9, 2012. Scoping meetings were held in Hillsboro and Truth or Consequences, New Mexico, on February 22 and 23,

2012, respectively. During the open house portion of the meeting, the public had opportunities to speak with representatives of the BLM, the State of New Mexico, and the Copper Corporation. Several display stations were featured with exhibits, maps, fact sheets, and other informational materials. The key issues identified from public scoping focused on water, biological resources, traffic, and social and economic concerns.

The BLM has prepared the Draft EIS in conjunction with its four Cooperating Agencies: The New Mexico Department of Game and Fish, New Mexico Environment Department, New Mexico Energy, Minerals and Natural Resources Department, and New Mexico Office of the State Engineer.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Aden L. Seidlitz,

Acting State Director.

[FR Doc. 2015–30293 Filed 11–27–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–19771; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before November 7, 2015, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 15, 2015.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before November 7, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

California

Los Angeles County

Lincoln Place Apartments, Lake & Penmar Aves., Frederick St. & Alley to S., Los Angeles, 15000911

Tank Site, The, Address Restricted, Topanga Canyon, 15000912

Napa County

Chateau Pacheteau, 1670 Diamond Mountain Rd., Calistoga, 15000913

Santa Cruz County

Headquarters Administration Building, (National-State Cooperative Program and the CCC in California State Parks MPS) 21600 Big Basin Way, Boulder Creek, 15000914

Iowa

Madison County

Winterset Courthouse Square Commercial Historic District, Roughly bounded by Green & 2nd Sts., 2nd Ave. & alley S. of Court Ave., Winterset, 15000915

Muscatine County

West Liberty Fairgrounds Historic District, 101 N. Clay St., West Liberty, 15000916

Polk County

American Republic Insurance Company Headquarters Building, 601 6th Ave., Des Moines, 15000917

Harbach, L. and Sons Furniture Warehouse and Factory Complex, 300–316 SW. 5th St., Des Moines, 15000918

New Hampshire

Hillsborough County

Nashua Gummed and Coated Paper Company Historic District, 34, 44, 55 Franklin & 21, 25 30 Front Sts., Nashua, 15000919

New Jersey

Hudson County

Butler Brothers Warehouse, (Terminal Distribution Warehouses of Hudson County, New Jersey MPS) 344–350 Warren St., Jersey City, 15000920

Merchant's Refrigerating Company Warehouse, (Terminal Distribution Warehouses of Hudson County, New Jersey MPS) 124–142 1st St., Jersey City, 15000921

New York

Niagara County

Mount St. Mary's Hospital, 515 6th St., Niagara Falls, 15000922

Onondaga County

Shepard Family Houses, 28 W. Genesee & 6 Hannum Sts., Skaneateles, 15000923

Saratoga County

Beecher, Eli and Diadama, House, 2 Military Rd., Edinburg, 15000924

Virginia

Hanover County

Virginia Industrial Home School for Colored Girls, 11391 Barrett Center Rd., Mechanicsville, 15000926

Nelson County

Rock Cliff, 12615 Norwood Rd., Wingina, 15000927

Wyoming

Johnson County

Wold Bison Jump, Address Restricted, Barnum, 15000928

Sweetwater County

Saints Cyril and Methodius Catholic Church and Rectory, 633 Bridger Ave., Rock Springs, 15000929

In the interest of preservation, a request for removal/re-listing has been received for the following resource:

Puerto Rico

Arecibo County

National Astronomy and Ionosphere Center, Esperanza Ward, San Rafael Sector, Rd. 625, Arecibo, 07000525

Authority: 36 CFR 60.13.

Dated: November 12, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2015–30254 Filed 11–27–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–19735;PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before October 31, 2015, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 15, 2015.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 31, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

ARIZONA

Maricopa County

Date Palm Manor Historic District, 2024–2106 S. Mill Ave, 5–1377 W. Palmcroft, 32–121 W. Palmdale, 2019–2025 S. Dateland & 2015–2030 Dromedary Drs., Tempe, 15000883

Tomlinson Estates Historic District, 1320–1437 E. Hall & 1300–1404 E. Lemon Sts., Tempe, 15000884

HAWAII

Honolulu County

Friendship Garden, 45–226 Kokohahi Pl., Kaneohe, 15000885

INDIANA

Johnson County

Bethel African Methodist Episcopal Church, 499 W. Madison St., Franklin, 15000886

Marion County

Indianapolis Athletic Club, 350 N. Meridian St., Indianapolis, 15000887

Marshall County

Bourbon Community Building—Gymnasium, (Indiana's Public Common and High Schools MPS) 800 N. Harris St., Bourbon, 15000888

Montgomery County

Spring Ledge, 3268 & 3270 W. Country Club Rd., Crawfordsville, 15000889

Sullivan County

Shelburn Interurban Depot—THI&E Interurban Depot, 3 N. Railroad St., Shelburn, 15000890

Tippecanoe County

Happy Hollow Heights Historic District, 1821 & 1809 Happy Hollow Rd., all houses on Laurel, Hollowood, Fearnleaf & Sumac Drs., West Lafayette, 15000891

Wayne County

Forest Hills Country Club, 2169 S. 23rd St., Richmond, 15000892

IOWA

Johnson County

Union Bakery, 203 N. Linn, Iowa City, 15000893

Linn County

St. James United Methodist Church, (Religious Properties of Cedar Rapids MPS) 1430 Ellis Blvd., NW., Cedar Rapids, 15000894

Polk County

Studebaker Corporation Branch Office Building, (Architectural Legacy of Proudfoot & Bird in Iowa MPS) 1436–42 Locust St., Des Moines, 15000895

MISSOURI

St. Louis Independent city Grand—Over Park Historic District, Bounded by S. Grand Blvd., Bates St. & alleys W. of Dewey Ave. & S. of Bowen St., St. Louis (Independent City), 15000896

NEBRASKA

Buffalo County

Gibbon Baptist Church, 917 2nd St., Gibbon, 15000897

NORTH CAROLINA

Cleveland County

Shelby Cotton Mill, 500 S. Morgan St., Shelby, 15000898

Columbus County

Tabor City Commercial Historic District, Includes Hickman Rd., W. 5th, E. & W. 4th & S. Main Sts., Tabor City, 15000899

Polk County

Downtown Tryon Historic District, Both sides of N. & S. Trade Sts., RR. right-of-way between 98 N. & 55 S. Trade Sts., Tryon, 15000900

OHIO

Cuyahoga County

Lake Shore Bank and Cleveland Public Library St. Clair Branch, 5410 St. Clair Ave. & 1368 E. 55th St., Cleveland, 15000901

Franklin County

Municipal Light Plant, 555 W. Nationwide Blvd., Columbus, 15000902

Miami County

Zollinger, S., Company Building, 101 S. Wayne St., Piqua, 15000903

RHODE ISLAND

Providence County

Prospect Heights Housing Project, 560 Prospect St., Pawtucket, 15000904

VIRGINIA

Bristol Independent city First Baptist Church, 1 Virginia St., Bristol (Independent City), 15000905

Fredericksburg Independent city

Shiloh Baptist Church (Old Site), 801 Sophia St., Fredericksburg (Independent City), 15000907

Gloucester County

Reed, Walter, Birthplace (Boundary Increase), 4021 Hickory Fork Rd., Gloucester, 15000906

Smyth County

Smyth County Community Hospital, 565 Radio Hill Rd., Marion, 15000908

WASHINGTON

Spokane County

Manito Park and Boulevard, (Spokane Parks and Boulevards MPS) 1702 S. Grand Blvd., Spokane, 15000909

Thurston County

Stoecker, Richard & Lydia, 1701 4th Ave., E., Olympia, 15000910

A request to move has been received for the following resource:

NORTH CAROLINA

Wake County

Hall, Rev. Plummer T., House, 814 Oberlin Rd., Raleigh, 02000501

Authority: 36 CFR 60.13.

Dated: November 3, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2015–30255 Filed 11–27–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Cancellation of Oil and Gas Lease Sale 237 in the Chukchi Sea Planning Area on the Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Cancellation of Chukchi Sea Lease Sale 237.

SUMMARY: The Department of the Interior has decided to cancel Chukchi Sea Lease Sale 237, which was scheduled to occur in 2016 under the 2012–2017 OCS Oil and Gas Leasing Program. Sale 237 is being canceled due to lack of industry interest; current market conditions (*e.g.*, low oil prices); and the unavailability of many of the most attractive tracts, which are already under lease at this time.

FOR FURTHER INFORMATION CONTACT: David Diamond, BOEM, Chief, Leasing Division, at (703) 787–1776 or *david.diamond@boem.gov.*

Dated: November 18, 2015.

Abigail Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–30299 Filed 11–27–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA 104000]

Cancellation of Oil and Gas Lease Sale 242 in the Beaufort Sea Planning Area on the Outer Continental Shelf (OCS)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Cancellation of Beaufort Lease Sale 242.

SUMMARY: The Department of the Interior has decided to cancel Beaufort Sea Lease Sale 242, which was scheduled to occur in 2017 under the 2012–2017 OCS Oil and Gas Leasing Program. Sale 242 is being canceled due to current market conditions (*e.g.*, low oil prices) and minimal competitive interest from industry.

FOR FURTHER INFORMATION CONTACT: David Diamond, BOEM, Chief, Leasing Division, at (703) 787–1776 or *david.diamond@boem.gov.*

Dated: November 18, 2015.

Abigail Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–30300 Filed 11–27–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0068; MMAA10400]

Outer Continental Shelf (OCS), Alaska Region, Beaufort Sea Planning Area, Liberty Development and Production Plan, Extension of Public Scoping Comment Period

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Extension of public scoping comment period.

SUMMARY: On September 25, 2015, BOEM published a Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Liberty Development and Production Plan (DPP) in the Beaufort Sea Planning Area (80 FR 57873). The September 25 notice provided for a 60-day comment period, which is scheduled to end on November 24, 2015. During BOEM's scoping, the pubic recommended extending the comment period. To further the intent of the National Environmental Policy Act (NEPA) to collect information to define the scope of issues to be addressed in depth in the analyses that will be included in the EIS, and to provide additional opportunity for interested and affected parties to comment, BOEM is extending the scoping comment period for an additional 60 days to January 26, 2016.

DATES: Scoping comments should be submitted by January 26, 2016.

FOR FURTHER INFORMATION CONTACT: For information on the Liberty DPP EIS or BOEM's policies associated with this notice, please contact Lauren Boldrick, Project Manager, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, AK 99503, telephone (907) 334–5227.

SUPPLEMENTARY INFORMATION: Federal, State, Tribal, and local governments and/or agencies and other interested parties may submit written comments on the scope of the EIS through the Federal eRulemaking Portal: *http://www.regulations.gov.* In the field entitled ''Enter Keyword or ID,'' enter [Docket No. BOEM–2015–0068], and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials available for this notice.

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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: The NOI to prepare an EIS was issued pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4231 *et seq.*), and implementing regulations at 40 CFR 1501.7 and 43 CFR 46.415.

Dated: November 18, 2015.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2015–30301 Filed 11–27–15; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03042000, 16XR0680A1, RX.18786000.1000000]

Agency Information Collection Activities Under OMB Review; Renewal of a Currently Approved Information Collection

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation has forwarded the following Information Collection Request to the Office of Management and Budget (OMB) for review and approval: Diversions, Return Flows, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin (OMB Control Number 1006–0015).

DATES: OMB has up to 60 days to approve or disapprove this information collection request, but may respond after 30 days; therefore, public comments must be received on or before December 30, 2015.

ADDRESSES: Send written comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806, or email to *oira_submission@omb.eop.gov.* A copy of your comments should also be directed to Mr. Paul Matuska, Bureau of Reclamation, Boulder Canyon Operations Office, Water Accounting and Verification Group, LC–4200, P.O. Box 61470, Boulder City, NV 89006, or via email to *pmatuska@usbr.gov.* Please reference OMB Control No. 1006–0015 in your comments.

FOR FURTHER INFORMATION CONTACT: Paul Matuska at 702–293–8164. You may

also view the information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. The Consolidated Decree of the United States Supreme Court in the case of *Arizona* v. *California, et al.,* entered March 27, 2006, (547 U.S. 150 (2006)) requires the Secretary of the Interior to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use and make these records available at least annually. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flows, and consumptive use. This information collection is required to obtain a benefit.

II. Changes to Forms

The Form LC–72, Record of Water Diverted From Lake Mead and/or the Colorado River for Use in the State of Nevada, is no longer needed because the water entitlement holder who used the form is no longer able to withdraw water from the Colorado River.

III. Data

OMB Control Number: 1006–0015.

Title: Diversions, Return Flows, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

Description of respondents: The respondents will include the Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Monthly and annually.

Estimated total number of respondents: 53.

Estimated number of responses per respondent: 1 annually and/or 12 monthly

Estimated total number of annual responses: 196.

Estimated total annual burden hours: 33 hours.

Form Numbers: LC–72A and LC–72B.

Estimated burden for each form: 10 minutes.

IV. Request for Comments

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 28, 2015 (80 FR 58294). No comments were received on this information collection.

We again invite comments concerning this information collection on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents.

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. Reclamation will display a valid OMB control number on the forms.

V. 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: November 9, 2015.

Terrance J. Fulp,

Regional Director, Lower Colorado Region.

[FR Doc. 2015–29871 Filed 11–27–15; 8:45 am]

BILLING CODE 4332–90–P–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–950]

Certain Electronic Products, Including Products With Near Field Communication (''NFC'') System-Level Functionality and/or Battery Power-Up Functionality, Components Thereof, and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice of Commission Determination not to review an initial determination granting a joint motion to terminate the investigation based on a patent license agreement; termination of the investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 14) that granted a joint motion to terminate the above-captioned investigation based on a patent license agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 19, 2015, based on a complaint filed by NXP B.V. of The Netherlands and NXP Semiconductors USA, Inc. of San Jose, California (collectively, ''NXP''). 80 *FR* 14406–07 (Mar. 19, 2015). The complaint was supplemented on February 27, 2015. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of the

importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic products, including products with near field communication (''NFC'') system-level functionality and/or battery power-up functionality, components thereof, and products containing same by reason of infringement of certain claims of six United States patents. The notice of investigation named Dell, Inc. of Round Rock, Texas (''Dell''), as the sole respondent. *Id.* at 14407.

On October 16, 2015, NXP and Dell filed a joint motion to terminate the investigation on the basis of a patent license agreement between the parties. Order No. 14 at 1. On October 26, 2015, the Commission investigative staff filed a response supporting the motion. *Id.*

On October 26, 2015, the ALJ issued the subject ID (Order No. 14) granting the joint motion to terminate the investigation. The ALJ found that the joint motion complies with the Commission's rules for termination and that the agreement does not adversely affect the public interest.

No petitions for review were filed. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 23, 2015.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2015–30276 Filed 11–27–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–468 and 731–TA–1166–1167 (Review)]

Certain Magnesia Carbon Bricks From China and Mexico; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order and countervailing duty order on certain magnesia carbon bricks from China and the antidumping duty order on certain magnesia carbon bricks from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: *Effective:* November 6, 2015.

FOR FURTHER INFORMATION CONTACT: Joseph Traw, (202–205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 6, 2015, the Commission determined that the domestic interested party group response to its notice of institution (80 FR 46050, August 3, 2015) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews was placed in the nonpublic record on November 19, 2015, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before December 3, 2015 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by December 3, 2015. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to filing have changed. The most recent amendments took effect on July 25, 2014. *See* 79 FR 35920 (June 25, 2014), and the revised Commission Handbook on E-filing, available from the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Dated: November 24, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–30282 Filed 11–27–15; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by Magnesia Carbon Bricks Fair Trade Committee to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 14–19]

Daniel A. Glick, D.D.S.; Decision and Order

On January 9, 2015, Chief Administrative Law Judge John J. Mulrooney, II (hereinafter, CALJ), issued the attached Recommended Decision (cited as R.D.).[1] Therein, the CALJ found that Respondent knowingly and materially falsified three renewal applications he submitted (in 2006, 2009, and 2012) for his DEA registration, when he failed to disclose that in 2003, he entered into a Consent Agreement with the Ohio State Dental Board pursuant to which his dental license was indefinitely suspended, and after his license reinstated, he was placed on probation. R.D. at 19–22.

Having concluded that the Government had ''made out a *prima facie* case'' to revoke Respondent's registration, *id.* at 22, the CALJ further found that he ''has not tendered an unequivocal acceptance of responsibility'' and was therefore ''foreclosed from a favorable result in these proceedings.'' *Id.* at 23. And, after finding that the egregiousness of Respondent's misconduct was ''enhanced by the fact that it was repeated on three occasions,'' *id.,* the CALJ further found that the Agency's interests in both specific and general deterrence supported the revocation of his registration. *Id.* at 23–25.

Respondent filed Exceptions to the CALJ's Decision. Having considered the record in its entirety including Respondent's Exceptions, I have decided to adopt the CALJ's factual findings, conclusions of law, and recommended order. A discussion of Respondent's Exceptions follows.

Respondent takes exception to the CALJ's finding that he did not adequately accept responsibility for his misconduct. Specifically, Respondent takes issue with the following reasoning in the CALJ's Recommended Decision:

> [t]o satisfy his modest burden to accept responsibility would have required, at a minimum, an acknowledgment that he knew and understood the answers were false when the applications were presented and thereafter. Even in his Closing Brief, the Respondent does not unequivocally state he was wrong and unreasonable at the time the DEA . . . renewal applications were submitted, but merely posits that he ''now agrees that he should have consulted with an attorney, someone with the federal government, or with the DEA specifically, before answering the liability question [on] the . . . application.''

R.D. 23 (quoting Resp. Post-Hrng. Br. at 3); *see also* Resp. Exceptions at 2–3.

According to Respondent, he ''did in fact accept responsibility and present an understanding that his answers were false.'' Exceptions at 2. Quoting from his proposed factual findings, his counsel argues that '' '[i]n retrospect, Respondent understands that he made a mistake in providing 'no' [answers] to various liability questions. Respondent had no intention of being deceitful.' '' *Id.* at 3 (quoting Post-Hrng. Br., at ¶ 11 (citing Tr. 124)). Further quoting from his proposed factual findings, Respondent's counsel argues that he '' 'is now fully aware of the importance of providing truthful answers' '' to the application's questions. *Id.* (quoting Post-Hrng. Br., at ¶ 12 (citing Tr. 127)). According to Respondent, ''these statements indicate that not only was Respondent aware that the statements he made on his application were false, but also that he now appreciated the importance of providing truthful answers.'' *Id.*

Having reviewed Respondent's testimony, I agree with the CALJ's conclusion that Respondent has not unequivocally acknowledged his misconduct. To be sure, Respondent did answer ''yes'' when asked by his counsel whether ''[i]n retrospect, would you say that was a mistake?'' Tr. 124. Yet a review of the record shows that ''that'' was not a reference to the three DEA applications he falsified but rather to an application for malpractice insurance. *See id.* at 122–24. As for Respondent's citation to the testimony at Tr. 127, here too, the questions failed to specifically refer to his DEA applications, rather than such generalities as his ''obligation to the patient populations that you treat,'' *id.* at 126, ''the importance of answering truthfully questions that may impact on that ability,'' and ''questions that were placed to you by PPOs.'' *Id.* at 127.

When Respondent did address why he provided a ''no'' answer to the question on the DEA applications regarding whether he had ever been disciplined by state licensing or controlled substance authorities, he claimed that he called either of two investigators for the State Dental Board and was ''specifically told'' that he could ''answer no'' on his DEA applications. Tr. 115–16. When pressed by the CALJ as to why he would ask investigators for the Dental Board how to answer questions on the DEA applications, Respondent testified:

> At the time I was asking about everything. So their answers were, and obviously I jumped and assumed, but their answers were, yeah, you can answer no. When I did and nothing happened, I took that as they know what they're talking about. I never had dealt with this previously, so I didn't know, you know, how to deal with it, and they're the only people I could talk to.

Tr. 116–17. When then asked by the CALJ ''why wouldn't you call DEA?'' Respondent answered:

> I don't know. I just—I think I assumed that the Ohio State Dental Board is my governing board of everything. In my mind, I don't separate it out, but I know it is a different thing and a different application, but, you know, without a dental license I can't get a DEA license, so my assumption is that the Ohio State Dental Board regulates or oversees all of my aspects of my license.

Id. at 117. And when asked by the CALJ whether, if he ''issued a subpoena to these two investigators . . . they would remember that they gave you advice on the DEA application and . . . didn't just say you need to talk to DEA about DEA's requirement?'' Respondent testified that ''they might not remember a specific conversation, but they may recollect it.'' *Id.* at 117–18. Respondent did not, however, call to testify either of the Board's Investigators who purportedly told him that he could provide a ''no'' answer to the DEA question.[2]

Later, on cross-examination, the Government asked Respondent: ''. . . if DEA asked you or if the PPO asked you or if the pharmacy board asked you about any previous disciplinary actions, do you understand the objective in their asking you whether you had any previous disciplinary actions with a licensing board?'' Tr. 129. Respondent answered: ''I don't think they explain the reason why they're asking.'' *Id.* After Respondent eventually conceded that protecting the public was the reason why these entities asked this question, the Government asked Respondent: ''[s]o how do you balance your reputational concerns with protection of the public?'' *Id.*[3] Respondent answered: ''I didn't feel I was a threat to the

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[1] All citations to the Recommended Decision are to the slip opinion as issued by the CALJ.

[2] The record shows that one of the Board's investigators was subpoenaed by Respondent but did not appear because of illness. *See* Order Canceling Hearing and Setting Filing Deadlines, at 1 (Dec. 1, 2014). While the CALJ continued the matter to allow Respondent to call this witness, Respondent eventually decided not to call the witness and rested on the evidence he had previously presented. *Id.; see also* R.D. 21 n.40.

[3] Earlier, in questions that did not specifically address his falsification of his DEA applications but appear to have been related to his admitted falsifications of his applications to participate in insurance plans, Respondent explained that he provided false answers ''[f]or fear that it would do more harm to my reputation . . . it was more a reputational immaturity, if you will.'' Tr. 128.

public.'' *Id.* Still later, on questioning by the CALJ, Respondent answered ''yes'' when asked if he was ''concerned that [providing a yes answer] would trigger some other response both in insurance or the regulatory boards?'' *Id.* at 132.

Returning to the issue of why he did not contact DEA and ask how he should answer the question on his DEA applications, Respondent explained:

> I never had a relationship with anybody from the DEA. I never thought to call them directly, and my sole contact was with the governing board of my license. So I assumed they knew—they were the umbrella. So, if you go to the top, everything else falls underneath them. That's what I assumed.

Id. at 134.

After he again asserted that both the Dental Board and Ohio Pharmacy Board knew about his disciplinary record, the CALJ asked: ''[b]ut if DEA wasn't part of that, there was no reason that you had to know that DEA would know any of this . . . ?'' *Id.* at 135. Respondent answered: I assumed that DEA is under the pharmacy board.'' *Id.* When the CALJ then asked Respondent how he could ''assume that DEA would know any of it if you didn't report it or didn't tell them,'' and ''how would [DEA] know?'' Respondent answered:

> Either . . . I assumed that they're all in conjunction with each other, I assume, and if they didn't know about it, I don't know. Why wouldn't they know about it? If the board was able to find out about it, why wouldn't the—you know, if the dental board found out about it, I'm sure that the pharmacies—the drug board would find out about it.

Id. at 136.

Still later, on re-direct examination, Respondent agreed with his counsel that he had ''answered no to these liability questions on numerous applications.'' *Id.* at 141. Respondent's counsel then asked him if ''[w]hen you first started answering no to that question, were you under an impression that that was the proper answer, and if you were, how did you get that impression?'' *Id.* Respondent testified: ''I was led to believe that that was the proper answer from various people, and once I answered no and it passed, so to speak, then I was in the clear.'' *Id.*

Respondent then asserted that at the time, he thought these ''people'' were, in the words of his counsel, ''people in authority at least in the State of Ohio'' and with the Dental Board. *Id.* Respondent then agreed with his counsel ''that not consulting with an attorney or at least somebody'' at the DEA, was ''a grave mistake.'' *Id.* at 142. When then asked if ''you had to do it over again, how would you handle this?'' Respondent testified: ''I would answer yes with a form letter attached to the applications.'' *Id.*

The Agency has repeatedly held that where, as here, the Government has made out a *prima facie* case to support a finding that a registration should be suspended or revoked under one of the five grounds set forth in 21 U.S.C. 824(a), a registrant must ' ''present sufficient mitigating evidence to assure the Administrator that [he] can be entrusted with the responsibility' '' that attaches with holding a registration. *Medicine Shoppe-Jonesborough,* 73 FR 364, 387 (2008) (quoting *Samuel S. Jackson,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller,* 53 FR 21931, 21932 (1988))). ''Moreover, because 'past performance is the best predictor of future performance,' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir.1995), [DEA] has repeatedly held that where a registrant has committed acts [which subject his registration to suspension or revocation], the registrant must accept responsibility for [his] actions and demonstrate that [he] will not engage in future misconduct.'' *Medicine Shoppe,* 73 FR at 387; *see also Jackson,* 72 FR at 23853; *John H. Kennedy,* 71 FR 35705, 35709 (2006); *Prince George Daniels,* 60 FR 62884, 62887 (1995). *See also Hoxie* v. *DEA,* 419 F.3d at 483 (''admitting fault'' is ''properly consider[ed]'' by DEA to be an ''important factor[]'' in the public interest determination). A registrant's acceptance of responsibility must be unequivocal. *See Michael A. White,* 79 FR 62957, 62958 (2014); *The Medicine Shoppe,* 79 FR 59504, 59510 (2014); *Ronald Lynch,* 75 FR 78745, 78754 (2010).

While Respondent had the burden of production on the issue of whether he accepted responsibility for his misconduct and can be entrusted with a registration, the CALJ found his evidence insufficient to rebut the Government's *prima facie* case. I agree with the CALJ. As discussed above, the testimony which Respondent cites in his Exceptions as evidence that he acknowledges his misconduct did not even address his falsifications of the three DEA applications. When Respondent did address why he falsified his DEA applications, he asserted that he was told by investigators for the Ohio Dental Board that he could answer ''no.'' Notably, while the CALJ continued the proceeding to allow Respondent to present the testimony of one of the Dental Board investigators who purportedly would have corroborated his claim, Respondent eventually rested his case without calling this witness.

The CALJ found implausible Respondent's testimony that a Dental Board investigator told him he could answer ''no'' to the DEA application's liability question. R.D. at 15–16. I agree and find that Respondent provided false testimony on this issue. Indeed, the only respect in which Respondent provided truthful testimony related to this issue was when he acknowledged that he was concerned that if he answered ''yes'' to questions on the various applications ''it would trigger some other response both in insurance or the regulatory boards.'' Tr. 132. Disturbingly, even at the hearing, Respondent persisted in offering excuses rather than admit that he lied on his three DEA applications. His false testimony is fatal to his contention that he acknowledges his misconduct and his claim that he is entitled to remain registered.

As the ALJ noted, because Respondent has failed to acknowledge his misconduct, his assurance (even if I found it credible) that he will provide truthful answers on future DEA applications is irrelevant. R.D. 23. Moreover, in his Exceptions, Respondent ignores that there are additional factors that are relevant in determining the appropriate sanction. *See, e.g., Joseph Gaudio,* 74 FR 10083, 10094 (2009); *Southwood Pharmaceuticals, Inc.,* 72 FR 36487, 36504 (2007).

These include the egregiousness and extent of a registrant's misconduct. *See Jacobo Dreszer,* 76 FR 19386, 19387–88 (2011) (explaining that a respondent can ''argue that even though the Government has made out a *prima facie* case, his conduct was not so egregious as to warrant revocation''); *Paul H. Volkman,* 73 FR 30630, 30644 (2008); *see also Paul Weir Battershell,* 76 FR 44359, 44369 (2011) (imposing six-month suspension, noting that the evidence was not limited to security and recordkeeping violations found at first inspection and ''manifested a disturbing pattern of indifference on the part of [r]espondent to his obligations as a registrant''); *Gregory D. Owens,* 74 FR 36751, 36757 n.22 (2009). They also include the Agency's need to deter similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Gaudio,* 74 FR at 10095 (quoting *Southwood,* 71 FR at 36503). *Cf. McCarthy* v. *SEC,* 406 F.3d 179, 188–89 (2d Cir. 2005) (upholding SEC's express adoption of ''deterrence, both specific and general, as a component in analyzing the remedial efficacy of sanctions'').

The CALJ found that Respondent's misconduct was egregious in that he materially falsified his applications three times and was ''motivated by his desire to avoid drawing negative

attention to himself and his practice.'' R.D. 23. In other words, Respondent intended to deceive the Agency. Notably, in his Exceptions, Respondent does not challenge the CALJ's finding that his conduct is egregious. I agree with the CALJ and conclude that Respondent's multiple falsifications warrant the revocation of his registration.

Finally, the CALJ also found that the Agency's interests in both specific and general deterrence support the revocation of his registration. Here too, Respondent does not challenge the CALJ's findings. I agree with the CALJ's findings that the Agency's interests in both specific and general deterrence support the revocation of Respondent's registration.

Accordingly, I reject Respondent's Exceptions and will adopt the CALJ's recommended order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BG1606219 issued to Daniel A. Glick, D.D.S, be, and it hereby is, revoked. I further order that any application of Daniel A. Glick, D.D.S., to renew or modify his registration, be, and it hereby is, denied. This Order is effective December 30, 2015.

Dated: November 19, 2015.

Chuck Rosenberg,

Acting Administrator.

Robert W. Walker, Esq. for the Government.

Michael J. Goldberg, Esq., for the Respondent.

RECOMMENDED RULINGS, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION OF THE ADMINISTRATIVE LAW JUDGE

Chief Administrative Law Judge John J. Mulrooney, II. On August 4, 2014, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause (OSC) [4] proposing to revoke the DEA Certificate of Registration (COR) Number BG1606219,[5] and deny any pending applications of Daniel A. Glick, D.D.S. (Respondent) pursuant to 21 U.S.C. 824(a) (2012), on the basis that the Respondent allegedly materially falsified multiple applications to renew his DEA COR.[6] On August 15, 2014, the Respondent filed a timely request for a hearing.[7] A hearing was conducted in this matter on November 19, 2014, in Cleveland, Ohio.

The issue ultimately to be adjudicated by the Administrator, with the assistance of this recommended decision, is whether the record as a whole establishes by substantial evidence that the Respondent's continued registration with the DEA should be revoked pursuant to 21 U.S.C. 824(a).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions of law below.

The Allegations

In its OSC, in support of the revocation it seeks, the Government alleges that the Respondent ''materially falsif[ied] [his] renewal applications for continuing authorization to handle controlled substances under [his] DEA COR,'' in violation of 21 U.S.C. 824(a)(1).

The Stipulations of Fact

The Government and the Respondent, through counsel, have entered into stipulations regarding the following matters:

1) Respondent is currently registered with DEA as a practitioner in Schedules II–V under DEA registration number BG1606219 at a registered location of 22901 Millcreek Boulevard, Suite 140, Beachwood, Ohio 44122. His DEA COR is current, and reflects an expiration date of September 30, 2015.

2) On November 6, 2003, Respondent entered into a Consent Agreement with the Ohio State Dental Board (Dental Board).

3) On or about September 19, 2003, Respondent was charged with felony possession of cocaine in the Cuyahoga County Court in Ohio.

4) On October 22, 2003, Respondent entered a plea of no contest to the above charges. On or about that same date, Respondent successfully petitioned the court for treatment in lieu of conviction, and on or about October 6, 2004, the charge of cocaine possession was dismissed, and Respondent's plea of no contest was vacated.

5) On January 7, 2004, Respondent's dental license was reinstated by the Dental Board.

6) Cocaine is a Schedule II controlled substance pursuant to 21 CFR 1308.12(b)(4).

The Evidence

The Government's Evidence

The Government's case-in-chief included the testimony of two witnesses: Ohio State Dental Board Executive Director Lili Reitz, Esq. and DEA Diversion Group Supervisor Scott Brinks.

Diversion Group Supervisor (GS) Scott Brinks, the lead DEA investigator on the Government's case, testified that he is a fifteen-year DEA investigator, retired Department of Veterans Affairs police officer, and former military police officer.[8] Tr. 64. GS Brinks testified that his contact with this case began as result of his independent investigation of the Respondent's brother, who, at the time, was also a practicing dentist and DEA registrant. In the course of investigating the Respondent's brother, GS Brinks happened upon the Respondent's 2003 airport arrest for cocaine possession and followed up.[9] Tr. 65–66. After conducting some additional research in DEA's Registration Information Consolidation System (RICS),[10] GS Brinks discovered that the Respondent answered ''no'' to a liability question (Question 3) on his DEA COR renewal application asking whether his state license had ever been suspended, notwithstanding the existence of a consent agreement with the Ohio State Dental Board (Dental Board) wherein his state license had been suspended as a result of his arrest.[11] Tr. 66; Gov't Ex. 7. GS Brinks explained the system by which DEA processes renewal applications for registrants, and stated that if a registrant enters a remarkable or ''yes'' answer to a liability question, the file is assigned to a field office for further investigation. Tr. 68. An application received with no remarkable answers to the liability questions is routinely processed without any field investigation, and according to GS Brinks, ''[i]t will just automatically be renewed.'' Tr. 68–69.

Through GS Brinks's testimony, the Government offered three COR renewal applications submitted by the

[4] ALJ Ex. 1.

[5] Gov't Exs. 1, 7.

[6] ALJ Ex. 1, at 1–2.

[7] ALJ Ex. 2.

[8] Diversion Group Supervisor (GS) Brinks testified that at the time he investigated the Respondent, he served as a Diversion Investigator (DI) in DEA's Cleveland office, but that he was subsequently promoted to his current position as Diversion Group Supervisor at the Merrillville (Indiana) Resident Office. Tr. 64–65.

[9] The Respondent's brother was the subject of an unrelated Order to Show Cause before this tribunal (Docket No. 14–18).

[10] A printout of the relevant RICS inquiry result (RICS printout) was received into the record without objection.

[11] The RICS printout reflected that all liability questions were answered in the negative.

Respondent on August 7, 2006, August 8, 2009, and August 19, 2012.[12] Gov't Exs. 4, 5, 6. Each of the three COR renewal applications reflected a negative answer to Question 3, which, in pertinent part, asks:

Has the applicant ever . . . had a state professional license or controlled substance registration . . . suspended . . . or placed on probation. . . .

The testimony presented by GS Brinks was essentially uncontested.[13] Beyond that, he presented as an objective, experienced [14] regulator who has no stake in the outcome of the Respondent's proceedings. Taken as a whole, his testimony was sufficiently detailed, plausible, and internally consistent to merit full credibility in the instant matter.

The Government also introduced, without objection, an affidavit executed by DEA's Chief of the Registration and Program Support Section, Richard A. Boyd, regarding the history of the Respondent's registration with the DEA (DEA Records Affidavit). Gov't Ex. 2. The DEA Records Affidavit states that DEA initially assigned the Respondent COR BG1606219 on October 20, 1988. *Id.* at 1. The DEA Records Affidavit further provides that the Respondent most recently renewed this registration on August 19, 2012. *Id.* The DEA Records Affidavit states that at the time of the August 19, 2012 license renewal application, the Respondent answered in the negative to all four mandatory ''Background Investigation'' liability questions, including question one, whether he had ''ever been convicted of a crime in connection with controlled substance(s) under state or federal law . . .''; and Question 3, whether he had ''ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?'' *Id.* The DEA Records Affidavit likewise certifies that the Respondent submitted additional DEA COR renewal applications on August 7, 2006 and August 8, 2009.[15] In both the 2006 and 2009 renewal applications, the Respondent also answered in the negative to Question 3 and the other liability questions. *Id.* at 2–3.

Executive Director (Exec. Dir.) Lili E. Reitz also testified for the Government. Exec. Dir. Reitz testified that she is and has been the Executive Director of the Dental Board since May 1996 and that she is also an attorney. Tr. 25. Exec. Dir. Reitz testified that as executive director, her responsibilities include overseeing the operations of the Dental Board's three ''primary functions'' regarding dental professionals in the state, *to wit,* licensing, regulation, and enforcement. Tr. 26, 28–29. As a result of her job functions, Exec. Dir. Reitz testified that she was familiar with the Dental Board's licensing requirements and renewal application process, and that in preparation for her testimony, she ''reviewed the files regarding [the Respondent] and [the Dental Board's] history with [the Respondent,] and the consent agreements, renewal information, anything relevant.'' Tr. 25–26, 35–36. According to Exec. Dir. Reitz, one of her job responsibilities is to review the renewal paperwork before it is made available to potential applicants each year. Tr. 37.

Although produced by the Government ostensibly to explain the finer points of the application and renewal procedures at the Dental Board, Exec. Dir. Reitz's testimony was regrettably marked by a significant level of inconsistency and confusion. Exec. Dir. Reitz initially explained that in Ohio, as dentists renew their state licenses every two years, they are only required to report disciplinary actions that occurred within that biennium and are likewise not required to report disciplinary actions occurring in a previous renewal period. Tr. 26–28. Early in her testimony, Exec. Dir. Reitz indicated that it was her belief that the pertinent liability question on the renewal application asks applicants to disclose only those disciplinary actions occurring in the two years prior to submission. Tr. 27–28. Exec. Dir. Reitz went on to explain that even where a disciplinary matter has been completed within the biennium, a dentist is still required to disclose it if the matter occurred within the relevant period for the application. Tr. 33–34. Exec. Dir. Reitz was unequivocal in her testimony that the biennium language in the renewal applications has been in place ''at least'' since May 1996, when she began her career at the Dental Board. Tr. 28, 37. Exec. Dir. Reitz even offered that the guidance to the practitioners in this regard is ''the way the question is worded [, which is] pretty clear.'' Tr. 34.

Later in her testimony, Exec. Dir. Reitz was compelled to admit that she was mistaken regarding the language in the renewal applications utilized by the Dental Board at the time of the renewal applications at issue in these proceedings. Tr. 39–41. When confronted with the undeniable reality that the language of the renewal applications in issue for the Respondent did not self-limit to two years, but rather stated ''at any time,'' Exec. Dir. Reitz conceded that she was unfamiliar with the language in the renewal applications in question. Tr. 44. It was only after the language utilized in the relevant forms was inflicted on her as she testified that she reasoned (with a level of conviction that equaled her earlier, likewise confident assurances) that the ''at any time'' language required a licensure renewal applicant at that time to disclose any and all previous disciplinary action taken against him or her at any time. Tr. 50. Exec. Dir. Reitz testified that she is confident that the current 2013 renewal applications now specify a two-year period, and that the Dental Board must have made the change to the liability question sometime between 2009 and 2013. Tr. 41–42. Her estimation as to why the Dental Board changed the question to limit the disclosure time to two years was because the Dental Board was ''getting the same information renewal period after renewal period for older types of actions.'' Tr. 45. Thus, the focus of the change was to ensure that the Dental Board was apprised of actions that had not been processed through its own disciplinary apparatus. Exec. Dir. Reitz testified that even prior to the application language modification, a renewal applicant ''would be expected to answer the question as written . . . [but f]rom the board standpoint, if they did not disclose something that occurred between the board and the licensee, we were aware of it anyway.'' Tr. 46. She explained that the liability question was more geared toward dentists disclosing disciplinary actions taken against them in other states, or by a different regulatory entities, and that the Dental Board has ''never disciplined a licensee for not disclosing to [them] an action that [it] took against that licensee.'' Tr. 48–49, 53. Exec. Dir. Reitz testified that the Dental Board would not necessarily know if an individual answered one of its liability questions incorrectly unless it conducted an audit, because the system does not ''flag'' an application for further review. Tr. 47. Exec. Dir. Reitz testified that because the Dental Board is aware of its own actions, the failure by an applicant to

[12] These exhibits were received over the Respondent's foundation objection. Tr. 72–78.

[13] The Respondent waived cross-examination of this witness. Tr. 79.

[14] GS Brinks testified that along with his education, prior law enforcement experience, and DEA training, he had been involved in ''well over 100'' diversion regulatory investigations. Tr. 65.

[15] A copy of the August 19, 2012 renewal application was received into the record. Gov't Ex. 6. Copies of the August 19, 2012 (Gov't Ex. 6), August 8, 2009 (Gov't Ex. 5), and August 7, 2006 (Gov't Ex. 4) renewal applications were also received into the record over the Respondent's (foundation) objection.

disclose a Dental Board matter would not be ''a major concern'' to the Dental Board. Tr. 53.

When pressed for details on any guidance that Ohio dentists would have had regarding the correct way to answer the ''at any time'' language in the 2009 Ohio dental license renewal application, Exec. Dir. Reitz testified that there was no internal guidance on this issue, no additional supplemental publications (such as a ''frequently asked questions'' resource) available to renewal applicants to assist in the process, and that the expectation was that the applicant would be required to comply with the plain language in the application in use at the time, to include the question that seeks disclosure of disciplinary actions that occurred ''at any time.'' Tr. 33–34, 42–43, 49. According to Exec. Dir. Reitz, telephonic inquiries by license renewal applicants are fielded by a cadre of experienced Dental Board staff members who ''have been there many years.'' Tr. 52. Exec. Dir. Reitz testified that she would be surprised if she were to learn that a Dental Board staff member ever provided advice to a caller that limited the temporal scope of the ''at any time'' question on the 2009 application. *Id.* When queried about whether staff members at the Dental Board routinely provide advice to state dental licensees about the requirements of other agencies, Exec. Dir. Reitz answered, ''We don't have any jurisdiction over those processes.'' Tr. 35.

Exec. Dir. Reitz also testified about a Consent Agreement that was entered into between the Respondent and the Dental Board in 2003 (Consent Agreement).[16] Gov't Ex. 3. In the Consent Agreement, the Respondent agreed to an indefinite suspension of his license to practice dentistry in exchange for the Dental Board not pursuing formal disciplinary proceedings against him.[17] *Id.* at 1; Tr. 31. The Consent Agreement expressly states that the Respondent's license was indefinitely suspended and could only be reinstated upon the Respondent having completed certain conditions and providing documentation to the Dental Board regarding the completion of those conditions. Gov't Ex. 3, at 1–2; Tr. 31. The Consent Agreement also specified that following reinstatement, the Respondent would be subject to a five-year probationary period, in which he was to ''abstain completely from the personal use or possession of drugs, except those prescribed, dispensed, or administered to him by another so authorized by law who has full knowledge of [the Respondent's] chemical dependency and the terms of the [Consent Agreement]'' and also to ''abstain completely from the use of alcohol.'' [18] *Id.* at 3.

According to Exec. Dir. Reitz, the Dental Board worked in conjunction with the state pharmacy board and the Cleveland Police Department regarding the Respondent's possession of a controlled substance. Tr. 29. Exec. Dir. Reitz referred to the Consent Agreement as a ''typical impairment consent agreement that [the Dental Board] enter[s] into with dentists.'' Tr. 32. According to Exec. Dir. Reitz, the Board ''had concerns about [the Respondent's] alcohol and drug use.'' [19] Tr. 59. Exec. Dir. Reitz further testified that the Respondent completed intensive outpatient treatment as required by the Consent Agreement and that his license was reinstated in early 2004. Tr. 60–61.

Exec. Dir. Reitz's testimony was certainly not without its warts. She presented as a witness who was as committed to her first version of licensee application expectations as she was to her second, corrected version. As the Dental Board's Executive Director for eighteen years, it would not be unreasonable to expect that she understood the requirements of the application language that, according to her own testimony, each new iteration of which she was obligated ''to review . . . before it gets issued for each licensing or renewal period.'' Tr. 37. Her testimonial deficiencies were amplified by her initial representation that, prior to taking the witness stand in this case, she ''reviewed the files regarding [the Respondent] and [the Board's] history with [the Respondent] and the consent agreements, renewal information, anything relevant.'' [20] Tr. 25. It was clear that she was surprised on the stand by the language utilized in the 2009 Renewal Application, which indicates that she either did not pay attention to the contents of the documents she reviewed, or (contrary to her initial testimony) did not really review them ahead of time. Although she testified unequivocally that the language had not changed in eighteen years, she was forced to backtrack and admit that she did not know what the earlier language said, or when it may have changed. Will Rogers once famously said that ''[i]t isn't what we don't know that gives us trouble, it's what we know that ain't so.'' Considering the complex and varied responsibilities associated with her duties as the executive director of a dental board with statewide jurisdiction, the fact that Ms. Reitz was not intimately familiar with the intricacies of each yearly iteration of that body's renewal application questions should be of no surprise, and only of modest significance here. Still, the confidence with which she declared both the earlier and corrected versions of the renewal application questions as established facts provides cause for some reflection.

Still, even with its blemishes, Exec. Dir. Reitz's testimony was credible. Notwithstanding the aforementioned single internal inconsistency, Exec. Dir. Reitz presented as an impartial and generally knowledgeable state regulator who was mistaken on one (ultimately non-dispositive) issue. When confronted with the issue, Exec. Dir. Reitz quickly, candidly, and commendably addressed and persuasively explained the basis for her mistake and did not equivocate in any way.[21] Tr. 41, 44, 54, 62. Exec. Dir. Reitz obviously has no stake in the outcome of the Respondent's DEA proceedings, and her testimony was sufficiently objective, detailed, and plausible to be fully credited in this recommended decision.

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[16] Gov't Ex. 3; Tr. 30, 33.

[17] In response to a question on the subject, Exec. Dir. Reitz indicated that the Respondent and the Dental Board entered into another consent agreement that is unrelated to the issues in this DEA enforcement action. Tr. 36.

[18] The Consent Agreement also required the Respondent to continue participation in drug and alcohol programs and to be subject to random screenings for drugs and alcohol. *Id.* The Consent Agreement also provided that should Respondent test positive for drugs or alcohol, or should he refuse to submit to testing in the probationary period, his license would be indefinitely suspended. Although the Agency has sustained adverse actions against the registrations of practitioners based on violations of 21 U.S.C. 843(a)(3) and personal abuse of controlled substances thus obtained, *Roger A. Pellmann, M.D.,* 76 FR 17704, 17709 (2011); *Randall Relyea, D.O.,* 72 FR 40378, 40380 (2008); *Alan H. Olefsky, M.D.,* 72 FR 42127, 42128 (2007), the Government does not allege in the instant case that self-abuse of drugs or alcohol is a basis for the revocation of the Respondent's COR.

[19] Although the Consent Agreement does not list any findings of fact among its stipulations, admissions, and understandings, a close reading of the Consent Agreement suggests a significant level of concern on the part of the Dental Board that the Respondent could have been drug and/or alcohol dependent prior to entering into the Consent Agreement. For example, as a condition of reinstatement, the Respondent was required to obtain documentation from a treating provider that he was ''no longer drug or alcohol dependent and that he [was] able to practice dentistry in accordance with the accepted standards of the profession.'' Gov't Ex. 3, at 2. The Respondent also had to provide documentation of having completed treatment from an ''approved treatment provider'' before the Dental Board would reinstate his license. *Id.*

[20] Exec. Dir. Reitz later clarified that she had not reviewed the Respondent's renewal applications. Tr. 54.

[21] In fact, upon leaving the witness stand, Exec. Dir. Reitz offered an apology for any confusion caused by this aspect of her testimony. Tr. 62.

The Respondent's Evidence

The Respondent presented his case-in-chief through his own testimony and two exhibits.[22] In the course of his testimony, the Respondent briefly described his career in the practice of dentistry, which along with his regular practice includes a history of some community service (including service to underserved patients), membership in professional organizations, and some modest involvement in academia. Tr. 81–84. He explained that he is a licensed dentist (D.D.S.) in the state of Ohio and that he has been practicing continuously[23] since his licensure in August 1988, at which time he joined his father and brother's dental practice after dental school. Tr. 81.

Although the Government's case focused on the three COR renewal applications at issue, the Respondent, during his direct testimony, raised the issue of, and spoke at some length about, the events precipitating his 2003 airport arrest and corresponding criminal charge for possession of cocaine. According to the Respondent, cocaine was found at the airport in his checked luggage as he was preparing to depart with some high school friends for Key West for a fortieth birthday party. Tr. 96–97. The Respondent testified in essence that the cocaine was brought to enhance the vacation experience, which in his words:

> was going to be a reunion of 12 high school friends that were [*sic*] going to be a party weekend, hell raising, all that fun stuff that you did back in the day. Me being a big—trying to be the big man on campus, I thought I would be the one to lead the parade, if you will.

Tr. 136–37. The Respondent related that after being stopped at the gate when drugs were discovered in his suitcase, he was placed in a detention room at the airport and subsequently arrested, booked, processed, and jailed for three days until he was released on his own recognizance. Tr. 89–90, 98. Although at the DEA hearing he ultimately agreed that his luggage contained cocaine that he placed there himself, he also was steadfast in his opinion that he was not a cocaine user, and pointed out more than once that at the time of his arrest, there was no cocaine in his system. Tr. 136, 140.

The Respondent's testimony regarding the cocaine was uneven and confusing. At one point, the Respondent testified that ''[t]here was cocaine in a suitcase that was registered in my name.'' Tr. 96. He then offered that ''one of the bags that was checked in under my name had cocaine in it'' and that the bag ''[h]ad cocaine in it, and that's why I was arrested.'' Tr. 97. When pressed on the issue of how it was that the cocaine ended up in his bag, the Respondent answered: ''I will take ownership of it. I always have and I always will. I had the cocaine in my bag.'' Tr. 97. After multiple questions and an equal number of equivocations, the Respondent's answers eventually morphed from his ''tak[ing] ownership'' and ''accept[ing] responsibility'' for the cocaine to his reluctant admission that he had actually placed the cocaine in his own bag. Tr. 97–98. Later in his testimony, the Respondent described how another member of his party was carrying fireworks, and that he (the Respondent) ''was able to get the cocaine'' and that he was ''the one that was going to carry it.'' Tr. 139. The Respondent, at another point in his testimony, did volunteer that he now feels his actions were a ''stupid mistake'' and a ''stupid, hugely horrible mistake.'' Tr. 97, 99. The testimony the Respondent offered regarding his arrest veered wildly, and was styled much less as an acceptance of responsibility than as an innocent man nobly accepting culpability for a high school chum. Suffice it to say that this narrative structure did not enhance the credibility of the Respondent's testimony.

The Respondent also testified about the criminal proceedings associated with his arrest. According to the Respondent, following his arrest, he was offered the option to participate in a drug court program[24] for one year because his infraction was an ''isolated incident.'' Tr. 85. According to the Respondent, the drug court program required that he undergo urinalysis testing, attend AA meetings, and counsel/mentor other individuals in the program once a month.[25] Tr. 87. Under his understanding of this legal process, his participation in drug court would reduce his felony charge to a misdemeanor charge, and following completion of the process, he would obtain an expungement. Tr. 88–89. According to the Respondent, he understood was that as a result of his participation in the drug court program, ''from a legal standpoint I was told the incident never happened because I complied and everything went well.'' Tr. 85.

The Respondent testified that approximately two months after his arrest, a Dental Board investigator visited his office.[26] Tr. 92–93. According to the Respondent, right from his initial contact with the Dental Board, the investigator advised him to enter into a consent agreement and told him that his dental license would likely be suspended. Tr. 92. The Respondent testified that one of the terms of the Dental Board Consent Agreement required that he undergo an evaluation for drug rehabilitation, but he was quickly rejected from the program because he was not addicted. Tr. 95–96. According to the Respondent, the evaluator told him: ''look, you're not a drug addict, you're an idiot.'' *Id.* As a result, the Respondent entered into a weekly program for approximately six weeks that he described as ''group therapy.'' Tr. 96.

The Respondent testified that the airport incident and its consequences burdened him with some financial hardships, the most significant of which was apparently his removal from some insurance company panels as a result of having been placed on probation by the Consent Agreement.[27] Tr. 99–100. According to the Respondent, removal from these panels resulted in his patients losing the benefit of lower, in-network rates for his dental services. The Respondent related that this development caused ''inner turmoil internally within my practice with the patients.'' Tr. 100. The Respondent testified that as a result of this financial hardship on his patients, he petitioned the Dental Board to be removed from probation early; a request which was granted. Tr. 101. The Respondent stated that his patients never knew the reason why he was removed from the insurance panels, and that there was no press

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[22] At the commencement of the hearing on November 19, 2014, the parties represented that Kathy Carson, a witness noticed by the Respondent in his Prehearing Statement, was unavailable to testify due to illness. Tr. 5–11. The Respondent was offered the option of presenting this witness at a later date when she was well enough to testify. Tr. 146. The Respondent initially sought and was granted a continuance to present Ms. Carson's testimony at a later date, and subsequently withdrew that request after consulting with her. On December 1, 2014, the Respondent's counsel telephonically informed chambers staff that he was no longer seeking to present Ms. Carson's testimony and that he wished to rest his case on the evidence presented at the November 19, 2014 hearing.

[23] The Respondent indicated that he has been in continuous practice with the exception of the suspension mandated by the Dental Board consent order at issue here. Tr. 81.

[24] Counsel for the Respondent clarified for this tribunal that the name of the diversion court was the Greater Cleveland Drug Court. Tr. 85.

[25] In fact, the Respondent testified that he continued to attend court to counsel other people for ''a year or so'' after his obligation to do so was completed. Tr. 88.

[26] The Respondent believes the Dental Board was tipped off by the Cleveland Police Department. Tr. 93.

[27] The Respondent also vaguely alluded to some impact on his family, but did not elaborate. Tr. 101.

attention devoted to his dalliance at the airport. Tr. 101.

Boiled down to its essence, the Respondent's position in these proceedings has consistently been that his DEA COR application answers were incorrect because in 2009, he completed his Ohio state license renewal application (apparently incorrectly), and applied the same (incorrect) rule he used at the state level to his (federal) DEA application. In support of this position, the Respondent supplied the record with a copy of his 2009 Ohio State Dental Board license renewal application (2009 Renewal Application).[28] Tr. 103, 115; Resp't Ex. 1. Among the questions included on the 2009 Renewal Application regarding ''Discipline'' were the following: (1) ''Have you *at any time* had any disciplinary action initiated against you by any state licensing board? If yes, provide details'' and (2) Have you *at any time* surrendered, or consented to limitation upon: a) a license to practice dentistry/dental hygiene; OR b) state or federal privileges to prescribe controlled substances? If yes, provide details.'' Resp't Ex. 1, at 1–2 (emphasis supplied). The Respondent answered in the negative to both questions.[29] Before submitting the 2009 Renewal Application, the Respondent was also required to ''Agree'' to the following statements: (1) ''I understand that submitting a false, fraudulent, or forged statement or document or omitting a material fact in obtaining licensure may be grounds for disciplinary action against my license'' and (2) ''Under penalty of law, I hereby swear or affirm that the information I have provided in the application is complete and correct, and that I have complied with all criteria for applying on line.'' *Id.* at 3.

The Respondent testified that before filing his 2009 Renewal Application, he called investigators at the Dental Board for guidance in responding to the ''Discipline'' questions. Tr. 104. At the hearing, the Respondent said that he conceived the idea to call the Dental Board investigators after participating in the Caduceus program, which was a series of substance abuse rehabilitation meetings geared toward the special needs of professionals in the medical and dental communities. Tr. 108–10. According to the Respondent, the Dental Board investigator that he spoke to [30] told him that he could answer ''no'' to the Discipline questions because the Dental Board was aware of its own proceedings. Tr. 104–05. The Respondent stated that, by his reckoning (apparently in spite of the plain language of the question),[31] the Discipline question really queried whether discipline had occurred within the prior biennium. Tr. 105. The Respondent further explained: ''I was told after the expungement this incident never happened, and I wanted it to never happen, and so I thought in my mind it never happened.'' Tr. 107. In a revealing moment during his testimony, the Respondent provided the following insight about his thought process in answering the 2009 Renewal Application Discipline questions the way he did:

> So I was looking to answer it as no. So, when I found somebody to tell me to answer it as no, I'm like, okay, I got it.

Tr. 113.

The Respondent likewise testified to his process of answering ''no'' to the DEA liability question regarding whether he had ever had his license suspended or placed on probation. He stated that he asked the (state) Dental Board investigators about how to answer the (federal) DEA liability questions, and that, according the Respondent, the investigators told him that he could answer the DEA questions in the negative. Tr. 115. The Respondent clarified:

> At the time I was asking [the Dental Board investigators] about everything. So their answers were, and obviously I jumped and assumed, but their answers were, yeah, you can answer no. When I did and nothing happened, I took that as they know what they're talking about.

Tr. 116–17.

Additionally, the Respondent said that he believed that the (state) Dental Board oversees his (federal) DEA registration. The Respondent said:

> I just—I think I assumed that the Ohio State Dental Board is my governing board of everything. In my mind, I don't separate it out, but I know it is a different thing and a different application, but, you know, without a dental license I can't get a DEA license, so my assumption is that the Ohio State Dental Board regulates or oversees all of my [sic] aspects of my license.

Tr. 117.

At his DEA hearing, in addition to his misperception that investigators at the state Dental Board wielded authority over his (federal) DEA COR, the Respondent also attributed his decision not to check with DEA to his (equally inexplicable) assumption that all regulatory authority (even federal DEA regulatory authority) fell under the jurisdiction of his state pharmacy board, and that the state pharmacy board was notified in some way by the state Dental Board. Tr. 134–35. When pressed on the patent illogic of his reasoning, the Respondent had the following to say:

> Either (a) I assumed that they were all in conjunction with each other, I assume, and if they didn't know about it, I don't know. Why wouldn't they know about it? If the board was able to find out about it, why wouldn't the—you know, if the dental board found out about it, I'm sure that the pharmacies—the drug board would find out about it.

Tr. 136. Needless to say, the offered explanation does little to persuasively account for placing a patently false answer on three DEA COR renewal applications. The Respondent did allow that if he ''had to do it over again [he] would answer yes with a form letter attached to the applications.'' Tr. 142.

The Respondent, in a perhaps more candid moment during his testimony, admitted that at the time he completed the various applications, he was concerned about a ''trickle-down'' effect on other applications should he answer in the affirmative to the liability questions asked by the Dental Board in its Renewal Application. Tr. 131. He stated:

> I don't know, but my assumption is if you were to—once you start answering yes, there is an alleged trickle-down effect of repercussions, that once you can—and the presumption is if you continue to answer no and you've gone through treatment and you can answer no, then you're okay with other, you know, boards, with other insurance companies, with other things. It's a dumb assumption.

Tr. 131. The Respondent testified when completing the applications, he was concerned that if he answered ''yes'' to the liability questions, it would ''trigger'' some response from the

[28] The exhibit was admitted without objection from the Government. Tr. 125.

[29] The Respondent also answered in the negative the following two inquiries under ''Legal Questions'': ''(1) Have you been found guilty of, or plead guilty or no contest to a felony or misdemeanor? (exclude all traffic violations other than those involving driving under the influence of alcohol or drugs). If yes, provide details'' and (2) ''Have you been found guilty of, plead guilty or no contest to a federal or state law regulating the possession, distribution or use of any drug? If yes, provide details.'' Resp't Ex. 1. Additionally, the Respondent answered in the negative to the following question regarding ''Addiction'': ''In the past biennium, have you been addicted to or dependent upon alcohol or any chemical substance? You may answer 'no' to this question if you have successfully completed treatment at a program approved by the Ohio State Dental Board, and have subsequently adhered to all statutory requirements as contained in ORC Section 4715, or you are currently enrolled in a Board-approved program . . . If yes, provide details.'' *Id.*

[30] The Respondent stated that the investigator he spoke to was named Gail Noble, who was at that time his contact with the Dental Board. Tr. 105.

[31] The Discipline questions in the 2009 Renewal Application consistently use the phrase ''at any time,'' whereas the question in the next section, entitled ''Addiction,'' uses the phrase ''[i]n the past biennium.'' Resp't Ex. 1, at 1–2.

insurance companies or regulatory boards. Tr. 132. However, as he conceded, this plan met with limited success. A negative answer he supplied to a liability question in an insurance company renewal application did not shield him from scrutiny from the insurance carrier. His insurance agent confronted him with a report from the National Practitioner Data Bank [32] reflecting the Consent Agreement he entered into with the Dental Board. Tr. 120–22. In his testimony, the Respondent explained his approach in this way:

> I can only use the analogy of when you're applying for car insurance and the guy goes, oh, we looked it up. You've gotten these many tickets and bumped a red light. [The insurance agent] was renewing my malpractice insurance and he said, hey, there's something, there's a blip on your screen. And I was like, oh, okay.

Tr. 121–22. There was no confusion in this scenario. No advice from the Dental Board. The Respondent was merely unaware that his insurance carrier would ever find out about his disciplinary action, so he lied on his policy renewal paperwork and got caught. Essentially, he played the game and lost.

The Respondent's assessment of whether he was intending to deceive with his false DEA COR renewal application answers was all over the place. At one point in his testimony, he denied there was any attempt to deceive or mislead. Tr. 124. At another point, when asked by his counsel whether he felt he was ''being misleading or duplicitous,'' the Respondent's answer was more introspective: ''I think initially the first time, yes, but since then no. No. No.'' Tr. 125. When he was asked ''why not be truthful . . . ?'', the Respondent replied:

> For fear that it would do more harm to my reputation. I know it was pretty self—I don't know what the word is, it's escaping me right now, but it was more of a reputational immaturity, if you will.

Tr. 128. The Respondent conceded that at the time he completed his DEA COR renewal applications, he was more concerned about how the matter would have affected him professionally than he was concerned about ''any protection or any service to the public.'' Tr. 133–34.

The Respondent's testimony was problematic from a credibility standpoint. As discussed, *supra,* his presentation was marked with significant equivocations and inconsistencies. Although the Respondent entered a no contest plea to carrying cocaine in a suitcase bound for a reunion in Puerto Rico with childhood friends, when he testified initially at his DEA administrative hearing, he equivocated that the drugs were in a suitcase ''checked in under [his] name.'' Tr. 97. When pressed on the issue at his DEA hearing, he ultimately said that he would ''take ownership'' of the cocaine and had done so at the time of his criminal case. Tr. 97. Ironically, this is a minimization that, even if credited, would not have fortified his position in this case, yet the equivocation and attempt to minimize his own responsibility served to undermine his credibility.

In addition to its equivocations and inconsistencies, the Respondent's testimony was implausible. His theory, that, even as an experienced practitioner, he was misled by errant advice supplied by state investigators is simply not supported by reason. The language in the 2009 Renewal Application further undermines his position. The 2009 Renewal Application he points to actually distinguishes between the Discipline questions, which are phrased in terms of ''at any time,'' and Addiction questions, which are targeted at ''the past biennium.'' Resp't Ex. 1, at 1–2. The Respondent's credibility also is profoundly compromised by his admission that, when it suited him to do so, he intentionally attempted to mislead his insurance carrier by providing false information on his policy renewal form and was caught. The Respondent's testimony in these proceedings, taken as a whole, suffered from inconsistencies, equivocations, and implausibility that preclude a finding that he was entirely credible.

The Analysis

The Government seeks revocation of the Respondent's COR based on its evidence that on three occasions, the Respondent filed COR renewal applications wherein he falsely declared that his state professional license had never been suspended or placed on probation.[33] ALJ Ex. 1. Under the Controlled Substances Act (CSA), the material falsification of any application for a DEA COR (including a renewal application [34]) constitutes a basis for revocation or other sanction. 21 U.S.C. 824(a)(1).

For the Government to prevail under a theory of material falsification, its evidence must establish, by ''clear, unequivocal, and convincing'' evidence [35] that a registrant has provided false information in his or her application and that the false information provided is material. *Id.* A material falsification requires a showing that a statement tendered in a COR application is one that ''has a natural tendency to influence, or was capable of

[32] Resp't Ex. 2. According to the exhibit, the reports contain information on adverse actions against practitioners that is ''confidential and is disclosed only to legally authorized queriers for specified uses.'' *Id.* at 1. The Data Bank Report includes a copy of the ''Adverse Action Report: State Licensure Action'' by the Ohio State Dental Board. *Id.* at 4. The Data Bank Report classifies the adverse action as ''Probation of License'' and ''Suspension of License'' and states that the action was the result of a consent agreement. *Id.* at 5. The Data Bank Report states that the adverse action came about on the grounds of ''Impairment'' and that the basis was that the Respondent was ''unable to practice safely by reason of alcohol or other substance abuse.'' *Id.* at 5–6. The Data Bank Report further provides that the Respondent's license to practice was reinstated on January 7, 2004, that the last four years of the probationary period were ''lift[ed]'' effective March 9, 2005, and that the Respondent's license was ''in good standing and not subject to any conditions, restrictions or limitations.'' *Id.*

[33] The parties have stipulated that in 2003, the Respondent entered a plea of no contest to a state charge of felony cocaine possession. Stip. 3–4. Agency precedent is clear that a conviction obtained pursuant to a *nolo contendere* plea, or even one where adjudication is withheld or even subsequently dismissed, constitutes a conviction under this provision. *See Kimberly Maloney, N.P.,* 76 FR 60922 (2011) (collecting cases). The Agency has also held that failure to disclose a conviction of a crime in connection with controlled substances is material to the Agency's decision whether an individual should be in possession of a DEA COR. ''[T]he failure to disclose such a conviction constitutes a material falsification because it is 'capable of influencing' the decision as to whether to grant an application.'' *Pamela Monterosso, D.M.D.,* 73 FR 11146, 11148 (2008). Thus, on the present record, it is clear that, if charged, the Respondent's negative responses in his COR renewal applications regarding his cocaine possession conviction could have formed the basis to sustain multiple incidents of material falsification under the CSA. However, Agency precedent is equally clear that that the parameters of DEA administrative hearings are circumscribed by the charging document and the prehearing statements. *CBS Wholesale Distribs.,* 74 FR 36746, 36750 (2009) (citing *Darrel Risner, D.M.D.,* 61 FR 728, 730 (1996)); *see also Roy E. Berkowitz, M.D.,* 74 FR 36758, 36759–60 (2009). To have these material application falsifications available to form the basis of a sanction, the Government would have had to sufficiently allege them and provide the Respondent with adequate notice. *See CBS Wholesale Distribs.,* 74 FR at 36750 (''The Government's failure to set forth its legal theory indisputably denied Respondent a meaningful opportunity to present an argument to the contrary.''). At the outset of the hearing, the Government, through its counsel, affirmed that it would not proceed on a theory that the Respondent's false answer regarding whether he had ever been convicted constitutes a material false statement. Tr. 15. Hence, while the Respondent's arguably false statements about his drug conviction could, if offered, have been considered for other purposes, it could not (and did not) serve as an independent basis for a sanction against his COR.

[34] *See, e.g., Smith,* 76 FR at 53964 (revoking a registrant's COR upon finding that the registrant had materially falsified multiple renewal applications); *Therial L. Bynum, M.D.,* 61 FR 3948, 3948–50 (1996) (revoking a registrant's COR upon finding that the registrant had materially falsified a renewal application).

[35] *Kam,* 78 FR at 62696 (quoting *Kungys,* 485 U.S. at 772).

influencing, the decision of the decisionmaking body to which it was addressed.'' *The Lawsons, Inc., t/a The Med. Shoppe Pharmacy,* 72 FR 74334, 74338 (2007) (quoting *Kungys* v. *United States,* 485 U.S. 759, 770, 772 (1988)); *see also Robles* v. *United States,* 279 F.2d 401, 404 (9th Cir. 1960), *cert. denied,* 365 U.S. 836 (1961). To prevail, the Government need not prove that any Government decision, including the decision regarding the registration application, was actually influenced. *The Lawsons,* 72 FR at 74339. The touchstone is whether the statement had the *capacity* to influence. *See United States* v. *Alemany Rivera,* 781 F.2d 229, 234 (1st Cir. 1985), *cert. denied,* 475 U.S. 1086 (1986); *Alvin Darby, M.D.,* 75 FR 26993, 26998 (2010).

As a materiality determination turns on an analysis of the relevant substantive law, *Kungys,* 485 U.S. at 772, the allegedly false statement must be analyzed in the context of the decision before the DEA, namely, whether a registrant is entitled to remain registered. *Hoi Y. Kam, M.D.,* 78 FR 62694, 62696 (2013). The falsification must relate to a ground that could affect the decision, not merely a basis upon which an investigation could be initiated. *Darryl J. Mohr, M.D.,* 77 FR 34998, 34998 n.2 (2012); *Harold Edward Smith, M.D.,* 76 FR 53961, 53964 (2011); *Scott C. Bickman, M.D.,* 76 FR 17694, 17701 (2011). The entire application will be examined to determine whether there was an intention to deceive the agency. *See Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23852–53 (2007). Furthermore, the correct analysis depends on whether the registrant knew or should have known that he or she submitted a false application. *Dan E. Hale, D.O.,* 69 FR 64902, 69406 (2004); *The Drugstore,* 61 FR 5031, 5032 (1996); *Bobby Watts, M.D.,* 58 FR 46995, 46995 (1993). Although even an unintentional falsification can serve as a basis for adverse action regarding a registration, lack of intent to deceive and evidence that the falsification was not intentional or negligent are all relevant considerations. *Anthony D. Funches,* 64 FR 14267, 14268 (1999). The Agency considers the ''totality of the circumstances'' in evaluating whether a registrant's COR should be revoked based on a material falsification. *Thomas G. Easter II, M.D.,* 69 FR 5579, 5581 (2004).

The Agency has held that a material falsification existed when a registrant failed to disclose on DEA renewal applications that he had entered into consent agreements with the state licensing agency which had either placed him on probation or suspended his state license. *Smith,* 76 FR at 53964. In *Smith,* the Agency found that on two renewal applications, the Respondent had answered ''no'' to the liability question of whether he had ''ever surrendered or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation.'' *Id.* In evaluating the materiality of the false statement, the Agency looked to the public interest standard articulated in 21 U.S.C. 823(f) and concluded that the information withheld from the Agency (allegations in a state proceeding that the Respondent had been accused of writing false prescriptions) would have been ''material to the Agency's investigation and assessment of Respondent's experience in dispensing controlled substances and his compliance with applicable laws related to the dispensing of controlled substances.'' *Id.* The Agency also noted that the false statement in omitting the state proceedings was material because it would have yielded information about the Respondent's drug abuse, which is relevant to the public interest under Factor Five of section 823. *Id.; see also Gilbert Eugene Johnson, M.D.,* 75 FR 65663, 65665 (2010) (considering Respondent's failure to disclose past state disciplinary action under section 823 public interest factor relating to a registrant's experience in dispensing). Where the Government has based its material falsification case on state controlled substance handling privileges that have been suspended and restored before the filing of a COR application, the Agency has held that the basis for the state's action must constitute a ground that could constitute actionable misconduct against a DEA registration under the CSA. *Richard D. Vitalis, D.O.,* 79 FR 68701, 98706 (2014).

In the present case, the Respondent's state controlled substance privileges were suspended based on his arrest and no contest plea [36] regarding possession of controlled substances, *to wit,* cocaine. Stip. 3, 4; Tr. 93–95. The Agency has long held that possession of illicit drugs in contravention of state and/or federal controlled substance laws is an adverse consideration under the fourth CSA public interest factor.[37] *David E. Trawick, D.D.S.,* 53 FR 5326, 5327 (1988) (even though the respondent's illicit drug possession and distribution was outside the realm of his professional practice, it related to controlled substances and could serve as a proper basis for a sanction against his DEA COR), *aff'd, Trawick* v. *DEA,* 861 F.2d 72 (4th Cir. 1988) (''It is clearly reasonable to interpret th[e] unambiguous language [in 21 U.S.C. 824(a)(4)] as allowing a negative action on a DEA [COR] based on a misdemeanor possession conviction that is unrelated to the registrant's practice or the diversion concerns of the amendment itself.''); *see also Michael S. Moore, M.D.,* 76 FR 45867, 45868 (2011) (COR sanction sustained on basis of the respondent's state conviction for manufacture of marijuana, which was unrelated to his professional medical practice as an emergency room physician). Thus, inasmuch as the conduct that culminated in the Dental Board's Consent Agreement was squarely in violation of ''applicable State . . . laws related to controlled substances,'' that conduct clearly relates to a ground that could have affected [38] each of the three renewal applications from which its disclosure was intentionally omitted. *Vitalis,* 79 FR at 98708 (''[W]here an applicant currently holds unrestricted state authority to dispense controlled substances, the failure to disclose state action against his medical license may be material if the action was based on conduct . . . which is actionable under either the public interest factors or the grounds for denial, suspension, and revocation set forth in [21 U.S.C.] 824.'').

In this case, the pertinent inquiry is whether the Respondent knew, or should have known that he submitted false applications for renewal of his DEA COR in 2006, 2009, and 2012. The Respondent does not contest that he did not disclose the Consent Agreements that he had entered into with the Dental Board, or that it is important to answer liability questions truthfully as part of a

[36] While it is true that during the hearing conducted in this matter (Tr. 18–19, 85) and in his closing brief (Resp't Brf. at 2) the Respondent's current counsel urges that no plea of guilty of any kind was entered by the Respondent on the criminal case, this is inconsistent with the parties' stipulations and not supported by any documentary evidence of record. The Respondent's counsel was invited to provide statutory authority regarding the state procedural structure that may have been employed at the time of the resolution of the Respondent's criminal case (Tr. 20, 86), but no citations in this regard were ever supplied to assist this tribunal to resolve the inconsistency. Resp't Brf. at 2 n.2. It is interesting that in describing his own understanding of what occurred, the Respondent stated that ''this was going to take the incident from a felony to a misdemeanor, and then the misdemeanor, and then the misdemeanor, by going through this drug court, it was a misdemeanor, so it was from a legal standpoint not—from my standpoint not a big deal, and then going through this process I was able to get an expungement, which was the ultimate thing I wanted.'' Tr. 88–89.

[37] 21 U.S.C. 823(f)(4) (''Compliance with applicable State, Federal, or local laws relating to controlled substances.'')

[38] *Mohr,* 77 FR at 34998 n.2; *Smith,* 76 FR at 53964; *Bickman,* 76 FR at 17701.

practitioner's obligation to the public. Tr. 21, 127. The Respondent does, however, contest the revocation sanction sought by the Government, arguing that taken in context with parallel state licensure requirements, his answers to the liability questions, though not correct, were based on an interpretation of his obligations that was, at least in his view, not unreasonable. Tr. 21.

The liability question in the three DEA COR renewal applications was worded in straightforward terms that left scarce little to the imagination of even the most unschooled of applicants. In pertinent part, the question to which the Respondent replied in the negative queried: ''Has the applicant ever . . . had a state professional license . . . suspended . . . or placed on probation, or is any such action pending?'' Gov't Exs. 4–6. In fact, the Agency has specifically confirmed the clarity of the language utilized here in sustaining findings of materially falsified applications under 21 U.S.C. 824(a)(1). *Felix K. Prakasam, M.D.,* 70 FR 33203, 33205–06 (2005); *Anne D. DeBlanco, M.D.,* 62 FR 36844, 36845 (1997). With like clarity, the Consent Agreement with the Dental Board comprising the center of the case provides in pertinent part that the Respondent ''knowingly and voluntarily agrees with the [Ohio] Board, to the following PROBATIONARY [39] terms conditions and limitations,'' the first of which states that the Respondent's ''license to practice dentistry is indefinitely suspended.'' Gov't Ex. 3 at 1.

The Respondent is highly educated [40] and has been a practicing dentist and DEA registrant for over twenty-five years.[41] Gov't Ex. 7. Like all DEA registrants, the Respondent is responsible for understanding the concepts and duties as a dentist and his obligations as a registrant. As DEA has held in the past, a registrant's ''ignorance of the law is no excuse'' for actions that are inconsistent with responsibilities attendant upon a registration. *Sigrid Sanchez, M.D.,* 78 FR 39331, 39336 (2013) (citing *Patrick W. Stodola,* 74 FR 20727, 20735 (2009) and *Hageseth* v. *Superior Ct.,* 59 Cal. Rptr. 3d 385, 403 (Ct. App. 2007) (a ''licensed health care provider cannot 'reasonably claim ignorance' of state provisions regulating medical practice'')). Under Agency precedent, ''[a]ll registrants are charged with knowledge of the CSA, its implementing regulations, as well as applicable state laws and rules.'' *Id.* at 39333. The Respondent's argument that he was somehow understandably befuddled in his obligations to answer the straightforward liability question in issue is mortally undermined by his level of experience and education, as well as the stark clarity of the language employed by both the Dental Board in its Order and the DEA in Question 3 of the COR renewal application.

Another fatal blow to his defense stems from the fact that his case in this regard is entirely dependent upon the strength of his testimony, which, as discussed in detail, *supra,* was none too credible. In this case, the Respondent's testimony was regrettably marked with a level of equivocation, implausibility, and inconsistency that profoundly undermined his efforts to ameliorate his culpability.

The Respondent's evidence that he was confused by Ohio Dental Board policy is wholly unpersuasive. Moreover, no evidence about how that policy (even if conceded *arguendo* as having been validly understood by the Respondent) was communicated to him was presented in a manner that was deserving of reliance. Further, the Respondent's assertion that he attempted to ascertain his DEA COR application obligations through inquiry with an employee of the Dental Board is not only incredible, it is also not reasonable. There is nothing in the record or in common sense that would even theoretically imbue officials of the Dental Board with authority or expertise regarding the requirements of a DEA COR renewal form. In fact, Exec. Dir. Lili Reitz explicitly stated that the state dental board has ''no jurisdiction'' over other licensing agencies, which would naturally include the DEA. Tr. 35. Either the Respondent asked Dental Board officials (who had no basis to speak with knowledge or authority on DEA applications) in the hopes of securing an answer (even an incorrect one) that served his purposes (which the Respondent alluded to as a strategy following his completion of the drug court program [42]), or the Respondent never asked the Dental Board officials anything about his DEA application.[43] Either scenario does not advance the Respondent's position, and more fundamentally, even if the Respondent's (naïve) version were credited (a big ''if''), there is no policy of any state board that does or can affect the obligations of a DEA registrant to truthfully answer plainly-stated questions in a COR renewal application. State officials possess no authority to alter DEA registrant applications, and this is a fact that the Respondent, a DEA registrant, clearly knew or should have known. Likewise, the Respondent's testimony that he believed that the DEA, a federal agency in the United States Department of Justice, was ''under'' the control of the Ohio state pharmacy board [44] does nothing other than further undermine his credibility. In short, on these facts, the Respondent's understanding of how much of the information he was obligated by Dental Board policy to include accurately on his application to renew his state dental license is little more than a red herring. His reliance on that theory here mortally undermines any argument that he has accepted responsibility for his actions by any measure that would militate in his favor in these proceedings.

Recommendation

In evaluating the DEA COR applications in their entirety, this record as a whole, and considering the totality of the circumstances [45] surrounding the Respondent, his experience, and the facts as he knew them to be at the time he submitted the applications, it is clear that the Respondent's answers were false, and that they were supplied by the Respondent with an intention to deceive the Agency,[46] and that the Respondent knew or should have known that his answers were false. *Hale,* 69 FR at 69406; *The Drugstore,* 61 FR at 5032; *Watts,* 58 FR at 46995. Thus, inasmuch as the Government's evidence has established by clear and convincing evidence that the Respondent has materially falsified three applications to renew his COR, it has supplied sufficient evidence to support revocation, and thus, made out a *prima facie* case for the relief it seeks. ''[T]o rebut the Government's *prima facie* case, [the Respondent is] required not only to accept responsibility for [the established] misconduct, but also to demonstrate what corrective measures [have been] undertaken to prevent the re-occurrence of similar acts.'' *Jeri*

[39] All caps in original document. Gov't Ex. 3.

[40] Tr. 81–82.

[41] The Respondent was admitted to the practice of dentistry in 1988 and first became a DEA registrant that same year. Tr. 81; Gov't Ex. 7. Thus, at the time he submitted the first of the charged DEA COR renewal applications in 2006, he had been a dentist and DEA registrant for eighteen years.

[42] Tr. 112–113.

[43] Although the Respondent initially noticed and subpoenaed Kathy S. Carson, one of the two employees that the Respondent testified he could have spoken with about the issue, he subsequently withdrew his request to call the witness. This was done in spite of the fact that the case was continued to accommodate an illness which made Ms. Carson unavailable to testify on the originally-scheduled hearing date.

[44] Tr. 135.

[45] *Easter,* 69 FR at 5581.

[46] *See Jackson,* 72 FR at 23852–53.

Hassman, M.D., 75 FR 8194, 8236 (2010); *see Hoxie* v. *DEA,* 419 F.3d 477, 483 (6th Cir. 2005); *Ronald Lynch, M.D.,* 75 FR 78745, 78754 (2010) (holding that a respondent's attempts to minimize misconduct undermined acceptance of responsibility); *George Mathew, M.D.,* 75 FR 66138, 66140, 66145, 66148 (2010); *George C. Aycock, M.D.,* 74 FR 17529, 17543 (2009); *Steven M. Abbadessa, D.O.,* 74 FR, 10077, 10078 (2009); *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 463 (2009); *Med. Shoppe–Jonesborough,* 73 FR 364, 387 (2008). The acceptance of responsibility must be unequivocal, or relief from sanction is unavailable. *Mathew,* 75 FR at 66148. This feature of the Agency's interpretation of its statutory mandate on the exercise of its discretionary function under the CSA has been sustained on review. *MacKay* v. *DEA,* 664 F.3d 808, 822 (10th Cir. 2011). The Agency has found that when a respondent is equivocal in accepting responsibility, such acceptance is ineffective and thus, any evidence of remedial measures taken is irrelevant. *The Medicine Shoppe,* 79 FR 59504, 59510 (2014). In determining whether and to what extent a sanction is appropriate, consideration must be given to both the egregiousness of the offenses established by the Government's evidence and the Agency's interest in both specific and general deterrence. *David A. Ruben, M.D.,* 78 FR 38363, 38364, 38385 (2013).

As discussed, *supra,* the Respondent's insistence that his false response to Question 3 was borne of a reasonable misunderstanding of the information sought is simply not credible or reasonable and fatally undermines his efforts to meet the Government's case. The Respondent is an experienced COR registrant, a highly-educated professional, and a professor at a dental school. Offering a mitigation case based on a theory that this could have happened to anyone, and upon reflection (and more importantly, discovery by DEA), the answers should have technically been different, convincingly demonstrates that the Respondent does appreciate his own deceitfulness in his multiple COR renewal applications. To satisfy his modest burden to accept responsibility would have required, at a minimum, an acknowledgement that he knew and understood the answers were false when the applications were presented and thereafter. Even in his Closing Brief, the Respondent does not unequivocally state he was wrong and unreasonable at the time the DEA COR renewal applications were submitted, but merely posits that he ''now agrees that he should have consulted with an attorney, someone with the federal government, or with the DEA specifically, before answering the liability question in the DEA [COR] renewal application.'' Resp't Brf. at 3. The clear import of the Respondent's position is that he is only guilty of failing to acquire a definitive legal interpretation regarding an ambiguous clause in an application. Thus, since the Respondent has not tendered an unequivocal acceptance of responsibility, under established Agency precedent, he is foreclosed from a favorable result in these proceedings and the issue of remedial actions is irrelevant.[47]

Although the egregiousness of the Respondent's material false misrepresentations is certainly enhanced by the fact that it was repeated on three occasions, and (even according to his own testimony) was actively motivated by his desire to avoid drawing negative attention to himself and his practice,[48] a far more significant part of the equation regarding the exercise of discretion here is founded in a consideration of the Agency's interests in deterrence of similar misconduct. Agency precedent has recognized that in the exercise of its oversight responsibilities, DEA must properly factor legitimate interests in both specific (related to the Respondent's future controlled substance privileges) and general (among the regulated community overall) deterrence. *Ruben,* 78 FR at 38385. Regarding specific deterrence, the Agency has an interest in ensuring that the Respondent complies with the CSA in future practice. Specific deterrence is especially important in the instant case given the Respondent's equivocation at hearing regarding the wrongfulness of his conduct as well as his stated motivations for failing to disclose the suspension and probation of his dental license. A strong indicator of his future conduct in this regard is his history of only disclosing his disciplinary issues to his insurance carrier when he was caught. The Respondent's presentation makes it clear that if presented with a similar circumstance, he would likely as not follow the same course. If the Respondent were amenable to learning this lesson, it would have been learned at the time he was caught trying to deceive his insurance carrier. There is no objective reason on the present record to believe that getting caught in a falsification by DEA will have any greater effect than getting caught by a falsification by his insurance carrier. The record supports the conclusion that he will act in what he feels is his own best interests. Simply put, there is just no basis in this record to conclude that the Respondent has evolved into a more candid registrant, and the interests of specific deterrence militate in favor of a denial of his COR application.

Regarding general deterrence, as the regulator in this field, the Agency bears the responsibility to deter similar misconduct on the part of others for the protection of the public at large. *Ruben,* 78 FR at 38385. Agency regulators are not and cannot be omniscient. To perform its regulatory mission, DEA must depend primarily on the candor of members and prospective members of the regulated community. The Respondent here did not come forward of his own volition; his actions were discovered by DEA. There is no question that for years the Respondent profited (monetarily and professionally) by his own lack of candor here. In this case, issuance of a published decision imposing no sanction on a registrant who attempted to (and for many years did) shield himself from a deserved level of scrutiny regarding multiple renewal applications by tendering material false answers designed to mask his misconduct would broadcast a message to the regulated community that lack of candor in material matters carries no consequence to the Respondent, only potential advantage for others in similar situations. Such a holding would unequivocally incentivize nuanced or even patently false answers on applications where the accuracy of the information is vital to the Agency's mission to regulate registrants who are entrusted or seek to be entrusted with the responsibility of handling controlled substances.

The evidence of record, which includes material false statements in multiple COR renewal applications and no basis upon which to find that the Respondent has accepted responsibility for his action, compels a recommendation that the Respondent's DEA registration be **REVOKED**.

Dated: January 9, 2015.

JOHN J. MULROONEY, II

Chief Administrative Law Judge

[FR Doc. 2015–30256 Filed 11–27–15; 8:45 am]

BILLING CODE 4410–09–P

[47] In any event, the record contains no significant evidence of remedial steps to prevent reoccurrence beyond the Respondent's assurances.

[48] Tr. 128.

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On November 23, 2015, the Department of Justice lodged a proposed partial consent decree with the United States District Court for the District of Arizona in *El Paso Natural Gas Company, LLC* v. *United States of America, et al.,* Civil Action No. 3:14–cv–08165–DGC.

The proposed consent decree would resolve the claims of the United States included in this action for the past response costs incurred by the United States Environmental Protection Agency (''EPA'') in addressing the release or threatened release of hazardous substances at and from 19 historical uranium mines located on the Navajo Nation Reservation in and around Cameron, Arizona (''the Mine Sites''). The Mine Sites are a subset of a larger number of abandoned uranium mines on Navajo lands. The United States included a claim for recovery of its response costs at the Mine Sites under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in a counterclaim it brought against El Paso Natural Gas Company, LLC (''EPNG'') in this action after EPNG sued the United States under sections 107 and 113 of CERCLA to recover EPNG's response costs at the Mine Sites. Under the consent decree, EPNG will pay the United States $502,500, plus interest, to be deposited in an EPA special account for cleanup of the Mine Sites. In return, the United States agrees not to sue EPNG under section 107 of CERCLA for EPA's past response costs incurred in connection with the Mine Sites. The consent decree is a partial settlement in that it would not resolve, and would be without prejudice to, the claims EPNG asserted against the United States in this action, or the portion of the United States' counterclaim asserting that EPNG is liable to the United States in contribution under section 113 of CERCLA. Nor does the consent decree address response costs incurred and to be incurred in cleaning up hazardous substances at or from other abandoned uranium mines located on the Navajo Nation that are not involved in this action.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *El Paso Natural Gas Company, LLC* v. *United States of America, et al.,* D.J. Ref. No. 90–11–3–11170. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–30229 Filed 11–27–15; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–109)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 8,343,740, Micro-Organ Device, NASA Case No. MSC–23988–1; USPN 8,580,546, Micro-Organ Device, NASA Case No. MSC–23988–2; and USPN 9,023,642, Miniature Bioreactor System for Long Term Cell Culture, NASA Case No. MSC–24210–1 to GRoK Technologies, LLC, having its principal place of business in Houston, Texas. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AL, Houston, Texas 77058; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office, NASA Johnson Space Center, 2101 NASA Parkway, Mail Code AO52, Houston, TX 77058, (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–30269 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 15–112]

Notice of Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent To Grant a Partially Exclusive Patent License

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant a partially

exclusive patent license in the United States, to practice the inventions described and claimed in the following U.S. Patents: ''USPN 8,160,728, Methods of determining complete sensor requirements for autonomous mobility; USPN 8,095,485, System and method for embedding emotion in logic systems; USPN 8,041,661, System and method for determining stability of a neural system; USPN 7,769,488, Reconfigurable Structure; USPN 7,512,568, Evolvable synthetic neural system'' to Sentient Cyber, having its principal place of business in New York, NY. The fields of use may be limited to, but not necessarily be limited to, e-Commerce Transactional Security Monitoring & Protection. For the purpose of this license, e-Commerce (electronic commerce or EC) is defined as the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the Internet. These business transactions occur either business-to-business, business-to-consumer, consumer-to-consumer or consumer-to-business. The patent rights in these inventions as applicable have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant partially exclusive licenses and may deny the requested licenses even if no objections are submitted within the comment period.

DATES: The prospective partially exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of exclusives licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. Bryan A. Geurts, Chief Patent Counsel, Goddard Space Flight Center, Code 140.1, Greenbelt, MD 20771, (301) 286–7351.

FOR FURTHER INFORMATION CONTACT: Darryl Mitchell, Innovative Technology Partnerships Office, Goddard Space Flight Center, Code 504, Greenbelt, MD 20771 (301) 286–5810. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–30268 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 15–113]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)). This is a request to reinstate OMB control number 2700–0092 with changes to include all NASA financial assistance awards, not just awards to commercial firms.

DATES: Consideration will be given to all comments received within 60 days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Ms. Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF0000, Washington, DC 20546 or *frances.c.teel@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF0000, Washington, DC 20546 or *frances.c.teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to reinstate OMB control number 2700–0092 with changes. This collection is required to ensure proper accounting of Federal funds and property provided under finanical assistance awards (grants and cooperative agreements). Reporting and recordkeeping are prescribed at 2 CFR part 1800 for awards issued to non-profits, institutions of higher educations, government, and commercial firms when cost sharing is not required and 14 CFR part 1274 for awards issued to commercial firms when cost sharing is required. This information collection was formally titled Cooperative Agreements with Commercial Firms.

II. Method of Collection

Proposals are filed through the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) or *grants.gov*. The use of these systems reduces the need for proposers to submit multiply copies to the agency. It further allows them to submit multiple proposals to different funding announcements without registering each time. Electronic funds transfer is used for payment under Treasury guidance, for commercial firms and through the HHS Payment Management System for other recipients. In addition, NASA encourages the use of computer technology and is participating in Federal efforts to extend the use of information technology to more Government processes.

Basis of Estimate. Approximately 6,500 NASA financial assistance awards are open at any one time. It is estimated that out of the 7,100 proposals received each year, NASA awards approximately 1,600 new awards. The period of performance for each financial assistance award is usually three to five years. NASA had approximately 120 awards with commercial firms. Commercial firms submit quarterly payment requests directly to NASA, while other recipients submit Financial Reports (SF 425) on a quarterly bases to the HHS Payment Management System. Performance, Property, and Patent Reports are filed annually. Historical records indicate that, on average, 1,625 changes are submitted annually. The total number of respondents is based on the average number of proposals that are received each year and the average number of active grants that are managed each year. The total number of hours spent on each task was estimated through historical records and experience of former recipients. Using past calculations, the total cost was estimated using the on the average salary (wages and benefits) for a GS–12 step 5.

III. Data

Title: Financial Assistant Awards/ Grants and Cooperative Agreements.

OMB Control Number: 2700–0092.

Type of review: Reinstatement with Change of a Previously Approved Information Collection.

Affected Public: Non-profits, institutions of higher educations, government, and commercial firms.

Estimated Number of Respondents: 13,600.

Estimated Total Annual Burden Hours: 691,641.

Estimated Total Annual Cost to Respondents: $20,674,712.

IV. Request for Comments

Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2015–30215 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (15–111)]

Notice of Intent to Grant Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive Patent License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive patent license in the United to practice the invention described and claimed in the following U.S. Patent Applications by, inter alia, engaging in marketing activities: U.S. Patent Application No. 13/601,194, ''Microfluidic Device and Method of Fabricating Microfluidic Devices,'' and U.S. Patent Application No. 14/021,812 ''MEMS Chip with Microfluid Channel Having Multi-Function Microposts,'' to ICAP Patent Brokerage, having its principal place of business in New York, NY.

The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant exclusive licenses and may deny the requested licenses even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of exclusives licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. Bryan A. Geurts, Chief Patent Counsel, Goddard Space Flight Center, Code 140.1, Greenbelt, MD 20771, Phone: (301) 286–7351; Fax (301) 286–9502.

FOR FURTHER INFORMATION CONTACT: Darryl Mitchell, Innovative Technology Partnerships Office, Goddard Space Flight Center, Code 504, Greenbelt, MD 20771 Phone: (301) 286–5810. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Mark P. Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2015–30267 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–107)]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, December 8, 2015, 8:30 a.m. to 5:00 p.m., EST; and Wednesday, December 9, 2015, 8:30 a.m. to 4:00 p.m., EST.

ADDRESSES: NASA Headquarters, 300 E Street SW., Washington, DC 20546. The meeting will take place in Room 8Q40 on December 8, and in Room 9H40 on December 9.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–390–0720, passcode 4737036, on both days, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com.* The meeting number on December 8th is, 992 964 342, and the passcode PPS120815!. The meeting number on December 9th is, 999 515 905 and the passcode is PPS120915!.

The agenda for the meeting includes the following topics:

—Update on NASA Planetary Protection Activities
—Planetary Protection for Mars Missions
—Other Related Items

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA

Headquarters. Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID. [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via email at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation no less than 3 working days prior to the meeting to Ann Delo. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–30250 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–106)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, December 7, 2015, 3:00 p.m.–4:30 p.m., EST.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be available telephonically and via WebEx. Any interested person may call the USA toll free conference call number 877–918–1347, passcode 1253083, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com.* The meeting number is 993 050 454 and the password is HPStelecon127! The agenda for the meeting includes the following topic:

—Research Opportunities in Space and Earth Sciences (ROSES) 2016 Supporting Research Program

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–30249 Filed 11–27–15; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATES: November 30, December 7, 14, 21, 28, 2015, January 4, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 30, 2015

Thursday, December 3, 2015

9:30 a.m. Briefing on Equal Employment Opportunity and Civil Rights Outreach (Public Meeting); (Contact: Larniece McKoy Moore: 301–415–1942).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 7, 2015—Tentative

There are no meetings scheduled for the week of December 7, 2015.

Week of December 14, 2015—Tentative

Tuesday, December 15, 2015

9:00 a.m. Hearing on Construction Permit for SHINE Medical Isotope Production Facility: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting); (Contact: Steven Lynch: 301–415–1524).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, December 17, 2015

9:30 a.m. Briefing on Project AIM 2020 (Public Meeting); (Contact: John Jolicoeur 301–415–1642).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of December 21, 2015—Tentative

There are no meetings scheduled for the week of December 21, 2015.

Week of December 28, 2015—Tentative

There are no meetings scheduled for the week of December 28, 2015.

Week of January 4, 2016

There are no meetings scheduled for the week of January 4, 2016.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email

Brenda.Akstulewicz@nrc.gov or *Patricia.Jimenez@nrc.gov.*

Dated: November 24, 2015.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–30420 Filed 11–25–15; 11:15 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Routine Use Implementation; System of Records

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice; Routine Use Implementation and Response to Comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and Office of Management and Budget (OMB), Circular No. A–130, notice is given that the U.S. Office of Personnel Management is implementing the modification, proposed in 80 FR 42133, to all of its systems of records, as identified in the list below.

SUPPLEMENTARY INFORMATION: On July 16, 2015, OPM published a notice to establish a new Privacy Act routine use which is applicable to all OPM systems of records. The new routine use allows OPM to disclose information to appropriate persons and entities for response and remediation purposes in the event of suspected or confirmed compromise of information in any of its systems. 80 FR 42133 (July 16, 2015). The July 16th notice invited comments on the new routine use until August 17, 2015. OPM received 5 comments during this period. After reviewing and considering the comments, OPM has decided to implement the new routine use without substantive alteration. A description of the comments and OPM's corresponding responses are included below.

Two Federal agencies requested administrative changes that were unrelated to the form or substance of this routine use. In response to one agency comment, OPM re-listed all of the OPM systems to which the new routine use will apply, including OPM/Central-19, which had been inadvertently left out of the prior notice. OPM determined that the other suggested changes do not affect implementation of the newly proposed use because they pertain specifically to other OPM systems of records. Therefore, those suggestions will be considered in future updates to notices regarding those systems.

OPM also received comments from a non-governmental organization regarding the location of certain records in other OPM systems and requesting notice in the event that those systems are compromised. OPM plans to continue fulfilling its breach notification responsibilities whenever appropriate and will respond separately to the organization with regard to its other comments, which seek OPM's response to a previous communication.

Finally, one individual and one Federal employee union sought information about security measures that would be taken to convey information shared outside of OPM pursuant to the new routine use. As with information shared outside the agency pursuant any routine use associated with its systems, OPM will transmit such information in accordance with applicable information security laws, guidelines, and standards including, but not limited to, the Federal Information Security Management Act (Pub. L. 107–296), and associated OMB policies, standards and guidance from the National Institute of Standards and Technology.

The individual commenter and employee union also questioned whether the routine use is appropriately tailored to address activities related to the suspected or confirmed compromise of information, OPM adopted the model language developed by the Office of Management and Budget (OMB Memorandum 07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information, Attachment 2) and adopted by a number of other Federal agencies. As drafted, this routine use permits the agency to protect sensitive information contained in OPM's systems while also facilitating mitigation and prevention activities in the event of confirmed or suspected compromise of information. Therefore, OPM has adopted the new routine use, first published on July 16, 2015, without further change.

A description of the modification to the agency's systems of records is provided below. In accordance with 5 U.S.C. 552a(r), the agency has provided a report to OMB and the Congress.

U.S. Office of Personnel Management.

Beth F. Cobert,

Director.

U.S. Office of Personnel Management Privacy Act notices and citations follow. An asterisk (*) designates the last publication of the complete document in the **Federal Register**.

SORN	Title	FR#
2013 statement	2013 OPM Statement of Routine Uses for OPM's Internal and Central Systems of Records.	60 FR 63075.
CENTRAL–1	Civil Service Retirement and Insurance Records	73 FR 15013.* 64 FR 54930. 63 FR 45881. 60 FR 63075.
CENTRAL–2	Complaints and Inquiries Records	60 FR 63075.
CENTRAL–4	Inspector General Investigations Case File	60 FR 63075.
CENTRAL–5	Intergovernmental Personnel Act Assignment Records	64 FR 60249.* 60 FR 63075.
CENTRAL–6	Administrative Law Judge Application Records	60 FR 63075.
CENTRAL–7	Litigation and Claims Records	60 FR 63075.
CENTRAL–8	Privacy Act/Freedom of Information Act (PA/FOIA) Case Records	64 FR 53424.* 60 FR 63075. vol. 58, no. 68, 4/12/1993.
CENTRAL–9	Personnel Investigations Records	75 FR 28307.* 60 FR 63075.
CENTRAL–10	Federal Executive Institute Program Participants Records	64 FR 59221.* 60 FR 63075.
CENTRAL–11	Presidential Management Fellows (PMF) Program Records	77 FR 61791.* 74 FR 42334. 60 FR 63075.

SORN	Title	FR#
CENTRAL–13	Executive Personnel Records	64 FR 60247.* 60 FR 63075.
CENTRAL–14	Debarment or Suspension Records for Federal Employee Health Benefits	60 FR 63075.* 60 FR 39194.
CENTRAL–15	Health Claims Data Warehouse	78 FR 23313.* 76 FR 35050.
CENTRAL–16	Health Claims Disputes External Review Services	76 FR 70512.* 75 FR 56601.
CENTRAL–18	Federal Employees Health Benefits Program Claims Data Warehouse	76 FR 35052.
CENTRAL–19	External Review Records for Multi-State Plan (MSP) Program	78 FR 65011.
CENTRAL–X	Federal Competency Assessment Tool	72 FR 60396.
GOVT–1	General Personnel Records	77 FR 73694.* 76 FR 32997. 71 FR 35342. 65 FR 24732. 61 FR 36919.
GOVT–2	Employee Performance File System Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT–3	Records of Adverse Actions, Performance Based Reductions In Grade and Removal Actions, and Terminations of Probationers.	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT–5	Recruiting, Examining and Placement Records	79 FR 16834.* 71 FR 35342. 65 FR 24732.
GOVT–6	Personnel Research and Test Validation Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT–7	Applicant Race, Sex, National Origin, and Disability Status Records	71 FR 35342.* 65 FR 24732. 61 FR 36919.
GOVT–9	File on Position Classification Appeals, Job Grading Appeals, Retained Grade or Pay Appeals, Fair Labor Standard Act (FLSA) Claims and Complaints, Federal Civilian Employee Compensation and Leave Claims, and Settlement of Accounts for Deceased Civilian Officers and Employees.	78 FR 60331.* 71 FR 35342. 65 FR 24732. 61 FR 36919.
GOVT–10	Employee Medical File Systems Records	75 FR 35099.* 71 FR 35342. 65 FR 24732.
Internal-1	Defense Mobilization Emergency Cadre Records	64 FR 72705.* 60 FR 63075.
Internal-2	Negotiated Grievance Procedure Records	60 FR 63075.
Internal-3	Security Officer Control Files	65 FR 14635.* 60 FR 63075.
Internal-4	Health Program Records	64 FR 51807.* 60 FR 63075.
Internal-5	Pay, Leave, and Travel Records	64 FR 61949.* 60 FR 63075.
Internal-6	Appeal and Administrative Review Records	60 FR 63075.
Internal-7	Complaints and Inquiries Records	60 FR 63075.
Internal-8	Employee Counseling Services Program Records	60 FR 63075.
Internal-9	Employee Locator Card Files (PDF file)	64 FR 51807.* 60 FR 63075.
Internal-10	Motor Vehicle Operator and Accident Report Records	60 FR 63075.
Internal-11	Administrative Grievance Records	60 FR 63075.
Internal-12	Telephone Call Detail Records	64 FR 54934.
Internal-13	Parking Program Records	65 FR 540.
Internal-14	Photo Identification and Visitor Access Control Records	64 FR 73108.
Internal-15	OPM Child Care Tuition Assistance Records	65 FR 30643.
Internal-16	Adjudications Officer Control Files	79 FR 30202.* 66 FR 42568.
Internal-17	Web-Enabled Voting Rights System (WEVRS)	71 FR 38190.
Internal-18	CyberCorps®: Scholarship For Service (SFS)	79 FR 42064.* 74 FR 42336.
Internal-19	Investigation Training Records	79 FR 8515.
Internal-20	Integrity Assurance Officer Control Files	80 FR 2447.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appropriate agencies, entities, and persons when (1) OPM suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the agency 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 OPM 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 OPM's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. 2015–30309 Filed 11–27–15; 8:45 am]

BILLING CODE P

OFFICE OF PERSONNEL MANAGEMENT

Post-DOMA Survivor Annuitant Federal Employees Health Benefit Waiver Criteria

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The U.S. Office of Personnel Management (OPM) has updated its Waiver Policy on the official OPM Web site[1] to post the additional criteria OPM will consider when reviewing certain requests for waiver of the Federal Employees Health Benefit (FEHB) Program enrollment eligibility requirements. The updates to the Waiver Policy detail the criteria OPM will consider when reviewing waiver requests from individuals who are receiving a monthly survivor annuity as the surviving same-sex spouse of a Federal employee or annuitant who died on or before June 26, 2013. After an individual who is receiving a monthly annuity as the surviving same-sex spouse of a deceased Federal employee or annuitant is granted a waiver pursuant to section 8905(b) of title 5, U.S. Code, and the applicable procedures, the FEHB enrollment will be effective the first day of the first pay period that begins after the date on which that OPM granted the waiver. The individual may not be enrolled in FEHB retroactively, unless there is clear administrative error.

FOR FURTHER INFORMATION CONTACT: Chelsea Ruediger, *chelsea.ruediger@opm.gov,* (202) 606–0004.

SUPPLEMENTARY INFORMATION: Following the Supreme Court's June 26, 2013 decision in *United States* v. *Windsor,* same-sex spouses became eligible family members under a Federal Employees Health Benefits (FEHB) Program enrollment. Because existing same-sex marriages were not recognized by the Federal government before the *Windsor* decision, all legal same-sex marriages that predated the *Windsor* decision were treated as new marriages. FEHB enrollees, which included Federal employees and annuitants, had 60 days from June 26, 2013 until August 26, 2013 to submit a request to change their FEHB eligibility enrollment from self-only to self and family, to provide FEHB coverage to their same-sex spouse. *See OPM Benefits Administration Letter 13–203 issued July 17, 2013. https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf.* However, Federal employees and annuitants who died on or before the date of the *Windsor* decision, June 26, 2013, did not have an option to elect FEHB coverage for their same-sex spouse.

In the ordinary course for a surviving spouse to be enrolled in FEHB after the death of the Federal employee or annuitant, the deceased Federal employee or annuitant must have been enrolled in Self and Family FEHB coverage that covered the surviving spouse at the time of death and the surviving spouse must be entitled to a monthly annuity as the survivor of a deceased Federal employee or annuitant. This means, absent a waiver of the FEHB eligibility requirements codified at 5 U.S.C. 8905(b)(2), individuals who are now receiving a survivor annuity as the surviving same-sex spouse of a deceased employee or annuitant who died on or before June 26, 2013, are not eligible for FEHB enrollment.

This notice outlines the updates to the OPM FEHB Eligibility Waiver Policy and identifies the criteria OPM will consider when reviewing waiver requests from individuals who are receiving a monthly survivor annuity benefit as the surviving same-sex spouse of a Federal employee or annuitant who died on or before June 26, 2013. It also prescribes the requirements and enrollment effective dates for these certain survivor annuitants to receive FEHB coverage.

Waiver Statute and Implementing Regulations

Section 8905(b) of title 5, U.S. Code allows OPM to waive certain FEHB eligibility requirements for an individual if OPM:

"determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant[2] in a health benefits plan under [chapter 89]."

The implementing regulation, promulgated at 5 CFR 890.108, requires the annuitant to provide OPM with evidence of the following in order to be granted a waiver for FEHB enrollment:

(1) The individual intended to have FEHB coverage as an annuitant (retiree);

(2) The circumstances that prevented the individual from meeting the requirements of 5 U.S.C. 8905(b) were beyond the individual's control; and

(3) The individual acted reasonably to protect his or her right to continue coverage into retirement.

OPM does not want to penalize an individual who is receiving a survivor annuity as a same-sex spouse and who was not covered by a FEHB Self and Family plan before his/her spouse's death because prior to June 26, 2013, the provisions of the Defense of Marriage Act (DOMA) prevented OPM from recognizing the same-sex marriage. Therefore, we believe it would be against equity and good conscience not to grant a waiver request submitted by such individual. OPM will consider the criteria in 5 CFR 890.108 satisfied given the circumstances presented in the scope of this notice, provided that the appropriate documentation of marriage and death is submitted.

OPM will accept the following to meet the requirements above:

1. Proof of a legally valid same-sex marriage performed prior to June 26, 2013, to the deceased annuitant,
2. Proof that the deceased annuitant died on or before June 26, 2013, and
3. Proof that the deceased annuitant was enrolled in FEHB at death.

Individuals must submit requests for waiver of the FEHB enrollment eligibility requirements under 5 U.S.C. 8905(b) to OPM in writing. These waiver requests should be mailed to: Office of Personnel Management, Retirement Programs, Attn: Retirement Eligibility Services—HB Waiver Request, 1900 E Street NW.,Room 2416, Washington, DC 20415.

In addition, the individual who is seeking a waiver of the FEHB eligibility requirements must have already been adjudicated eligible for a survivor annuity before he or she may seek a waiver under 5 U.S.C. 8905(b).

Enrollment Effective Date

After an individual who is receiving a survivor annuity as a same-sex spouse

[1] See: *https://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/annuitants-and-compensationers/#current.*

[2] For purposes of the Federal Employees Health Benefits program, "annuitant" has been defined to include, *inter alia,* a member of a family who receives an immediate annuity as the survivor of an employee. 5 U.S.C. 8901(3)(B).

is granted a waiver pursuant to 5 U.S.C. 8905(b) and the procedures described above, the FEHB enrollment will be effective the first day of the first pay period that begins after the date on which that OPM granted the waiver. The survivor annuitant may not be enrolled in FEHB retroactively, unless there is clear administrative error.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2015–30312 Filed 11–27–15; 8:45 am]

BILLING CODE 6325–63–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–17 and CP2016–23; Order No. 2834]

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 153 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:* December 1, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
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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 153 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. MC2016–17 and CP2016–23 to consider the Request pertaining to the proposed Priority Mail Contract 153 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 December 1, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2016–17 and CP2016–23 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd 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 December 1, 2015.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2015–30225 Filed 11–27–15; 8:45 am]

BILLING CODE 7710–FW–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Public Input on the Triennial Update to the USGCRP Strategic Plan

ACTION: Request for public comment.

SUMMARY: The U.S. Global Change Research Program is three years into the implementation of its National Global Change Research Plan 2012–2021 (*http://www.globalchange.gov/strategic-plan*) hereafter called the Strategic Plan. That decadal Strategic Plan remains the continuing blueprint for USGCRP, with its strategic directions guiding the Program. There are areas, however, where the landscape has changed by virtue of significant progress, changing scientific or societal urgencies, or challenges. This Triennial Update to the Strategic Plan (hereafter simply ''Update'') addresses these areas and their implications for USGCRP. In accordance with the Global Change Research Act of 1990 (Sec 104, P.L. 101–606), this public comment period invites the public to provide comments and feedback on the Update.

DATES: Public comments will be accepted through January 30, 2016.

ADDRESSES: Comments from the public may be submitted by any of the following methods:

- Electronically via *http://www.globalchange.gov/notices.* Instructions for submitting comments are on the Web site.
- If you are unable to submit electronically, comments may be submitted by mail to Attn: Benjamin DeAngelo, U.S. Global Change Research Program, 1800 G Street NW., Suite 9100, Washington, DC 20006. Information submitted by postal mail should allow ample time for processing.

Instructions: Response to this Request for Public Comment is voluntary. Mailed comments should be less than 10 pages. Responses to this Request for Public Comment may be posted without change online. OSTP therefore requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this Request for Public Comment. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: Benjamin DeAngelo, (202) 419–3474, *bdeangelo@usgcrp.gov*, U.S. Global Change Research Program.

SUPPLEMENTARY INFORMATION: Background information, additional details, and instructions for submitting comments can be found at *www.globalchange.gov/notices.* For more information about the Strategic

[1] Request of the United States Postal Service to Add Priority Mail Contract 153 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, November 20, 2015 (Request).

Plan, please see *http://www.globalchange.gov/strategic-plan.*

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2015–30292 Filed 11–27–15; 8:45 am]

BILLING CODE 3270–F6–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76510; File No. SR–DTC–2015–011]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Regarding the Acknowledgment of End-of-Day Net-Net Settlement Balances by Settling Banks

November 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 November 16, 2015, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to section 19(b)(2) [3] of the Act thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the DTC Settlement Service Guide (''Guide'') to provide that any Settling Bank that does not affirmatively acknowledge by the Acknowledgment Cutoff Time (as defined below) its end-of-day net-net settlement balance [4] or notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, would be deemed to have acknowledged its end-of-day net-net settlement balance.[5] DTC would also make other changes to the Guide as set forth below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to mitigate a risk to DTC in settlement relating to a Settling Bank's failure to take the action required to acknowledge its end-of-day net-net settlement balance, or notify DTC of a refusal to settle for any Participant for which it is the designated Settling Bank, by the Acknowledgment Cutoff Time (as defined below).

Background

The DTC end-of-day net settlement structure depends upon the use of Settling Banks.[6] Each Participant must designate a Settling Bank to settle on its behalf. Any Participant that is a bank may settle for itself.[7] Today, a Settling Bank that settles for other Participants must acknowledge its end-of-day net-net settlement balance for the group of Participants for which it settles, or notify DTC if it refuses to settle for any Participant for which it is the designated Settling Bank, by the later of 4:15 p.m. and the time that is 30 minutes after the Settling Bank end-of-day net-net settlement balances are first made available by DTC (''Acknowledgment Cutoff Time'').[8]

If a Settling Bank notifies DTC that it refuses to settle for a Participant, DTC would recalculate the Settling Bank's net-net settlement balance by excluding the net settlement balance of the Participant for which the Settling Bank refused to settle.[9] DTC would then provide the Settling Bank with its adjusted net-net settlement balance (''Post-Refusal Adjusted Balance''). The Settling Bank may not refuse to settle for any other Participant on that day and must immediately respond to DTC to acknowledge its Post-Refusal Adjusted Balance.

After the Acknowledgment Cutoff Time and any adjustments, DTC will prepare and submit to the National Settlement Service (''NSS'') provided by the Federal Reserve Banks (individually and collectively, the ''Fed'') a file (''NSS File'') reflecting the net debits or credits from and to all Settling Banks. NSS will process a debit or credit of each Settling Bank's Fed account (''Fed Account''), as applicable.[10]

Today, failure of a Settling Bank to timely respond to DTC after posting of final settlement figures creates uncertainty with respect to timely completion of settlement at DTC. The proposed rule change is intended to address this issue as discussed below.

Proposal

To promote settlement certainty, DTC is proposing to treat a Settling Bank that fails to timely provide its affirmative acknowledgement of its end-of-day net-net settlement balance or notify DTC of its refusal to settle for one or more Participants for which it is the designated Settling Bank, as having been deemed to acknowledge its end-of-day net-net settlement balance.

DTC proposes to modify the Guide to provide that a Settling Bank that (i) fails to affirmatively acknowledge its end-of-day net-net settlement balance, or (ii) does not notify DTC of its refusal to settle on behalf of a Participant or Participants for which it is the designated Settling Bank, by the Acknowledgement Cutoff Time, would be deemed to have acknowledged its end-of-day net-net settlement balance.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(2).

[4] The end-of-day net-net settlement balance for each Settling Bank reflects (i) a net credit amount due to the Settling Bank from DTC, (ii) a net debit amount due from the Settling Bank to DTC, or (iii) a zero balance so that no payment is due to or from the Settling Bank. In accordance with the timeframes set forth in the Guide, DTC's end-of-day funds settlement process begins with the posting by DTC of ''final settlement figures'' at approximately 3:45 p.m. each Business Day unless extended.

[5] Terms not otherwise defined herein have the meaning set forth in the DTC Rules (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*>

[6] *See* the Guide at pp. 17–18, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf* for an overview of the end-of-day net settlement process.

[7] *See* Rule 9(B), *supra* note 5.

[8] Currently, a Settling Bank that settles only for itself may opt out of the requirement to acknowledge its balance, but it cannot refuse to settle for itself.

[9] Any Participant for which its designated Settling Bank has refused to settle on its behalf remains obligated to DTC for the payment of any net debit balance and must make another arrangement to timely pay that amount by Fedwire.

[10] The Guide currently provides that if NSS is unavailable then, if instructed by DTC, Settling Banks in a net-net debit balance must remit payments to DTC via Fedwire by the later of 5:00 p.m. or 1 hour after net settlement balances are first made available. This provision would be clarified to note an operational detail that all such payments must be remitted prior to the close of Fedwire.

[11] DTC would provide reminders to Settling Banks when they have not affirmatively acknowledged their settlement balance. Notwithstanding delivery of reminders, once a Settling Bank is deemed to have acknowledged its balance, it may not notify DTC of a refusal to settle for a Participant for which it is the designated Settling Bank.

The Settling Bank's balance would then, in the ordinary course of settlement processing, be debited from or credited to its Fed Account through the NSS process. Likewise, DTC proposes that the Guide provide that a Settling Bank that fails to acknowledge immediately upon receipt its Post-Refusal Adjusted Balance, if any, would be deemed to have acknowledged its Post-Refusal Adjusted Balance and the Post-Refusal Adjusted Balance would then, in the ordinary course of settlement processing, be debited from or credited to its designated Fed Account through the NSS process.

DTC would continue to maintain flexibility and allow for a Settling Bank to request extra time if the Settling Bank has a reason that it cannot affirmatively acknowledge or refuse its net-net settlement balance so long as the Settling Bank notifies DTC accordingly at or before the Acknowledgement Cutoff Time, or, in the case of a Post-Refusal Adjusted Balance, it notifies DTC immediately where it is unable to affirmatively acknowledge its Post-Refusal Adjusted Balance. In this regard, the Guide would be updated to clarify that the Settling Bank is required to notify DTC of its request for extra time via a dedicated DTC Settlement phone ''hotline'' prior to the Acknowledgment Cutoff Time. In the event that DTC provides the Settling Bank with a Post-Refusal Adjusted Balance, the Settling Bank would be required to notify DTC of its request for extra time immediately via the hotline. Any Settling Bank that timely complies with this notification requirement would not be deemed to have acknowledged its net-net Settlement Balance or its Post-Refusal Adjusted Balance.[12]

If, after the initial release of final settlement figures, a Settling Bank's net-net settlement balance is adjusted for any reason, other than as a result of the Settling Bank's refusal to settle, then the Acknowledgment Cutoff Time for that Settling Bank would be extended to 30 minutes after DTC advises the Settling Bank of the adjusted net-net settlement balance.

DTC would attempt to contact the Settling Bank if DTC does not receive a response in the form of (i) an acknowledgment or refusal prior to the Acknowledgment Cutoff Time, (ii) an immediate acknowledgment of a Post-Refusal Adjusted Balance, or (iii) a notification from the Settling Bank that it cannot acknowledge or refuse, as described in the preceding paragraph.[13] If DTC is able to contact the Settling Bank and the Settling Bank notifies DTC that it cannot, at that time, acknowledge or refuse its net-net settlement balance, or Post-Refusal Adjusted Balance, as applicable, then the Settling Bank would not be deemed to have acknowledged its net-net settlement balance. However, if the Settling Bank cannot be reached, the Settling Bank would be deemed to have acknowledged its net-net settlement balance or Post-Refusal Adjusted Balance, as applicable.

DTC would update the Guide to clarify that each Settling Bank must ensure that it maintains accurate contact details with DTC so that DTC may contact the Settling Bank regarding settlement issues. Settling Banks must update any contact details by contacting their DTC Relationship Manager.

The Fed's cutoff for NSS processing, unless extended, is 5:30 p.m. In order to facilitate timely processing of the NSS File, DTC would maintain discretion to exclude a Settling Bank's balance from the NSS File if the Settling Bank (i) (A) does not acknowledge its net-net settlement balance by the Acknowledgment Cutoff Time, or (B) does not immediately acknowledge its Post-Refusal Adjusted Balance; and (ii) is not deemed to have acknowledged its net-net settlement balance or Post-Refusal Adjusted Balance because it has notified DTC that it is unable to affirmatively acknowledge its net-net settlement balance or to refuse to settle on behalf of a Participant. If DTC proceeds to process the NSS File excluding the Settling Bank's debit balance, then the Settling Bank must pay the debit balance via Fedwire. If DTC proceeds to process the NSS File excluding the Settling Bank's credit balance, then DTC would pay the credit balance via Fedwire after the Settling Bank acknowledges its settlement balance.

The text of the Guide would also state that a Settling Bank which settles on behalf of others that timely notifies DTC that it cannot acknowledge or refuse its end-of-day net-net settlement balance would not be assessed a flat fee for failure to acknowledge or notify DTC of its refusal to settle. However, such a Settling Bank would be charged interest with respect to any borrowing DTC is required to make to complete settlement that day for any Participant that the Settling Bank settles on behalf of, if the Settling Bank has not timely refused to settle for that Participant.

Additionally, DTC would revise the Guide to:

(i) clarify that it is DTC's Settlement Operations group that controls and coordinates the settling of Participant and Settling Bank accounts on DTC's systems;

(ii) define the Federal Reserve Banks individually and collectively within the Guide's text as the ''Fed'' unless indicated otherwise;

(iii) clarify text for descriptive purposes, and consistent with the Rules, that Participants make formal arrangements for a Settling Bank to be designated as the Settling Bank to settle with DTC on the Participant's behalf;

(iv) clarify that certain online reports DTC provides Participants and Settling Banks through the processing day reflect ''intraday'' gross debits and credits, and net debit and credit balances;

(v) clarify that a Settling Bank's end-of-day net-net settlement balance includes the Settling Bank's own settlement obligations as a Participant if it settles for itself;

(vi) add text for the purpose of context, consistent with the Rules, that each Participant is obligated to settle timely with DTC and if its Settling Bank refuses to settle for it then it must make alternative arrangements to make payment to DTC via Fedwire, [sic]

(vii) add text for the purpose of context, consistent with the Rules, that a Participant that acts as its own Settling Bank may not refuse to settle for itself and that it will be in default if it does not fund its settlement obligation;

(viii) for clarity, change the heading to an existing example of how a Settling Bank's settlement balance is calculated from ''Settlement Example'' to ''Example of the Calculation of a DTC Settling Bank's Net-Net Settlement Balance'';

(ix) remove the provision from the Guide indicating that that a Settling Bank that settles only for itself would need to affirmatively opt out in order to not be required to affirmatively acknowledge its settlement balance, and add text simply stating that a Settling Bank that settles only for itself would not be required to acknowledge its settlement balance;

(x) clarify the interest charged to Participants for a failure to settle;

(xi) delete references to a Settling Bank's failure to timely settle its settlement balance from being referred to as a ''failure to settle'' and remove references to related procedures as being ''failure-to-settle'' procedures, as the terminology could be confused with an individual Participant's failure to meet its settlement obligation;

[12] If the problem is due to a connectivity issue with DTC, DTC may then direct the Settling Bank to submit its acknowledgement/refusal instruction via email or as otherwise specified by DTC at that time.

[13] DTC uses the most recent contact information provided by the Settling Bank to its DTC Relationship Manager for this purpose.

(xii) rewrite text in the Guide in light of the proposed changes, as applicable, including Addendum A of the Guide, to incorporate proposed changes, consolidate text, clarify text for readability and eliminate duplication;

(xiii) clarify certain Settling Bank and settlement processing timeframes;

(xiv) apply initial capitalization as appropriate for the terms ''Participant'' and ''Settling Bank'' where they are used as defined terms;

(xv) remove references to Participant Terminal System (PTS) functions, which are no longer used for DTC settlement processing; and

(xvi) insert the title of the Guide on the Guide's front page.

Implementation

The effective date of the proposed rule change would be announced via a DTC Important Notice.

2. Statutory Basis

Section 17A(b)(3)(F) [14] of the Act requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act because the proposed rule change would reduce delays in the settlement process by allowing DTC to collect net debits and release net credits within scheduled timeframes despite the failure of a Settling Bank to affirmatively acknowledge its end-of-day net-net settlement balance or notify DTC of its refusal to settle for a Participant for which it is the designated Settling Bank on a timely basis.

Rule 17Ad–22(d)(5) [15] promulgated under the Act requires, *inter alia*, that a clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants; and require funds transfers to the clearing agency to be final when effected. DTC believes the proposed rule change is consistent with this provision because it would reduce DTC's credit and liquidity risk by mitigating the risk that end-of-day net-net debit settlement balances would not be paid due to the failure of a Settling Bank to respond to DTC after posting of final settlement figures.

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(d)(5).

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because the proposed rule change applies to all Settling Banks and would not have an impact on Settling Banks' current ability to timely acknowledge their net-net settlement balances or notify DTC of a refusal to settle on behalf of a Participant.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC filed a substantially similar proposed rule change on April 15, 2015 (''April Rule Filing''),[16] which was subsequently withdrawn.[17]

The Commission received a favorable written comment to the April Rule Filing.[18] DTC also received written comments in connection with the April Rule Filing from a Participant that is a Settling Bank for other Participants. The Participant commented to the effect that it was expecting, but the April Rule Filing did not clearly state, that a Settling Bank (i) will be granted an extension to acknowledge its net-net settlement balance whenever it is requested prior to DTC processing the NSS File, and (ii) will not be charged a fee in situations where such an extension has been requested. In order to fully consider these comments DTC withdrew the April Rule Filing.

With respect to (i) above, in order to avoid wider disruption to the DTC settlement process and the industry, DTC must have the discretion to promptly complete settlement for the Settling Banks that have timely acknowledged or have been deemed to have acknowledged their respective net-net settlement balances. Therefore, although DTC can grant limited extensions, DTC cannot grant an indefinite extension to a Settling Bank to acknowledge its balance prior to DTC processing the NSS File.[19]

[16] Securities Exchange Act Release No. 74830 (April 29, 2015), 80 FR 25727 (May 5, 2015) (File No. SR–DTC–2015–003).

[17] Securities Exchange Act Release No. 74380 (July 7, 2015), 80 FR 40116 (July 13, 2015) (File No. SR–DTC–2015–003).

[18] Letter from Suzanne Shatto (May 3, 2015), *available at https://www.sec.gov/comments/sr-dtc-2015-003/dtc2015003.shtml.*

[19] As stated above, DTC would maintain flexibility to allow for a Settling Bank to request extra time if the Settling Bank cannot affirmatively acknowledge or refuse, so long as the Settling Bank promptly notifies DTC at or before the Acknowledgement Cutoff Time or upon receipt of an Adjusted Balance.

With respect to (ii) above, the proposed rule change adds text to the Guide so that a Settling Bank that timely notifies DTC that it cannot acknowledge or refuse its net-net settlement balance will not be charged a flat fee for failure to acknowledge its balance. However the Settling Bank may be charged interest.

To the extent any additional written comments are received by DTC on the proposed rule change, DTC will forward them to the Commission.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove 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–DTC–2015–011 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–DTC–2015–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2015–011 and should be submitted on or before December 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30245 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 3, 2015 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Adjudicatory matters;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 25, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–30481 Filed 11–25–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76507; File No. SR–ISE–2015–41]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

November 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 November 10, 2015, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend the Schedule of Fees as described in more detail below. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Schedule of Fees to introduce a new set of rebates to the Qualified Contingent Cross ("QCC") and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, pricing initiative that offers rebates to members who execute a specified volume of QCC and other solicited crossing orders in a month. This new set of rebates, as proposed, offers a lower rebate to members that execute a specified volume of QCC and solicited orders between two Priority Customers [3] ("'Customer to Customer' Orders"). The Exchange notes that there is no change to how volume is calculated for the volume tiers. Thus, members will continue to obtain the tier level based on all QCC and/or solicited crossing orders' originating side volume. Members will receive the Non-"Customer to Customer" Order [4] rebate for their Non-"Customer to Customer" Orders and the "Customer to Customer" Order rebate for their "Customer to Customer" Orders.

Currently, the Exchange offers members rebates in QCC and/or other solicited crossing orders (including "Customer to Customer" Orders), *i.e.* orders executed in the Solicitation,

[3] The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[4] "Non-'Customer to Customer' Orders" are QCC and/or other solicited crossing orders, including solicited orders executed in the Solicitation, Facilitation or Price Improvement Mechanisms, and excluding "Customer to Customer" Orders.

Facilitation, or Price Improvement Mechanisms where the agency order is executed against an order solicited from another party. These rebates are provided for each originating side of a crossing order, based on a member's volume in the crossing mechanisms during a given month. Currently, for members that execute 0 to 99,999 originating contract sides (''Tier 1'') the rebate is $0.00 per contract, for members that execute 100,00 to 199,999 originating contract sides (''Tier 2'') the rebate is $0.05 per contract, for members that execute 200,000 to 499,999 originating contract sides (''Tier 3'') the rebate is $0.07 per contract, for members that execute 500,000 to 699,999 originating contract sides (''Tier 4'') the rebate is $0.08 per contract, for members that execute 700,000 to 999,999 originating contract sides (''Tier 5'') the rebate is $0.09 per contract, and for members that execute 1,000,000 originating contract sides or more (''Tier 6'') the rebate is $0.11 per contract.[5]

The Exchange now proposes to offer a new set of rebates for ''Customer to Customer'' Orders. These rebates will be provided to members for each originating contract side of a ''Customer to Customer'' Order in all symbols traded on the Exchange as follows: For Tier 1 the rebate is $0.00, for Tiers 2 through 3 the rebate is $0.01, and for Tiers 4 through 6 the rebate is $0.03.

Finally, the Exchange notes that all originating contract side volume will continue to contribute to the member's Tier level. For example, if a member has 175,000 originating contract sides for Non-''Customer to Customer'' Orders and 75,000 originating contract sides for ''Customer to Customer'' Orders, the member's aggregated volume will be 250,000 placing them in Tier 3 (200,000 to 499,999). As a result, the member will receive a rebate of $0.07 per originating contract side for its Non-''Customer to Customer'' Orders and a rebate of $0.01 per originating contract side for its ''Customer to Customer'' Orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to offer lower rebates for certain ''Customer to Customer'' Orders because other exchanges, including the CBOE for example, offer no rebate (credit) for customer to customer executions.[8] Further, the Exchange believes it is reasonable and equitable to continue to provide for the opportunity to receive rebates as these proposed rebates are designed to attract additional order flow to the Exchange and continue to remain attractive to market participants. The Exchange believes that the proposed fees are not unfairly discriminatory because these fees would be uniformly applied to all ''Customer to Customer'' Orders. Additionally, as fees for Priority Customer orders continue to decrease, it has become necessary for the Exchange to lower rebates for ''Customer to Customer'' Orders in order to balance the decrease in fees for Priority Customer orders and the rebates provided for ''Customer to Customer'' Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rebates remain competitive with the many rebates (if any) offered by other options exchanges as discussed above. Further, the rebates remain attractive to market participants. The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2015–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–41. 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

[5] The rebate is applied to the originating contract side of QCC and solicited crossing orders traded in a given month once a member reaches the specified volume threshold/Tier during that month.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* CBOE Fee Schedule, QCC Rate Table, Notes at *https://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

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–ISE–2015–41 and should be submitted by December 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30243 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76505; File No. SR–ISE Gemini–2015–17]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change To Amend Rule 804(g)

November 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 November 12, 2015, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 804(g) to require Clearing Member approval for market makers to resume trading after a market-wide speed bump is triggered. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 804(g) on ''Automated Quotation Adjustments'' to require Clearing Member[3] approval for Primary Market Makers (''PMMs'') and Competitive Market Makers (''CMMs'') (collectively, ''market makers'') to resume trading after a market-wide speed bump is triggered. The Exchange offers market makers functionality whereby the Exchange will automatically remove a market maker's quote in all series in an options class if a ''curtailment event'' occurs based on parameters set by the market maker on a class-by-class basis.[4] In particular, the Exchange will automatically remove a market maker's quote in a class when, during a time period established by the market maker, the market maker exceeds: (i) The specified number of total contracts in the class, (ii) the specified percentage of the total size of the market maker's quotes in the class, (iii) the specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the specified absolute value of the net between (a) calls purchased plus puts sold in the class, and (b) calls sold plus puts purchased in the class.[5] In addition, the Exchange provides market-wide functionality whereby a market maker's quote in all options classes are automatically cancelled if, during a configurable time period, the total number of curtailment events exceeds a market-wide parameter set by the market maker.[6] This market-wide functionality, which is available for ISE Gemini only or across both ISE Gemini and ISE Gemini's affiliate, the International Securities Exchange, LLC,[7] is useful to members as numerous curtailment events triggered across multiple options classes, and if chosen, multiple exchanges, may signify a larger problem being experienced by the market maker that warrants its quotes being removed from the market. Currently, the Exchange only requires that a market maker notify Market Operations of its intention to reenter the market to resume trading after the market-wide speed bump has been activated. Due to the significant nature of events that may trigger this market-wide speed bump functionality, the Exchange now proposes also to require Clearing Member approval prior to allowing the market maker to resume quoting. Pursuant to the proposed rule change, a market maker must notify its Clearing Member(s) when it is ready to resume trading following a market-wide speed bump. Exchange staff may also notify the Clearing Member(s) when the market maker's quotes have been removed, to facilitate a better response time. Each Clearing Member must then contact the Exchange directly to give their authorization for the market maker to resume trading.[8]

Each market maker authorized to trade on the Exchange must obtain from a Clearing Member a ''Market Maker Letter of Guarantee'' wherein the Clearing Member accepts financial responsibility for all Exchange transactions made by the market maker.[9] The Exchange believes that it is appropriate to require Clearing Member approval before a market maker can reenter the market after the market-wide speed bump has been triggered as the Clearing Member guarantees the market makers trades, and therefore bears ultimate financial risk associated with those transactions. The Exchange notes that while not all market makers are Clearing Members, all market makers require a Clearing Member's consent to clear transactions on their behalf in

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Clearing Member'' means a Member that is self-clearing or an Electronic Access Member that clears Exchange Transactions for other Members of the Exchange. *See* Rule 100(a)(8).

[4] *See* Rule 804(g)(i).

[5] *Id.*

[6] *See* Rule 804(g)(ii). This functionality is known as ''market-wide speed bump'' and is the subject of this filing.

[7] *Id.*

[8] If a market maker has multiple Clearing Members, it must receive approval from each Clearing Member to resume trading.

[9] *See* Rule 808.

order to conduct business on the Exchange. As the Clearing Member ultimately bears the risk for a trade they clear on any market makers behalf, the Exchange believes it is reasonable to require that the Clearing Member authorize the market maker to continue trading after the market-wide speed bump is triggered.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[11] because it is designed to promote just and equitable principles of trade, to 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.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by requiring that Clearing Members authorize continued trading by a market maker after that market maker triggers a market-wide speed bump. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it will permit Clearing Members with a financial interest in a market maker's risk management to better monitor and manage the potential risks assumed by that market maker. The Exchange already shares market makers' risk settings with their Clearing Members in order to assist those Clearing Members in monitoring risks at firms on whose behalf they clear trades.[12] The proposed rule change would further assist Clearing Members in monitoring risk, and provide these Clearing Members with greater control and flexibility over their risk tolerance and exposure. Because the Clearing Member guarantees all of the market maker's trades it is in a unique position to objectively evaluate the risk of a market maker reentering the market following a serious systems or other issue. While in some cases this may result in a minimal delay for a market maker that wants to reenter the market quickly following a market-wide speed bump, the Exchange believes that Clearing Member approval is appropriate to ensure that the market maker does not prematurely enter the market without adequate safeguards in place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[13] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, but is rather intended to provide additional safeguards by requiring Clearing Member approval before market makers are allowed to reenter the market following a market-wide speed bump. The Exchange believes that this would allow Clearing Members to better monitor and manage the potential risks assumed by market makers on whose behalf they have executed a Market Maker Letter of Guarantee, and does not impose any unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–ISE Gemini–2015–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE Gemini–2015–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE Gemini–2015–17 and should be submitted on or before December 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30241 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 74622 (April 1, 2015), 80 FR 18665 (April 7, 2015) (SR–ISE Gemini–2015–08).

[13] 15 U.S.C. 78f(b)(8).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76508; File No. SR–ISE–2015–42]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating Alternative Primary Market Makers

November 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 November 16, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to permit any Competitive Market Maker (''CMM'') that is appointed to act as an Alternative Primary Market Maker (''Alternative PMM'') to voluntarily act as a Back-Up Primary Market Maker (''Back-Up PMM''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permit any CMM that is approved to act as an Alternative PMM to voluntarily act as a Back-Up PMM in options series in which it is quoting when the appointed PMM fails to have a quote in the System. In doing so, the Exchange would further enhance its markets by having additional Back-Up PMMs to take over a PMM's responsibilities when the appointed PMM faces operational difficulties or ceases operations. The Exchange also proposes to amend the process by which a Back-Up PMM is chosen to replace a PMM that fails to have a quote in the System, when more than one CMM is quoting in the series.

Background

Currently, CMMs that are also PMMs on the Exchange may voluntarily act as Back-Up PMMs when the appointed PMM has technical difficulties that interrupt its participation in the market.[3] These CMMs/PMMs are permitted to be Back-Up PMMs because they already have systems built to undertake the responsibilities of a PMM on the Exchange.[4] Back-Up PMMs reduce volatility that occurs during, and the duration of, non-firm or ''fast market'' states disseminated by the ISE and facilitate uninterrupted trading even when a PMM experiences difficulties that cause it to remove its quotes from the market. In these situations, the Back-Up PMM assumes most of the responsibilities and privileges of a PMM under the Rules with respect to any series in which the appointed PMM fails to have a quote in the System.[5] The system automatically switches back to the appointed PMM when it re-establishes its quotes in the series, but the Back-Up PMM continues to be responsible for any outstanding unexecuted orders it is handling.

The Exchange's Rules also allow the Exchange to appoint a CMM as an Alternative PMM when a PMM does not wish to trade in an option class.[6] These CMMs are permitted to be Alternative PMMs because they have appropriate systems and procedures in place to undertake the responsibilities of a PMM. Alternative PMMs enable the Exchange to list and retain options classes that PMMs do not wish to trade.[7] Specifically, when no PMMs want the allocation of an option class, the Alternative PMMs are offered the opportunity to serve as PMM in the option class in accordance with the Exchange's regular allocation procedures. In these situations, the Alternative PMM has all of the responsibilities and privileges of a PMM with respect to all appointed options classes.[8] Additionally, if an Alternative PMM ceases trading in an option class, that option class would be reallocated by the Exchange.

Proposed Rule Change

The Exchange now proposes to permit an Alternative PMM to voluntarily act as a Back-Up PMM in options series in which it is quoting[9] and assume most of the responsibilities and privileges of a PMM under the Rules with respect to any option series in which the appointed PMM fails to have a quote in the System.[10] This may occur when, for example, the appointed PMM has technical difficulties that interrupt its participation in the market or a PMM exits the options market making business. Under the proposal, an Alternative PMM is eligible to act as a Back-Up PMM because it already has in place written procedures and systems built to assume the responsibilities of a

[3] Securities Exchange Act Release No. 34–53419 (March 6, 2006), 71 FR 12758 (March 13, 2006) (SR–ISE–2005–50).

[4] If there is more than one eligible member quoting in the series, the System will automatically switch to the member with the largest offer in the series.

[5] A CMM does not become subject to the requirement in Rule 804(e)(1) to enter continuous quotations in all of the series of all of the options classes to which it is appointed, as opposed to only 60% of the options classes under Rule 804(e)(2), by acting as a Back-Up PMM.

[6] Securities Exchange Act Release No. 34–59250 (January 14, 2009), 74 FR 4062 (January 22, 2009) (SR–ISE–2008–90).

[7] Under Rule 802, allocations are voluntary, and at times ISE was unable to list new products because none of the PMMs were interested in trading the class. As a result, the Exchange was unable to list new products because existing PMMs were not interested in trading the option class. At other times, ISE delisted certain products due to lack of PMM interest. ISE represents that this occurs most frequently with respect to options on stocks that have pending corporate actions and options products that are not listed at any other options exchange. ISE believes that despite the lack of PMM interest, these products may be of interest to other Members of the Exchange.

[8] For example, Alternative PMMs would enjoy privileges that include, among other things, participation rights and small order execution preference while accepting responsibilities that include, among other things, the obligation to provide continuous quotations in the option class to which the Alternative PMM is appointed, and the obligation to conduct the opening rotation on a daily basis for as long as the Alternative PMM is appointed to that option class.

[9] The Exchange notes that under its current rules it may only appoint PMMs (*i.e.* CMMs that are also PMMs in other option classes) as Back-up PMMs.

[10] *See* Supplementary Material .03(a) to ISE Rule 803.

PMM on the Exchange. The Exchange also proposes to further amend the process by which a Back-Up PMM is chosen to replace a PMM that fails to have a quote in the System, when more than one Back-Up PMM is quoting in the series.

In situations where a PMM fails to have a quote in the System, the System will choose a Back-Up PMM, from the available CMMs, to replace the PMM. The System will choose the CMM with the lowest offer price in the series at that time. If there are two or more CMMs at the same offer price, the CMM with the highest bid price will be chosen. If there are two or more CMMs at the same bid and offer price, the CMM with the largest offer quantity will be chosen. If there are two or more CMMs with the same offer quantity, the CMM with the largest bid quantity will be chosen. If there remains two or more CMMs with the same bid and offer quantity and prices, the one with the highest time priority on the offer will be chosen as the Back-Up PMM.[11] Additionally, when possible, the System will automatically switch back to the appointed PMM when it re-establishes its quotes in the series, but the Back-Up PMM will continue to be responsible for any outstanding unexecuted orders it is handling.

The proposed rule change enhances ISE's market because it ensures ISE has an adequate number of willing Members to act as Back-Up PMMs for PMMs that are not participating in the market. Ultimately, having more Back-Up PMMs will further: (1) Reduce the volatility that occurs during, and the duration of, non-firm or ''fast market'' [12] states disseminated by ISE and (2) allow for virtually seamless trading even when multiple PMMs experience difficulties that cause PMMs to remove their quotes from the market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) [14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by enhancing the Exchange's market by reducing volatility that occurs during and the duration of non-firm or ''fast market'' states disseminated by the ISE and allowing for virtually uninterrupted trading even when multiple PMMs experience difficulties that cause PMMs to remove their quotes from the market. Uninterrupted trading is possible because 1) Back-Up PMMs have appropriate systems and procedures in place to undertake the responsibilities of a PMM when necessary and 2) having an adequate amount of Back-Up PMMs means a Back-Up PMM will be available to take over for a PMM, and post firm and accurate quotes when a situation causes a PMM to fail to have a quote in the System. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it enhances the Exchange's ability to disseminate firm markets. Additionally, by amending and explaining the detailed steps for choosing Back-Up PMMs, members will have additional clarity on the process by which a Back-Up PMM is chosen in certain situations.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act because ISE is enhancing its market by allowing additional Members, which have systems built to assume the responsibilities of a PMM on the Exchange to be Backup-PMMs when appointed PMMs face operational difficulties or cease market making operations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] The Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission, as required by Rule 19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2015–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–42. 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

[11] *See* Supplementary Material .03(b) to ISE Rule 803.

[12] Fast markets occur when there is rapid trading in a security that causes a delay in the electronic updating of its last sale. Trades can occur so rapidly that market orders may be executed at a very different price from the price at the time the order was placed. This leads to investors being disadvantaged because 1) quotes can be inaccurate when PMMs are unable to keep up with the pace of trading or 2) a broker may not be able to fill orders when investors want or expect them to because the PMM is not quoting the other side of the market resulting in the purchase or sale of an investor's securities at undesirable price levels.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

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–ISE–2015–42 and should be submitted byDecember 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30244 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76513; File No. SR–Phlx–2015–79]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change Relating to the Active Specialized Quote Feed Port Fee

November 24, 2015.

I. Introduction

On September 23, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to pay eligible Specialists and Market Makers a refund for a portion of the monthly variable Active Specialized Quote Feed (''SQF'') Port Fees (''Variable Active SQF Port Fees'') that were in effect under Section VII.B. of the Phlx Pricing Schedule during the month of April 2015. The proposed rule change was published for comment in the **Federal Register** on October 13, 2015.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

On April 2, 2015, the Exchange submitted a proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder to, among other things, replace monthly Variable Active SQF Port Fees applicable to Specialists[6] and Market Makers[7] with a monthly fixed Active SQF Port Fee (''Fixed Active SQF Port Fee'').[8] According to the Exchange, all Specialists and Market Makers on the Exchange were subject to the following Variable Active SQF Port Fees beginning in April 2015:[9]

Number of active SQF port	Monthly fee per port
1	$2,500
2–6	$4,000
7 and over	$15,000

The Variable Active SQF Port Fees were capped at $42,000 per month.[10] Under the Fixed Active SQF Port Fees, Specialists and Market Makers would pay $1,250 per port per month and this fee would also be capped at $42,000 per month.[11]

The Exchange notes that the April 2015 submission proposing to replace the monthly Variable Active SQF Port Fees with a monthly Fixed Active SQF Port Fee was rejected.[12] As a result, the Exchange assessed Specialists and Market Makers the applicable Variable Active SQF Port Fees that were in effect from April 1, 2015—April 30, 2015 (''April 2015 Billing Period'') and not the comparably lower Fixed Active SQF Port Fee.[13] The Exchange subsequently refiled another proposed rule change for immediate effectiveness pursuant to Section 19(b)(3)(A)[14] of the Act and Rule 19b–4(f)(2)[15] thereunder to replace the monthly Variable Active SQF Port Fees with the monthly Fixed Active SQF Port Fee.[16] This proposal became operative May 1, 2015.

According to the Exchange, because the April 2015 submission to replace the Variable Active SQF Port Fees with the Fixed Active SQF Port Fee was rejected, the Exchange is proposing to pay a refund to eligible Specialists and Market Makers for a portion of the Variable Active SQF Port Fees that the Exchange assessed during the month of April 2015 and that these eligible Specialists and Market Makers paid to the Exchange.[17] The Exchange states that it did not intend to impose the Variable Active SQF Port Fees in April 2015, but rather the Exchange intended to charge the less expensive Fixed Active SQF Port Fee for the April 2015 Billing Period.[18] The Exchange notes that, because the Fixed Active SQF Port Fee did not become operative until May 1, 2015, and the fee reduction resulting from the Fixed Active SQF Port Fee did not occur as intended on April 1, 2015, Specialists and Market Makers were not able to take advantage of the cheaper Fixed Active SQF Port Fee for April 2015 and had to pay the more expensive Variable Active SQF Port Fees for the April 2015 Billing Period. The Exchange also states that Specialists and Market Makers paid more in April 2015 than was anticipated by the Exchange and the Specialists and Market Makers.[19]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76083 (October 6, 2015), 80 FR 61537 (SR–Phlx–2015–79) (''Notice'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a).

[7] ''Market Makers'' include Registered Options Traders (Exchange Rule 1014(b)(i) and (ii)), which include Streaming Quote Traders (Exchange Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (Exchange Rule 1014(b)(ii)(B)).

[8] *See* SR–Phlx–2015–33, *available at http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2015/SR-Phlx-2015-33.pdf.*

[9] *See* Notice, *supra* note 3, at 61538.

[10] *See id.* at 61537. *See also* Securities Exchange Act Release No. 73687 (November 25, 2014), 79 FR 71485 (December 2, 2014) (SR–Phlx–2014–73) (implementing the Variable Active SQF Port Fees with a delayed operative date of April 1, 2015).

[11] *See* Notice, *supra* note 3, at 61538 (referencing note 26 in Section VII.B. of the Phlx Pricing Schedule).

[12] *See id.* at 61537.

[13] *See id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] *See* Securities Exchange Act Release No. 74833 (April 29, 2015), 80 FR 25749 (May 5, 2015) (SR–Phlx–2015–36) (proposed rule change that, among other things, instituted the Fixed Active SQF Port Fee in lieu of the Variable Active SQF Port Fees as of May 1, 2015).

[17] *See* Notice, *supra* note 3, at 61537.

[18] *See id.*

[19] *See* Nasdaq Equity Trader Alert No. 2015–37 (March 25, 2015), *available at http://nasdaqtrader.com/TraderNews.aspx?id=ETA2015-37;* and Nasdaq Options Trader Alert No. 2015–9 (April 14, 2015), *available at http://www.phlx.com/TraderNews.aspx?id=OTA2015-9* (the ''Alerts''). The Exchange notes that the Alerts show how some Exchange members may have anticipated the proposed lower Fixed Active SQF Port Fee in April

The fees that the Exchange proposes to refund to eligible Specialists and Market Makers represent the difference between the Variable Active SQF Port Fees and the Fixed Active SQF Port Fee that became operative on May 1, 2015, each subject to the $42,000 monthly cap.[20] For example, according to the Exchange, if Specialist A was assessed and paid a Variable Active SQF Port Fee of $16,000 for the month of April 2015 (4 ports at $4,000 per port) whereas the Specialist would have paid only a $5,000 Fixed Active SQF Port Fee if this fee had been operative in April (4 ports at $1,250 per port), the Exchange would pay that member a refund amount of $11,000. In addition, if Market Maker B was assessed and paid a Variable Active SQF Port Fee of $42,000 for the month of April 2015 (8 ports at $15,000 per port for an uncapped total of $120,000, to which the cap was applied) whereas the Market Maker would have paid only a $10,000 Fixed Active SQF Port Fee if this fee had been operative in April (8 ports at $1,250 per port), the Exchange would pay that member a refund amount of $32,000.[21] The Exchange notes that the payment of a refund to eligible Specialists and Market Makers is unique to April 2015 only and applies only to the April 2015 Billing Period.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, approval of the retroactive application of the proposal is consistent with Section 6(b)(4) of the Act,[23] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities.

The Commission notes that the refund the Exchange proposes to pay would have a retroactive effect on eligible Specialists and Market Makers because these members of the Exchange would effectively be subject to the Fixed Active SQF Port Fee during the month of April 2015, which was a month that the Variable Active SQF Port Fees were operative under the Exchange's rules. The Commission further notes that the proposed change from the Variable Active SQF Port Fees to the Fixed Active SQF Port Fee was contained in an April 2015 submission by the Exchange for immediate effectiveness pursuant to Section 19(b)(3)(A)[24] of the Act and Rule 19b–4(f)(2)[25] thereunder; however that submission was rejected by the Commission because it was not filed in accordance with the requirements of the Act and the rules and regulations thereunder.[26] The proposed fee changes would otherwise qualify for immediate effectiveness pursuant to Section 19(b)(3)(A)[27] of the Act and Rule 19b–4(f)(2) thereunder.[28] However, because the proposed rule change seeks retroactive application of a fee change, the Exchange filed the proposed rule change pursuant to Section 19(b)(2) of the Act,[29] seeking approval retroactive to April 1, 2015. Retroactive approval of this proposal allows the proposed rule change to take effect for the month of April 2015.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (File No. SR–Phlx–2015–79) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30332 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

2015, but had to pay higher fees because the filing to delete the Variable Active SQF Port Fees was initially rejected by the Commission. *See* Notice, *supra* note 3, at 61537, n.6.

[20] The Exchange represents that a few members reached the cap of $42,000 for the Variable Active SQF Port Fees and would have also reached the cap of $42,000 for the Fixed Active SQF Port Fee. According to the Exchange, these members did not pay any overage and would not be eligible for a refund. *See* Notice, *supra* note 3, at 61538, n.13.

[21] *See* Notice, *supra* note 3, at 61538.

[22] Additionally, in approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(4).

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] *See* 17 CFR 240.19b–4 and 17 CFR 249.819 Appendix A.

[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] *Id.*

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76506; File No. SR–ISE–2015–30]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change To Amend Rule 804(g)

November 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 November 10, 2015, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange 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 Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 804(g) to require Clearing Member approval for market makers to resume trading after a market-wide speed bump is triggered. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 804(g) on ''Automated Quotation Adjustments'' to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

require Clearing Member[3] approval for Primary Market Makers (''PMMs'') and Competitive Market Makers (''CMMs'') (collectively, ''market makers'') to resume trading after a market-wide speed bump is triggered. The Exchange offers market makers functionality whereby the Exchange will automatically remove a market maker's quote in all series or complex order strategies in an options class if a ''curtailment event'' occurs based on parameters set by the market maker on a class-by-class basis.[4] In particular, the Exchange will automatically remove a market maker's quote in a class when, during a time period established by the market maker, the market maker exceeds: (i) The specified number of total contracts in the class, (ii) the specified percentage of the total size of the market maker's quotes in the class, (iii) the specified absolute value of the net between contracts bought and contracts sold in the class, or (iv) the specified absolute value of the net between (a) calls purchased plus puts sold in the class, and (b) calls sold plus puts purchased in the class.[5] In addition, the Exchange provides market-wide functionality whereby a market maker's quote in all options classes are automatically cancelled if, during a configurable time period, the total number of curtailment events in simple and complex instruments exceeds a market-wide parameter set by the market maker.[6] This market-wide functionality, which is available for ISE only or across both ISE and ISE's affiliate, ISE Gemini, LLC,[7] is useful to members as numerous curtailment events triggered across multiple options classes, and if chosen, multiple exchanges, may signify a larger problem being experienced by the market maker that warrants its quotes being removed from the market. Currently, the Exchange only requires that a market maker notify Market Operations of its intention to reenter the market to resume trading after the market-wide speed bump has been activated. Due to the significant nature of events that may trigger this market-wide speed bump functionality, the Exchange now proposes also to require Clearing Member approval prior to allowing the market maker to resume quoting. Pursuant to the proposed rule change, a market maker must notify its Clearing Member(s) when it is ready to resume trading following a market-wide speed bump. Exchange staff may also notify the Clearing Member(s) when the market maker's quotes have been removed, to facilitate a better response time. Each Clearing Member must then contact the Exchange directly to give their authorization for the market maker to resume trading.[8]

Each market maker authorized to trade on the Exchange must obtain from a Clearing Member a ''Market Maker Letter of Guarantee'' wherein the Clearing Member accepts financial responsibility for all Exchange transactions made by the market maker.[9] The Exchange believes that it is appropriate to require Clearing Member approval before a market maker can reenter the market after the market-wide speed bump has been triggered as the Clearing Member guarantees the market makers trades, and therefore bears ultimate financial risk associated with those transactions. The Exchange notes that while not all market makers are Clearing Members, all market makers require a Clearing Member's consent to clear transactions on their behalf in order to conduct business on the Exchange. As the Clearing Member ultimately bears the risk for a trade they clear on any market makers behalf, the Exchange believes it is reasonable to require that the Clearing Member authorize the market maker to continue trading after the market-wide speed bump is triggered.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[11] because it is designed to promote just and equitable principles of trade, to 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.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by requiring that Clearing Members authorize continued trading by a market maker after that market maker triggers a market-wide speed bump. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it will permit Clearing Members with a financial interest in a market maker's risk management to better monitor and manage the potential risks assumed by that market maker. The Exchange already shares market makers' risk settings with their Clearing Members in order to assist those Clearing Members in monitoring risks at firms on whose behalf they clear trades.[12] The proposed rule change would further assist Clearing Members in monitoring risk, and provide these Clearing Members with greater control and flexibility over their risk tolerance and exposure. Because the Clearing Member guarantees all of the market maker's trades it is in a unique position to objectively evaluate the risk of a market maker reentering the market following a serious systems or other issue. While in some cases this may result in a minimal delay for a market maker that wants to reenter the market quickly following a market-wide speed bump, the Exchange believes that Clearing Member approval is appropriate to ensure that the market maker does not prematurely enter the market without adequate safeguards in place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[13] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, but is rather intended to provide additional safeguards by requiring Clearing Member approval before market makers are allowed to reenter the market following a market-wide speed bump. The Exchange believes that this would allow Clearing Members to better monitor and manage the potential risks assumed by market makers on whose behalf they have executed a Market Maker Letter of Guarantee, and does not

[3] The term ''Clearing Member'' means a Member that is self-clearing or an Electronic Access Member that clears Exchange Transactions for other Members of the Exchange. *See* Rule 100(a)(8).

[4] *See* Rule 804(g)(i) for simple instruments, and Supplementary Material .04 to Rule 722 for complex instruments.

[5] *Id.*

[6] *See* Rule 804(g)(ii). This functionality is known as ''market-wide speed bump'' and is the subject of this filing.

[7] *Id.*

[8] If a market maker has multiple Clearing Members, it must receive approval from each Clearing Member to resume trading.

[9] *See* Rule 808.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* Securities Exchange Act Release No. 74623 (April 1, 2015), 80 FR 18447 (April 6, 2015) (SR–ISE–2015–12).

[13] 15 U.S.C. 78f(b)(8).

impose any unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove 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–ISE–2015–30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2015–30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2015–30 and should be submitted on or before December 21, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–30242 Filed 11–27–15; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0298]

LaSalle Capital Group II–A, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that LaSalle Capital Group II–A, L.P. 70 W Madison Street, Suite 5710, Chicago, IL 60602, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). LaSalle Capital Group II–A, L.P. proposes to merge Westminster Foods II, LLC, 1 Scale Avenue, Suite 8, Rutland, Vermont 05701 and Dr. Lucy's LLC, 7420 Central Business Park Drive, Suite 1, Norfolk, Virginia 23513 together. The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Westminster Foods II, LLC and Dr. Lucy's, LLC all Associates of LaSalle Capital Group II–A, L.P., will merge together as Westminster Foods II, LLC, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: November 18, 2015.

John R. Williams,

Acting Deputy Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2015–30246 Filed 11–27–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9364]

Culturally Significant Objects Imported for Exhibition Determinations: ''Everywhen: The Eternal Present in Indigenous Art from Australia'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Everywhen: The Eternal Present in Indigenous Art from Australia,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Harvard Art Museums, Cambridge, Massachusetts, from on about February 5, 2016, until on or about September 18, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@*

state.gov). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: November 20, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–30326 Filed 11–27–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9361]

Determination by the Secretary of State Relating to Iran Sanctions

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Secretary of State determined on November 10, 2015, pursuant to Section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (Pub. L. 112–81), as amended, that as of November 10, 2015, the following countries, Malaysia and Singapore, have maintained their crude oil purchases from Iran at zero over the preceding 180-day period.

FOR FURTHER INFORMATION CONTACT: Katherine Skarsten, Senior Energy Officer, Department of State Bureau of Energy and Natural Resources, 202–647–9526.

Dated: November 23, 2015.

Amos Hochstein,

Special Envoy and Coordinator for International Energy Affairs, Bureau of Energy Resources, Department of State.

[FR Doc. 2015–30324 Filed 11–27–15; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF STATE

[Public Notice: 9363]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nasreen Mohamedi'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Nasreen Mohamedi,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about March 18, 2016, until on or about June 5, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: November 20, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–30327 Filed 11–27–15; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9362]

Culturally Significant Objects Imported for Exhibition Determinations: ''The World in Play: Luxury Cards, 1430–1540'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The World in Play: Luxury Cards, 1430–1540,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about January 20, 2016, until on or about April 17, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: November 20, 2015.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2015–30325 Filed 11–27–15; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Rescinded for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the approved by rule projects rescinded by the Susquehanna River Basin Commission during the period set forth in ''DATES.''

DATES: October 1–31, 2015.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, being rescinded for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and § 806.22(f) for the time period specified above:

Rescinded ABR Issued

1. Energy Corporation of America, Pad ID: COP 325 A, ABR–201112011, Girard Township, Clearfield County, Pa.; Rescind Date: October 5, 2015.
2. Range Resources-Appalachia, LLC, Pad ID: Rupert, Elton Unit #1H Drilling Pad, ABR–201012047, Penn Township, Lycoming County, Pa.; Rescind Date: October 5, 2015.
3. EXCO Resources (PA), LLC, Pad ID: Cadwalader Pad 2A, ABR–201309006, Cogan

House Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

4. EXCO Resources (PA), LLC, Pad ID: Cadwalader Pad 3, ABR–201309010, Cogan House Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

5. EXCO Resources (PA), LLC, Pad ID: Daisy Barto Unit Well Pad, ABR–201205003, Penn Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

6. EXCO Resources (PA), LLC, Pad ID: Dale Bower Pad 2, ABR–201212007, Penn Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

7. EXCO Resources (PA), LLC, Pad ID: Herring Pad 9, ABR–201012027, Graham Township, Clearfield County, Pa.; Rescind Date: October 8, 2015.

8. EXCO Resources (PA), LLC, Pad ID: Kepner Unit Well Pad, ABR–201205013, Penn Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

9. EXCO Resources (PA), LLC, Pad ID: Murray Unit Pad, ABR–201204005, Penn Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

10. EXCO Resources (PA), LLC, Pad ID: Painters Den Pad 1, ABR–201202010, Davidson Township, Sullivan County, Pa.; Rescind Date: October 8, 2015.

11. EXCO Resources (PA), LLC, Pad ID: Spotts Unit Drilling Pad 3H, 4H, 5H, 7H, 8H, 9H, ABR–201202003, Miffling Township, Lycoming County, Pa.; Rescind Date: October 8, 2015.

12. Chesapeake Appalachia, LLC, Pad ID: Bumpville, ABR–201202023, Litchfield Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

13. Chesapeake Appalachia, LLC, Pad ID: CMI, ABR–201203021, Wysox Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

14. Chesapeake Appalachia, LLC, Pad ID: Dr. Marone, ABR–201405007, Washington Township, Wyoming County, Pa.; Rescind Date: October 21, 2015.

15. Chesapeake Appalachia, LLC, Pad ID: Ford, ABR–201106004, Orwell Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

16. Chesapeake Appalachia, LLC, Pad ID: Hare Ridge, ABR–201210001, Rush Township, Susquehanna County, Pa.; Rescind Date: October 21, 2015.

17. Chesapeake Appalachia, LLC, Pad ID: Matthews, ABR–201203018, Sheshequin Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

18. Chesapeake Appalachia, LLC, Pad ID: Maurice, ABR–201204006, Herrick Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

19. Chesapeake Appalachia, LLC, Pad ID: Shumhurst, ABR–201205019, Tuscarora Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

20. Chesapeake Appalachia, LLC, Pad ID: Simplex, ABR–201204011, Standing Stone Township, Bradford County, Pa.; Rescind Date: October 21, 2015.

21. Chesapeake Appalachia, LLC, Pad ID: Whitney, ABR–201208006, Rush Township, Susquehanna County, Pa.; Rescind Date: October 21, 2015.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: November 23, 2015.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2015–30231 Filed 11–27–15; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration Revised Notice of Intent To Prepare a Tier 1 Environmental Impact Statement: Juneau, Sauk, and Columbia Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), Wisconsin Department of Transportation (WisDOT).

ACTION: Federal Notice of Intent to Prepare an Environmental Impact Statement (EIS).

SUMMARY: The purpose of this NOI is to update the notice that was issued in the **Federal Register** Vol. 79 No. 221, Monday, November 17, 2014, Notices. The FHWA is issuing this revised notice to advise the public that FHWA and WisDOT will be preparing a Tier 1 Environmental Impact Statement (EIS) for proposed transportation improvements along the Interstate (I)–90/94 corridor, from United States Highway (US) 12/Wisconsin State Highway (WIS) 16 Interchange to the I–39/WIS 78 interchange in Juneau, Sauk, and Columbia Counties in Wisconsin.

FOR FURTHER INFORMATION CONTACT: Johnny Gerbitz, Field Operations Engineer, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, Wisconsin, 53717–2157, Telephone: (608) 829–7511. You may also contact Steve Krebs, Director, Bureau of Technical Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965, Telephone: (608) 246–7930.

SUPPLEMENTARY INFORMATION:

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare a Tier 1 Environmental Impact Statement (EIS) for proposed improvements in the I–90/94 corridor and adjacent local road systems from the US 12/WIS 16 interchange (2 miles north of Wisconsin Dells) to the I–39/WIS 78 interchange (south of Portage), approximately 25 miles. The project limits include operational areas of influence at each interchange. The preliminary purpose of this project is to address pavement and bridge structural needs; highway and roadside safety issues and design deficiencies; accommodate existing and projected traffic volumes; and improve the transportation system's ability to support local and regional tourism economies.

FHWA's decision to prepare an EIS is based on the initial review that indicates the proposed action is likely to have significant impacts on the environment, including wetlands. The study began preparing a traditional Draft EIS for the corridor, but due to project complexity and funding limitations, FHWA and WisDOT have decided to prepare a Tiered EIS. The Tiered EIS approach will allow FHWA and WisDOT to bring forward portions of the project as needs dictate and as funding becomes available.

The Tier 1 EIS document will analyze the project on a broad scale and identify a preferred corridor location for potential future improvements. The Tier 1 EIS will evaluate the social, economic, and environmental impacts for a range of alternatives within the existing I–90/94 corridor and improvements along other corridors. The Tier 1 EIS will be prepared in accordance with 23 U.S.C. 139, 23 CFR771, and 40 CFR parts 1500–1508. Completion of the Tier 1 EIS and the Record of Decision (ROD) is expected in 2018.

Subsequent Tier 2 environmental documents will be prepared with a greater degree of engineering detail for specific improvements in the remainder of the corridor. The alternative analysis in the Tier 2 documents will include, but is not limited to, the alternatives that have been developed as part of the previous EIS study.

Public involvement is a critical component of the National Environmental Policy Act (NEPA) and will occur throughout the development of the draft and final Tier 1 EIS. All environmental documents will be made available for review by federal and state resource agencies and the public. Specific efforts to encourage involvement by, and solicit comments from, minority and low-income populations in the project study area will be made, with public involvement meetings held throughout the environmental document process. Public notice will be given as to the time and place of public involvement meetings. A public hearing will be held after the completion of the Draft Tier 1 EIS.

Inquiries related to this study can be sent to *mark.westerveld@dot.wi.gov.* A public Web site will be maintained throughout the study to provide information about the project (*http://www.dot.wisconsin.gov/projects/swregion/9094/index.htm*). To ensure

the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the FHWA address provided above.

Projects receiving Federal funds must comply with Title VI of the Civil Rights Act, and Executive Order 12898 ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' Federal law prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this project. It is also Federal policy to identify and address any disproportionately high and adverse effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: November 23, 2015.

Johnny M. Gerbitz,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 2015–30277 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033]

Notice of Intent To Grant a Buy America Waiver To the Illinois Department of Transportation for the Use of Sure Close Self-Closing Force Adjustable Gate Hinges

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the Illinois Department of Transportation (IDOT) a waiver from FRA's Buy America requirement for the use of 250 Sure Close gate hinges, which are manufactured in Italy. FRA believes a waiver is appropriate because, despite IDOT's best efforts to develop a domestic source for these hinges, domestically-produced gate hinges for pedestrian crossings meeting IDOT's safety specifications and schedule needs remain unavailable in the United States.

DATES: Written comments on FRA's determination to grant IDOT's Buy America waiver request should be provided to the FRA on or before December 7, 2015.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web site: *http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493–2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC, 20590–0001; or

(4) Hand Delivery: Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must reference the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION:

FRA is issuing this notice to advise the public that it intends to grant the Illinois Department of Transportation (IDOT) a waiver from FRA's Buy America requirement for the use of 250 Sure Close gate hinges, which are manufactured in Italy. Self-closing, force adjustable gate hinges are one component of the larger construction project to install pedestrian swing gates in connection with the Chicago-St. Louis High Speed Rail (HSR) corridor project. The Chicago-St. Louis HSR project is funded by a $1.33 billion grant from FRA. The value of the 250 hinges is approximately $79,000. FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) because, despite IDOT's best efforts to develop a domestic source for these hinges, domestically-produced gate hinges for pedestrian crossings meeting IDOT's safety specifications and schedule needs remain unavailable in the United States.

The letter granting IDOT's request is quoted below:

John Oimoen
Interim Director, Division of Public and Intermodal Transportation
Illinois Department of Transportation
Division of Public and Intermodal Transportation
100 West Randolph Street, Suite 6–600
Chicago, IL 60601

Re: Request for Waiver of Buy America Requirement for Sure Close Gate Hinges

Dear Mr. Oimoen:

This letter responds to your request, dated June 30, 2015, that the Federal Railroad Administration (FRA) grant the Illinois Department of Transportation (IDOT) a waiver from FRA's Buy America provision, at 49 U.S.C. 24405(a)(1), for one component of pedestrian swing gates IDOT needs to purchase using FRA grant monies. Specifically, your request is based on the Buy America provision (49 U.S.C. 24405(a)) applicable to FRA's High-Speed Intercity Passenger Rail (HSIPR) Program grant ($1.33 billion) to IDOT for the Chicago-St. Louis High Speed Rail (HSR) corridor.

Your waiver request is for the remaining 250 of 600 Sure Close gate hinges needed for the project that D&D Technology, an Italian company, manufactures. In February 2015, FRA granted IDOT a waiver for the initial 350 gate hinges. Because the hinges are manufactured in Italy, IDOT needs a waiver from FRA's Buy America requirement. FRA is granting IDOT's waiver request for the additional 250 Sure Close gate hinges. FRA believes a waiver is again appropriate under 49 U.S.C. 24405(a)(2)(B) because, despite IDOT's best efforts to develop a domestic source for these hinges, domestically-produced gate hinges for pedestrian crossings meeting IDOT's safety specifications and schedule needs remain unavailable in the United States. IDOT needs the remaining 250 gate hinges for its project to remain on schedule.

FRA posted the new request for the 250 gate hinges on its Web site and received no comments. Under 49 U.S.C. 24405(a)(4), FRA is publishing notice of its decision to grant IDOT's waiver request in the **Federal Register** and provide notice of such finding

and an opportunity for public comment after which this waiver will become effective. Questions about this letter can be directed to, John Johnson, Attorney-Advisor, at *john.johnson@dot.gov* or (202)493–0078.
Sincerely,
Sarah Feinberg
Acting Administrator

Issued in Washington, DC on November 23, 2015.

Sarah L. Inderbitzin,

Acting Chief Counsel.

[FR Doc. 2015–30205 Filed 11–27–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of a General License Related to the Foreign Narcotics Kingpin Sanctions Program

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, Publication of a General License.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license issued in the Foreign Narcotics Kingpin sanctions program.

DATES: *Effective Date:* October 21, 2015.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

Recently OFAC issued a general license authorizing certain transactions and activities otherwise prohibited by the sanctions programs OFAC administers. At the time of issuance of the general license, OFAC made that license available on its Web site (*www.treasury.gov/ofac*). With this notice, OFAC is publishing the general license in the **Federal Register**. The general license contained in this Notice relates to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598.

General License No. 1

Authorizing Certain Transactions and Activities To Liquidate and Wind Down Banco Continental, S.A.

(a) Except as provided in paragraph (b) of this general license, all transactions and activities otherwise prohibited by the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598, that are for the liquidation and wind down of the Honduran bank, Banco Continental, S.A., including transactions and activities related to the preparation and submission of bids to acquire the assets of Banco Continental, S.A., are authorized through 12:01 a.m. eastern daylight time, December 12, 2015.

(b) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to the Foreign Narcotics Kingpin Sanctions Regulations, 31 CFR part 598; or

(2) Any transactions or dealings otherwise prohibited by any Executive order or any other part of 31 CFR Chapter V, or any transactions or dealings with any individual or entity other than Banco Continental, S.A. that is listed on the Office of Foreign Assets Control's List of Specially Designated Nationals or Blocked Persons or that otherwise constitutes a person whose property and interests in property are blocked.

(c) U.S. persons participating in transactions authorized by this general license are required, within 10 business days after the liquidation and wind-down activities conclude, to file a report, including the parties involved, the type and scope of activities conducted, and the dates of the activities, with the Office of Foreign Assets Control, Licensing Division, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

Issued: October 21, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30206 Filed 11–27–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the two individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on November 24, 2015.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the

Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On November 24, 2015, the Director of OFAC designated the following two individuals whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

1. FERNANDEZ VALENCIA, Guadalupe (a.k.a. FERNANDEZ VALENCIA, Ma. Guadalupe; a.k.a. FERNANDEZ VALENCIA, Maria Guadalupe; a.k.a. ''DON JULIO''; a.k.a. ''JULIA''); DOB 29 Oct 1960; POB Aguililla, Michoacan de Ocampo, Mexico; citizen Mexico; Gender Female; R.F.C. FEVM601029EN3 (Mexico); C.U.R.P. FEVG601029MMNRLD10 (Mexico); alt. C.U.R.P. FEVG601029MMNRLD02 (Mexico) (individual) [SDNTK]. Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the Sinaloa Cartel, Joaquin Guzman Loera, Ivan Archivaldo Guzman Salazar, and/or Jesus Alfredo Guzman Salazar, and/or being directed by, or acting for or on behalf of, the Sinaloa Cartel, Joaquin Guzman Loera, Ivan Archivaldo Guzman Salazar, and/ or Jesus Alfredo Guzman Salazar.

2. VALENZUELA VERDUGO, Jorge Mario (a.k.a. ''CHOCLOS''), Antonio Rosales 280, Centro Culiacan, Culiacan, Sinaloa 80000, Mexico; De Las Toronjas 1999, Culiacan, Sinaloa 80060, Mexico; Boulevard Constitucion 257 PTE, Colonia Jorge Almada, Culiacan, Sinaloa 80200, Mexico; Angel Flores 624, Colonia Centro, Culiacan, Sinaloa, Mexico; DOB 23 Oct 1982; POB Distrito Federal, Mexico; citizen Mexico; Gender Male; Cedula No. 09084650 (Mexico); R.F.C. VAVJ821023EL8 (Mexico); National ID No. 23038267151 (Mexico); C.U.R.P. VAVJ821023HDFLRR02 (Mexico) (individual) [SDNTK]. Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the Sinaloa Cartel, Joaquin Guzman Loera, Ivan Archivaldo Guzman Salazar, Jesus Alfredo Guzman Salazar, and/or Victor Manuel Felix Beltran, and/or being directed by, or acting for or on behalf of, the Sinaloa Cartel, Joaquin Guzman Loera, Ivan Archivaldo Guzman Salazar, Jesus Alfredo Guzman Salazar, and/or Victor Manuel Felix Beltran.

Dated: November 24, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–30281 Filed 11–27–15; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

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 4970, Tax on Accumulation Distributions of Trusts.

DATES: Written comments should be received on or before January 29, 2016 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 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:* Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Form 4970 is used by beneficiary of domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. This form is used to verify whether the correct tax has been paid on the accumulation distribution.

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.

Estimated Number of Respondents: 30,000.

Estimated Time Per Response: 1 hour, 25 minutes.

Estimated Total Annual Burden Hours: 42,900.

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: November 20, 2015.

Michael Joplin,

IRS, Reports Clearance Officer.

[FR Doc. 2015–30365 Filed 11–27–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

AGENCY: Department of the Treasury.

ACTION: Notice.

The Department of the Treasury will submit the following information collection requests to the Office of

Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 30, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0131.

Type of Review: Extension without change of a currently approved collection.

Title: Certificate of Taxpaid Alcohol.

Form: TTB F 5100.4.

Abstract: Under 27 CFR 17.181, medicinal preparations and flavoring extracts produced in the United States and then exported, are eligible for drawback of all Federal alcohol excise taxes paid on the distilled spirits used to make the product, as provided in 19 U.S.C. 1313(d). These export drawback claims are made to U.S. Customs and Border Protection (CBP) and may cover either the full rate of the distilled spirits excise tax paid on the alcohol (if the respondent has made no nonbeverage drawback claim to TTB under 26 U.S.C. 5114 (see OMB control number 1513–0030), or may cover the remainder of the excise tax paid on the spirits if a claim under 26 U.S.C. 5114 was previously made. When such a drawback claim is to be made, the industry member submits TTB F 5100.4 to TTB, and TTB certifies the form to show that the excise taxes claimed for drawback were previously paid and not previously refunded. TTB returns the certified form to the respondent, who then submits it to CBP as part of the respondent's export drawback claim. TTB keeps a copy of the form on file to compare with future submissions in order to prevent duplication.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 500.

Dated: November 23, 2015.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2015–30239 Filed 11–27–15; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection: VA Financial Services Center (VA–FSC) Vendor File Request Form

Activity: Comment Request

AGENCY: Financial Services Center, VA.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs—Financial Services Center (VA–FSC) is announcing an opportunity for the general public and other Federal agencies to comment on a continuing information collection as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and allow 60 days for public comment in response to the notice. Currently the Nationwide Vendor File Division within VA–FSC is soliciting comments concerning VA Form 10091, which will replace the Automated Clearing House ''ACH Vendor/Miscellaneous Payment Enrollment Form'' (SF3881/OMB 1510–0056) for all vendors who need to establish or update their Financial Management System (FMS) Vendor Record in order to receive VA payments that comply with the1996 Debt Collection Improvement Act (DCIA). *The DCIA* mandated the use of electronic funds transfer (EFT) for federal payments.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 29, 2016.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to VA–FSC—Nationwide Vendor File Division, Valerie H. Robinson, 7600 Metropolis Drive, Bldg 5, Austin, TX 78744 or *valerie.robinson7@va.gov.* Please refer to ''OMB Control No. 2900–NEW (VA–FSC Vendor File Request Form)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Valerie H Robinson at (512) 460–5454

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA–FSC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VA–FSCs functions, including whether the information will have practical utility; (2) the accuracy of VA–FSCs estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA–FSC Vendor File Request Form.

OMB Control Number: 2900–NEW.

Type of Review: New Collection.

Abstract: The mission of the Nationwide Vendor File Division of the Department of Veterans Affairs—Financial Services Center (VA–FSC) is to add, modify, or delete vendor records in the Financial Management Services (FMS) Vendor File. The VA–FSCs FMS Vendor File controls aspects of when, where, and how vendors are paid. There are currently more than 2.4M active vendor records in FMS.

In 1987, Treasury implemented several initiatives to encourage agencies to convert their vendor and miscellaneous payment activity from checks to the Automated Clearing House (ACH) payments. By 1996, the Debt Collection Improvement Act (DCIA) mandated the use of electronic funds transfer (EFT) for federal payments. In order to comply with these federal requirements, the VA and other Federal Agencies have used OMB # 1510–0056/ Standard Form 3881 (SF 3881) to collect the essential payment data from vendors (*i.e.,* Name, Address, SSN/TaxID, Financial Institution, Routing and Transit Number and Bank Account Number) to establish payment files. However, because SF 3881 lacks the necessary information fields to communicate the type of Vendor record required (*i.e.,* commercial, individual, veteran, employee, etc.) the VA–FSC required all SF 3881 submissions to have an accompanying Vendorizing

Cover Sheet included to ensure proper document processing.

The new Vendorizing Form (VA10091) streamlines the data required to establish a vendor record (from the SF 3881 and Vendorizing Cover Sheet) into a single form.

Affected Public: Businesses or other for-profit, not-for-profit institutions; State, Local or Tribal Government; VA employees; Veterans; Caregivers.

Estimated Annual Burden: 37,500 burden hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Once per applicant, unless there is a change of name, address, banking information.

Estimated Number of Respondents: 150,000.

By direction of the Secretary:.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–30288 Filed 11–27–15; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Agency Information Collection (Application for Voluntary Service VA Form 10–7055 and Associated Internet Application)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 30, 2015.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0090 (Application for Voluntary Service VA Form 10–7055 and Associated Internet Application)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov.* Please refer to ''OMB Control No. 2900–0090'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

SUPPLEMENTARY INFORMATION:

Titles: Application for Voluntary Service VA Form 10–7055 and Associated Internet Application.

OMB Control Number: 2900–0090.

Type of Review: Revision.

Abstract: This application (VA Form 10–7055 and the associated web form) will be here-in-after referred to as the form. The form is used to assist personnel of volunteer organizations, which recruit volunteers from their membership, and the Department of Veterans Affairs (VA) in the selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers. The information is collected under the authority of 38 U.S.C. 7405(a).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 80 FR 46105 on August 3, 2015.

Affected Public: Individuals or Households.

Estimated Annual Burden: 8,000 burden hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 32,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2015–30280 Filed 11–27–15; 8:45 am]

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Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 45

Federal Reserve System

12 CFR Part 237

Federal Deposit Insurance Corporation

12 CFR Part 349

Farm Credit Administration

12 CFR Part 624

Federal Housing Finance Agency

12 CFR Part 1221

Margin and Capital Requirements for Covered Swap Entities; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2011–0008]

RIN 1557–AD43

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1415]

RIN 7100–AD74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AE21

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AC69

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA45

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (''OCC''); Board of Governors of the Federal Reserve System (''Board''); Federal Deposit Insurance Corporation (''FDIC''); Farm Credit Administration (''FCA''); and the Federal Housing Finance Agency (''FHFA'').

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each an ''Agency'' and, collectively, the ''Agencies'') are adopting a joint rule to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This final rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (''TRIPRA''). Sections 731 and 764 require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

DATES: The final rule is effective April 1, 2016.

FOR FURTHER INFORMATION CONTACT:

OCC: Kurt Wilhelm, Director, Financial Markets Group, (202) 649–6437, or Carl Kaminski, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Sean D. Campbell, Associate Director, (202) 452–3760, or Elizabeth MacDonald, Manager, Division of Banking Supervision and Regulation, (202) 475–6316; Anna M. Harrington, Counsel, Legal Division, (202) 452–6406, or Victoria M. Szybillo, Counsel, Legal Division, (202) 475–6325, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Markets Branch, *bbean@fdic.gov*, Jacob Doyle, Capital Markets Policy Analyst, *jdoyle@fdic.gov*, Division of Risk Management Supervision, (202) 898–6888; Thomas F. Hearn, Counsel, *thohearn@fdic.gov*, or Catherine Topping, Counsel, *ctopping@fdic.gov*, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FCA: J.C. Floyd, Associate Director, Finance & Capital Markets Team, Timothy T. Nerdahl, Senior Policy Analyst—Capital Markets, Jeremy R. Edelstein, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649–3196, *Robert.Collender@fhfa.gov*, or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649–3060, *Peggy.Balsawer@fhfa.gov*, Federal Housing Finance Agency, Constitution Center, 400 7th St. SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Act'' or ''Dodd-Frank Act'') was enacted on July 21, 2010.[1] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as ''swaps'' (which are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity swaps, equity swaps, and credit default swaps) and ''security-based swaps'' (which are defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index).[2] For the remainder of this preamble, the term ''swaps'' refers to swaps and security-based swaps unless the context requires otherwise.

As part of this new regulatory framework, sections 731 and 764 of the Dodd-Frank Act add a new section, section 4s, to the Commodity Exchange Act of 1936, as amended (''Commodity Exchange Act'') and a new section, section 15F, to the Securities Exchange Act of 1934, as amended (''Securities Exchange Act''), respectively, which require registration with the U.S. Commodity Futures Trading Commission (the ''CFTC'') of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (the ''SEC'') of security-based swap dealers and major security-based swap participants (each a ''swap entity'' and, collectively, ''swap entities'').[3] For swap entities that are prudentially regulated by one of the Agencies,[4] sections 731 and 764 of the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the CFTC, which is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. Section 764 of the Dodd-Frank Act requires security-based swap dealers and major security-based swap participants to register with the SEC, which is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the Supplementary Information accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

[4] Section 1a(39) of the Commodity Exchange Act defines the term ''prudential regulator'' for

Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (i) capital requirements and (ii) initial and variation margin requirements on all swaps not cleared by a registered derivatives clearing organization or a registered clearing agency.[5] Swap entities that are prudentially regulated by one of the Agencies and therefore subject to this final rule are referred to herein as ''covered swap entities.''

Sections 731 and 764 of the Dodd-Frank Act also require the CFTC and SEC separately to adopt rules imposing capital and margin requirements to their applicable swap entities for which there is no prudential regulator.[6] The Dodd-Frank Act requires the CFTC, SEC, and the Agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements.[7]

The capital and margin standards for swap entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from non-cleared swaps.[8] Sections 731 and 764 of the Dodd-Frank Act require that the capital and margin requirements imposed on swap entities must, to offset such risk, (1) help ensure the safety and soundness of the swap entity and (2) be appropriate for the greater risk associated with non-cleared swaps.[9] In addition, sections 731 and 764 of the Dodd-Frank Act require the Agencies, in establishing capital requirements for entities designated as covered swap entities for a single type or single class or category of swap or activities, to take into account the risks associated with other types, classes, or categories of swaps engaged in, and the other activities conducted by swap entities that are not otherwise subject to regulation.[10]

In addition to the Dodd-Frank Act authorities mentioned above, the Agencies also have safety and soundness authority over the entities they supervise.[11] The Dodd-Frank Act specified that the provisions of its Title VII shall not be construed as divesting any Agency of its authority to establish or enforce prudential or other standards under other law.[12]

The capital and margin requirements for non-cleared swaps under sections 731 and 764 of the Dodd-Frank Act complement other Dodd-Frank Act provisions that require all sufficiently standardized swaps to be cleared through a registered derivatives clearing organization or clearing agency.[13] This requirement is consistent with the consensus of the G–20 leaders to clear derivatives through central counterparties (''CCPs'') where appropriate.[14]

In the derivatives clearing process, CCPs manage credit risk through a range of controls and methods, including a margining regime that imposes both initial margin and variation margin requirements on parties to cleared

purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. The Board is the prudential regulator for any swap entity that is (i) a State-chartered bank that is a member of the Federal Reserve System, (ii) a State-chartered branch or agency of a foreign bank, (iii) a foreign bank which does not operate an insured branch, (iv) an organization operating under section 25A of the Federal Reserve Act (an Edge corporation) or having an agreement with the Board under section 25 of the Federal Reserve Act (an Agreement corporation), and (v) a bank holding company, a foreign bank that is treated as a bank holding company under section 8(a) of the International Banking Act of 1978, as amended, or a savings and loan holding company (on or after the transfer date established under section 311 of the Dodd-Frank Act), or a subsidiary of such a company or foreign bank (other than a subsidiary for which the OCC or FDIC is the prudential regulator or that is required to be registered with the CFTC or SEC as a swap dealer or major swap participant or a security-based swap dealer or major security-based swap participant, respectively). The OCC is the prudential regulator for any swap entity that is (i) a national bank, (ii) a federally chartered branch or agency of a foreign bank, or (iii) a Federal savings association. The FDIC is the prudential regulator for any swap entity that is (i) a State-chartered bank that is not a member of the Federal Reserve System or (ii) a State savings association. The FCA is the prudential regulator for any swap entity that is an institution chartered under the Farm Credit Act of 1971, as amended (the ''Farm Credit Act''). The FHFA is the prudential regulator for any swap entity that is a ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (*i.e.,* the Federal National Mortgage Association (''Fannie Mae'') and its affiliates, the Federal Home Loan Mortgage Corporation (''Freddie Mac'') and its affiliates, and the Federal Home Loan Banks). *See* 7 U.S.C. 1a(39).

[5] *See* 7 U.S.C. 6s(e)(2)(A); 15 U.S.C. 78o–10(e)(2)(A). Section 6s(e)(1)(A) of the Commodity Exchange Act directs registered swap dealers and major swap participants for which there is a prudential regulator to comply with margin and capital rules issued by the prudential regulators, while section 6s(e)(1)(B) directs registered swap dealers and major swap participants for which there is not a prudential regulator to comply with margin and capital rules issued by the CFTC and SEC. Section 78o–10(e)(1) generally parallels section 6s(e)(1), except that section 78o–10(e)(1)(A) refers to registered security-based swap dealers and major security-based swap participants for which ''there is not a prudential regulator.'' The Agencies construe the ''not'' in section 78o–10(e)(1)(A) to have been included by mistake, in conflict with section 78o–10(e)(2)(A), and of no substantive meaning. Otherwise, registered security-based swap dealers and major security-based swap participants for which there is not a prudential regulator could be subject to multiple capital and margin rules, and institutions regulated by the prudential regulators and registered as security-based swap dealers and major security-based swap participants might not be subject to any capital and margin requirements under section 78o–10(e).

[6] *See* 7 U.S.C. 6s(e)(2)(B); 15 U.S.C. 78o–10(e)(2)(B). The CFTC issued a proposed rule imposing capital and margin requirements for swap dealers and major swap participants for which there is no prudential regulator on October 3, 2014. *See* 79 FR 59898 (October 3, 2014). The CFTC proposal was substantially similar to the Agencies' proposal. More recently, the CFTC issued a cross-border proposed rule on margin that is also substantially similar to §__.9 of the Agencies' final rule. *See* 80 FR 41376 (July 14, 2015); 17 CFR part 23. To date, the SEC has yet to finalize similar rules imposing capital and margin requirements for security-based swap dealers and major security-based swap participants. The SEC proposed margin rules in October 2012. *See* 77 FR 70214 (Nov. 23, 2012).

[7] *See* 7 U.S.C. 6s(e)(2)(A); 6s(e)(3)(D); 15 U.S.C. 78o–10(e)(2)(A), 78o–10(e)(3)(D). Staffs of the Agencies have consulted with staff of the CFTC and SEC in developing the final rule.

[8] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

[9] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A). In addition, section 1313 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended requires the Director of FHFA, when promulgating regulations relating to the Federal Home Loan Banks, to consider the following differences between the Federal Home Loan Banks and Fannie Mae and Freddie Mac: Cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. *See* 12 U.S.C. 4513. The Director of FHFA also may consider any other differences that are deemed appropriate. For purposes of this final rule, FHFA considered the differences as they relate to the above factors.

[10] *See* 7 U.S.C. 6s(e)(2)(C); 15 U.S.C. 78o–10(e)(2)(C). In addition, the margin requirements imposed by the Agencies must permit the use of noncash collateral, as the Agencies determine to be consistent with (i) preserving the financial integrity of the markets trading swaps and (ii) preserving the stability of the U.S. financial system. *See* 7 U.S.C. 6s(e)(3)(C); 15 U.S.C. 78o–10(e)(3)(C).

[11] 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 12 U.S.C. 1463, 12 U.S.C. 1464, 12 U.S.C. 1818, 12 U.S.C. 1828, 12 U.S.C. 1831p–1, 12 U.S.C. 3102(b) (OCC); 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.* and 12 U.S.C. 1461 *et seq.* (Board); 12 U.S.C. 1811 *et seq.,* 12 U.S.C. 1818 (FDIC); 12 U.S.C. 2001 *et seq.;* 12 U.S.C. 2241 through 2274; 12 U.S.C. 2279aa–11; 12 U.S.C. 2279bb through bb–7 (FCA); 12 U.S.C. 4513 (FHFA).

[12] *See* Dodd-Frank Act sections 741(c) and 764(b).

[13] *See* 7 U.S.C. 2(h); 15 U.S.C. 78c–3. Certain types of counterparties (*e.g.,* counterparties that are not financial entities and are using swaps to hedge or mitigate commercial risks) are exempt from this mandatory clearing requirement and may elect not to clear a swap that would otherwise be subject to the clearing requirement.

[14] G–20 Leaders, June 2010 Toronto Summit Declaration, Annex II, ¶ 25. The dealer community has also recognized the importance of clearing beginning in 2009. In an effort led by the Federal Reserve Bank of New York, the dealer community agreed to increase central clearing for certain credit derivatives and interest rate derivatives. *See* Press Release, Federal Reserve Bank of New York, New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives (June 2, 2009), *available at www.newyorkfed.org/newsevents/news/markets/2009/ma090602.html.*

transactions.[15] Thus, the mandatory clearing requirement established by the Dodd-Frank Act for swaps effectively will require any party to any transaction subject to the clearing mandate to post initial and variation margin in connection with that transaction.

However, a particular swap may not be cleared either because it is not subject to the mandatory clearing requirement, or because one of the parties to a particular swap is eligible for, and uses, an exception or exemption from the mandatory clearing requirement. Such a swap is a ''non-cleared'' swap that may be subject to the capital and margin requirements for such transactions established under sections 731 and 764 of the Dodd-Frank Act.

The swaps-related provisions of Title VII of the Dodd-Frank Act, including sections 731 and 764, are intended in general to reduce risk, increase transparency, promote market integrity within the financial system, and, in particular, address a number of weaknesses in the regulation and structure of the swaps markets that were revealed during the financial crisis of 2008 and 2009. During the financial crisis, the opacity of swap transactions among dealers and between dealers and their counterparties created uncertainty about whether market participants were significantly exposed to the risk of a default by a swap counterparty. By imposing a regulatory margin requirement on non-cleared swaps, the Dodd-Frank Act reduces the uncertainty around the possible exposures arising from non-cleared swaps.

Further, the financial crisis revealed that a number of significant participants in the swaps markets had taken on excessive risk through the use of swaps without sufficient financial resources to make good on their contracts. By imposing an initial and variation margin requirement on non-cleared swaps, sections 731 and 764 of the Dodd-Frank Act will reduce the ability of firms to take on excessive risks through swaps without sufficient financial resources. Additionally, the minimum margin requirement will reduce the amount by which firms can leverage the underlying risk associated with the swap contract.

The Agencies originally published proposed rules to implement sections 731 and 764 of the Act in May 2011 (the ''2011 proposal'').[16] Over 100 comments were received in response to the 2011 proposal from a variety of commenters, including banks, asset managers, commercial end users, and various trade associations. Following the release of the Agencies' 2011 proposal, the Basel Committee on Banking Supervision (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') proposed an international framework for margin requirements on non-cleared derivatives with the goal of creating an international standard for non-cleared derivatives.[17] Following the issuance of the international framework proposal, the Agencies re-opened the comment period on the Agencies' 2011 proposal to allow for additional comments in relation to the proposed international framework.[18] The proposed international framework was also subject to extensive public comment before being finalized in September 2013 (the ''2013 international framework'').[19] Following the publication of the 2013 international framework the Agencies published a re-proposal of the Agencies' rule in September 2014 (the ''proposal,'' ''2014 proposal'' or ''proposed rule'').[20] The Agencies received over 55 comments in response to the proposal. The Agencies subsequently met with several commenters at their request to discuss their concerns with the proposal and summaries of these meetings may be found on each Agency's respective public Web site.

B. Other Dodd-Frank Act Provisions Affecting the Margin and Capital Rule

The applicability of the Agencies' margin requirements rely in part on regulatory action taken by the CFTC, the SEC, and the Secretary of the Treasury. The margin requirements will apply to any prudentially-regulated entity that: (1) Is registered as a swap dealer or major swap participant with the CFTC, or as a security-based swap dealer, major security-based swap participant with the SEC; and (2) enters into a non-cleared swap. In addition, as a means of ensuring the safety and soundness of the covered swap entity's non-cleared swap activities under the final rule, the requirements would apply to all of a covered swap entity's swap and security-based swap activities without regard to whether the entity has registered as both a swap entity and a security-based swap entity. Thus, for example, for an entity that is a swap dealer but not a security-based swap dealer or major security-based swap participant, the final rule's requirements would apply to all of that swap dealer's non-cleared swaps and non-cleared security-based swaps.

On May 23, 2012, the CFTC and SEC adopted a final joint rule defining ''swap dealer,'' ''major swap participant,'' ''security-based swap dealer,'' and ''major security-based swap dealer.'' These definitions include quantitative thresholds in the relevant activity that affect whether an entity subject to the ''prudential regulator'' definition also will be subject to the margin regulations.[21]

On August 13, 2012, the CFTC and SEC adopted a final joint rule defining ''swap'' and ''security-based swap.''[22] On November 16, 2012, the Secretary of the Treasury made a determination pursuant to sections 1a(47)(E) and 1(b) of the Commodity Exchange Act to exempt foreign exchange swaps and foreign exchange forwards from certain swap requirements, including the Title VII margin requirements.[23]

The CFTC has adopted a final rule requiring registration by entities meeting the substantive definition of

[15] CCPs interpose themselves between counterparties to a swap transaction, becoming the buyer to the seller and the seller to the buyer and, in the process, taking on the credit risk that each party poses to the other. For example, when a swaps contract between two parties that are members of a CCP is executed and submitted for clearing, it is typically replaced by two new contracts—separate contracts between the CCP and each of the two original counterparties. At that point, the original counterparties are no longer counterparties to each other; instead, each faces the CCP as its counterparty, and the CCP assumes the counterparty credit risk of each of the original counterparties.

[16] 76 FR 27564 (May 11, 2011).

[17] *See* BCBS and IOSCO ''Consultative Document—Margin requirements for non-centrally cleared derivatives'' (July 2012), *available at http://www.bis.org/publ/bcbs226.pdf* and ''Second consultative document—Margin requirements for non-centrally cleared derivatives'' (February 2013), *available at http://www.bis.org/publ/bcbs242.pdf.*

[18] 77 FR 60057 (October 2, 2012).

[19] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), *available at https://www.bis.org/publ/bcbs261.pdf.*

[20] 79 FR 57348 (Sept. 24, 2014). Comments on the 2011 proposal were discussed in detail in the 2014 proposal. In April 2014, the European Supervisory Authorities published a consultation paper with draft regulatory technical standards on risk-mitigation techniques for over-the-counter (''OTC'') derivative contracts not cleared by a CCP under Article 11(15) of the European Market Infrastructure Regulation (''EMIR''), *available at: https://www.eba.europa.eu/documents/10180/655149/JC+CP+2014+03+%28CP+on+risk+mitigation+for+OTC+derivatives%29.pdf.* On June 10, 2015, these European authorities released a reproposal *available at: https://eiopa.europa.eu/Publications/Consultations/JC-CP-2015-002%20JC%20CP%20on%20Risk%20Management%20vTechniques%20for%20OTC%20derivatives.pdf.* On July 3, 2014, the Financial Services Agency of Japan also published a proposal for OTC Derivatives regulation available at *http://www.fsa.go.jp/news/26/syouken/20140703-3.html.*

[21] *See* 77 FR 30596 (May 23, 2012), 77 FR 39626 (July 5, 2012) (correction of footnote in Supplementary Information accompanying the rule) and 77 FR 48207 (August 13, 2012); 17 CFR part 1; 17 CFR parts 230, 240, and 241.

[22] *See* 77 FR 48207 (August 13, 2012); 17 CFR part 1; 17 CFR parts 230, 240, and 241.

[23] 77 FR 69694 (November 20, 2013).

swap dealer or major swap participant and engaging in relevant activities above the applicable quantitative thresholds.[24] As of September 24, 2015, 104 entities have registered as swap dealers,[25] and two entities have registered as major swap participants. The SEC has also adopted rules for registering entities that meet the definition of ''security-based swap dealer,'' or ''major security-based swap participant,'' however, the compliance dates for registration have yet to occur.[26] The CFTC has adopted guidance addressing how the Commodity Exchange Act's swap requirements, will apply to ''cross-border swaps.'' [27] Similarly, the SEC published a final rule and interpretative guidance that addresses the application of the definitions of ''security-based swap dealer'' and ''major security-based swap participant'' in the cross-border context.[28] The SEC also recently proposed amendments and a re-proposed rule to address the application of certain provisions of the Securities Exchange Act to cross-border security-based swap activities.[29]

On January 12, 2015, the President signed into law TRIPRA. Title III of TRIPRA amends sections 731 and 764 of the Dodd-Frank Act to exempt certain transactions of certain counterparties from the Agencies' margin requirements as set out in this final rule.[30] Specifically, section 302 of Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the Agencies' rules on margin requirements under those sections shall not apply to a swap in which a counterparty: (1) Qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act, (2) qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act for cooperative entities as defined in such exemption, or (3) satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act, or a security-based swap in which a counterparty (1) qualifies for an exception under section 3C(g)(1) of the Securities Exchange Act or (2) satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act.

Section 303 of TRIPRA requires that the Agencies implement the provisions of Title III by seeking comment on an interim final rule. The Agencies are adopting and, in a separate document published elsewhere in this **Federal Register**, are inviting comment on, an interim final rule that will implement these statutory exemptions by adding § __.1(d) (''the interim final rule'').

II. Overview of Final Rule

A. Margin Requirements

In the final rule, the Agencies are adopting a risk-based approach for initial and variation margin requirements for covered swap entities. Consistent with the statutory requirement, the final rule would help ensure the safety and soundness of the covered swap entity and would be appropriate for the risk to the financial system associated with non-cleared swaps held by covered swap entities. The final rule takes into account the risk posed by a covered swap entity's counterparties by establishing the minimum amount of initial and variation margin that the covered swap entity must exchange with its counterparties.

In implementing this risk-based approach, the final rule distinguishes among four separate types of swap counterparties: (i) Counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure, and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks.[31] The final rule also includes special provisions for inter-affiliate swaps between a covered swap entity and its affiliates. The requirements of this final rule will apply to non-cleared swaps with those counterparties to the extent they are not exempt pursuant to TRIPRA. Each of these four types of counterparties pose different levels of risk to the financial system, and the final rule adopts a risk-based approach to the margin requirements for the different types of counterparties, which reflect both the Agencies' safety and soundness concerns and the provisions of the Dodd-Frank Act.

Post and collect. The initial and variation margin requirements generally apply to the posting and the collecting of minimum initial and variation margin amounts between a covered swap entity and its counterparties. While the Agencies believe that imposing requirements with respect to collecting the minimum amount of initial and variation margin is a critical aspect of offsetting the greater risk to the covered swap entity and the financial system arising from the covered swap entity's non-cleared swap exposure, the Agencies also believe that requiring a covered swap entity to post margin to other financial entities could forestall a build-up of potentially destabilizing exposures in the financial system. The final rule's approach therefore is designed to ensure that covered swap entities transacting with other swap entities and with financial end users in non-cleared swaps, with certain exceptions, will be collecting and posting appropriate minimum margin amounts with respect to those transactions.

The final rule's margin provisions establish only *minimum* requirements with respect to initial and variation margin. Nothing in the final rule is intended to prevent or discourage a covered swap entity from collecting or posting margin in amounts greater than is required under the final rule.

Initial margin. For initial margin, the final rule would require a covered swap entity to calculate its minimum initial margin requirement in one of two ways. The covered swap entity may use a standardized margin schedule, which is set out in Appendix A of the final rule. The standardized margin schedule allows for certain types of netting and offsetting of exposures. In the alternative, a covered swap entity may use an internal margin model that

[24] 77 FR 2613 (January 1, 2012); 17 CFR 23.21.

[25] Currently, all swap dealers are provisionally registered with the CFTC.

[26] *See* 80 FR 48963 (August 14, 2015); 17 CFR parts 240 and 249; 17 CFR 240.15Fb1–1 *et seq.* (effective October 15, 2015). The compliance date for the SEC registration requirements for security-based swap dealers and major security-based swap participants is the later of: (1) Six months after the date of publication in the **Federal Register** of a final rule establishing capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants; (2) the compliance date of final rules establishing recordkeeping and reporting requirements for security-based swap dealers and major security-based swap participants; (3) the compliance date of final rules establishing business conduct requirements under Securities Exchange Act sections 15F(h) and 15F(k); and (4) the compliance date for final rules establishing a process for registered security-based swap dealers and major security-based swap participants to make an application to the SEC to allow an associated person who is subject to a disqualification to effect or be involved in effecting security-based swaps on the security-based swap dealer's and major security-based swap participant's behalf.

[27] In 2013, the CFTC issued guidance addressing the cross-border applicability of certain swap provisions. *See* 78 FR 45292 (July 26, 2013); 17 CFR part 1. More recently, the CFTC issued a cross-border proposed rule for swap margin requirements. *See* 80 FR 41376 (July 14, 2015); 17 CFR part 23.

[28] *See* 79 FR 47278 (August 12, 2014); 17 CFR parts 240, 241, and 250.

[29] *See* 80 FR 27444 (May 13, 2015); 17 CFR parts 240 and 242. The SEC published for comment proposed amendments and a re-proposed rule to address the application of certain provisions of the Securities Exchange Act that were added by Subtitle B of Title VII of the Dodd-Frank Act to cross-border security-based swap activities.

[30] Public Law 114–1, 129 Stat. 3.

[31] *See* § __.2 of the final rule for the various definitions that identify these four types of swap counterparties.

satisfies the criteria outlined in § __.8 of the final rule and that has been approved by the relevant prudential regulator.[32]

When a covered swap entity transacts with another swap entity (regardless of whether the other swap entity meets the definition of a ''covered swap entity'' under the final rule), the covered swap entity must collect at least the amount of initial margin required under the final rule. Likewise, the swap entity counterparty also will be required, under margin rules that are applicable to that swap entity, to collect a minimum amount of initial margin from the covered swap entity. Accordingly, covered swap entities will both collect and post a minimum amount of initial margin when transacting with another swap entity.[33] A covered swap entity transacting with a financial end user with a material swaps exposure must collect at least the amount of initial margin required by the final rule and must post at least the amount of initial margin that the covered swap entity would be required by the final rule to collect if the covered swap entity were in the place of the counterparty. In addition, a covered swap entity must post or collect initial margin on at least a daily basis if changes in portfolio composition or any other factors result in a change in the required initial margin amounts.[34]

The final rule permits a covered swap entity to adopt a maximum initial margin threshold amount of $50 million, below which it need not collect or post initial margin from or to swap entities and financial end users with material swaps exposures. The threshold amount applies on a consolidated basis, and applies both to the consolidated covered swap entity as well as to the consolidated counterparty.[35]

Variation margin. With respect to variation margin, the final rule generally requires a covered swap entity to collect or post variation margin for swaps with a swap entity or a financial end user (regardless of whether the financial end user has a material swaps exposure) in an amount that is at least equal to the increase or decrease in the value of the swap since the counterparties' previous exchange of variation margin. The final rule would not permit a covered swap entity to adopt a threshold amount below which it need not collect or post variation margin on swaps with swap entity and financial end user counterparties.[36] In addition, a covered swap entity must collect or post variation margin with swap entities and financial end user counterparties under the final rule on at least a daily basis.[37]

Exempt transactions and ''other counterparties.'' Under the interim final rule, certain transactions with certain nonfinancial end users and other financial counterparties are exempt from the Agencies' margin requirements. Specifically, under § __.1(d) as added by the interim final rule, the Agencies' margin requirements do not apply to a swap or security-based swap with a counterparty that: (1) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act (*i.e.,* a nonfinancial entity using the swap or security-based swap to hedge or mitigate commercial risk, certain small financial institutions, and captive finance companies);[38] (2) qualifies for an exemption from clearing under section 4(c)(1) of the Commodity Exchange Act for cooperative entities that would otherwise be subject to the requirement to clear;[39] or (3) satisfies the criteria for the affiliate exception from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act for treasury affiliates that act as agent.[40] Section 1(d), as added by the interim final rule published elsewhere in this **Federal Register**, implements the exemptions enacted in Title III of TRIPRA, which excludes these swaps from the statutory directive issued to the Agencies by section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act to impose margin requirements for all non-cleared swaps.

Separate from the transactions exempt from the final rule as a result of the interim final rule, there are also swap transactions with ''other counterparties'' that are subject to this final rule, but that are not subject to specific, numerical minimum initial or variation margin requirements. As discussed below, these swaps include swaps with counterparties such as foreign sovereigns, as well as swaps with financial end users that do not have a material swaps exposure (with respect to the initial margin requirement). The final rule makes a covered swap entity's collection of margin from these ''other counterparties'' subject to the judgment of the covered swap entity. That is, under the final rule, a covered swap entity will not be required to collect initial and variation margin from these ''other counterparties'' as a matter of course.[41] Instead, a covered swap entity should continue with the current practice of collecting initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate in its overall credit risk management of the covered swap entity's exposure to the customer. The Agencies recognize that a covered swap entity may find it prudent from a risk management perspective to collect margin from one or more of these ''other counterparties.''[42]

Eligible collateral. The final rule limits the types of collateral that are eligible to be used to satisfy both the initial and variation margin requirements. Eligible collateral is generally limited to high-quality, liquid assets that are expected to remain liquid and retain their value, after accounting

[32] *See* § __.8 and appendix A of the final rule for a complete description of the requirements for initial margin models and standardized minimum initial margin requirements.

[33] All swap entities will be subject to a rule on minimum margin for non-cleared swaps promulgated by one of the Agencies, the SEC or the CFTC. The counterparty may be a covered swap entity subject to this final rule or a swap entity that is subject to the margin rules of the CFTC or SEC. If the counterparty is a covered swap entity, it must collect at least the amount of margin required under this final rule. If the counterparty is a swap entity subject to the margin rules of the CFTC or SEC, it must collect the amount of margin required under the CFTC or SEC margin rules.

[34] Under the final rule, when entering into a swap transaction, the first collection and posting of initial margin must occur on or before the business day following the day of execution. Thereafter, posting and collecting initial margin must be made on at least a daily basis, in response to changes in portfolio composition or any other factors that would change the required initial margin amounts, until the date the non-cleared swap terminates or expires.

[35] *See* §§ __.3 and __.8 of the final rule for a complete description of the initial margin requirements.

[36] Covered swap entities, however, are not required to collect or post margin from or to any individual counterparty unless and until the combined amount of initial and variation margin that must be collected or posted under the final rule, but has not yet been exchanged with the counterparty, is greater than $500,000. *See* § __.5 of the final rule.

[37] *See* § __.4 of the final rule for a complete description of the variation margin requirements.

[38] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g).

[39] *See* 7 U.S.C. 6(c)(1). The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted 17 CFR 50.51 which exempts from required clearing certain swaps entered into by certain cooperatives.

[40] *See* 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c–3(g)(4).

[41] Covered swap entities would be required to collect variation margin from all financial end user counterparties under the final rule. However, no specific minimum initial margin requirement would apply to transactions with those financial end users that do not have a material swaps exposure. Thus, for the purpose of the initial margin requirements, financial end users that do not have material swaps exposure would be treated in the same manner as entities characterized as ''other counterparties.''

[42] *See* §§ __.3 and __.4 of the final rule for a complete description of the initial and variation margin requirements that apply to ''other counterparties.''

for an appropriate risk-based ''haircut'' or ''discount,'' during a severe economic downturn.

Eligible collateral for initial margin includes cash, debt securities that are issued or guaranteed by the U.S. Department of Treasury or by another U.S. government agency, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, multilateral development banks, certain U.S. Government-sponsored enterprises' (''GSEs'') debt securities,[43] certain foreign government debt securities, certain corporate debt securities, certain listed equities, shares in certain pooled investment vehicles, and gold.

Eligible collateral for variation margin depends on the type of counterparty the covered swap entity is facing in its swap transaction. For swaps between a covered swap entity and another swap entity, eligible collateral for variation margin is limited to only immediately available cash funds denominated in U.S. dollars, another major currency, or the currency of settlement for the swap. When a covered swap entity faces financial end user counterparties, on the other hand, a covered swap entity may exchange variation margin in any of the same forms of collateral as the final rule permits for initial margin collateral.

When determining collateral value for purposes of satisfying the final rule's margin requirements, non-cash collateral is subject to an additional ''haircut'' or ''discount'' as determined using appendix B of the final rule.[44] The limits on eligible collateral and the haircuts under appendix B would not apply to margin collected or posted in excess of what is required by the rule. The Agencies believe that the eligibility of certain non-cash collateral, subject to the conditions and restrictions contained in the final rule, is consistent with the Dodd-Frank Act, because the use of such non-cash collateral is consistent with preserving the financial integrity of markets by trading swaps and preserving the stability of the U.S. financial system. The use of different types of eligible collateral pursuant to the requirements of the final rule should also incrementally increase liquidity in the financial system.

Collateral segregation. Under the final rule, a covered swap entity must require that any collateral other than variation margin that it posts to its counterparty (even collateral in excess of any required by the final rule) be segregated at one or more custodians that are not the covered swap entity or the counterparty nor affiliates of the covered swap entity or the counterparty (''third-party custodian''). The final rule would also require a covered swap entity to place the initial margin it collects (up to the amount required by the final rule) from a swap entity or a financial end user with material swaps exposure at a third-party custodian.[45] In both of the foregoing cases, the final rule would require that a custodial agreement prohibit certain actions with respect to any of the funds or other property that the custodian holds as initial margin. First, the custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the funds or other property held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § __.6(a)(2) or (b), such assets are segregated pursuant to § __.7(a) through (b), and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin. Second, with respect to initial margin required to be posted or collected, the custodial agreement must prohibit the substituting or reinvesting of any funds or other property in any asset that would not qualify as eligible collateral under the final rule. Third, the custodial agreement must require that after such substitution or reinvestment, the amount net of applicable discounts described in appendix B continue to be sufficient to meet the requirements for initial margin under the final rule.[46] With the exception of collateral posted by a covered swap entity, funds or other property held by a third-party custodian in excess of the amounts required to be posted or collected under the rule are not subject to any of these restrictions on collateral substitution or reinvestment.

Cross-border transactions. Given the global nature of swaps markets and swap transactions, margin requirements will be applied to transactions across different jurisdictions. As required by the Dodd-Frank Act, the Agencies are adopting a specific approach to address cross-border non-cleared swap transactions. Under the final rule, foreign swaps of foreign covered swap entities would not be subject to the margin requirements of the final rule.[47] In addition, certain covered swap entities that are operating in a foreign jurisdiction and covered swap entities that are organized as U.S. branches or agencies of foreign banks may choose to abide by the swap margin requirements of the foreign jurisdiction if the Agencies determine that the foreign regulator's swap margin requirements are comparable to those of the final rule.[48] This section would also allow any covered swap entity to post initial margin to its counterparty pursuant to a foreign regulator's swap margin requirements that are comparable to those of the final rule in certain circumstances. In addition, this section also addresses certain jurisdictions where inherent limitations in the legal or operational infrastructure make it impracticable for the covered swap entity and counterparty to post initial margin as required in § __.3(b) in compliance with the segregation requirements of § __.7 of this rule; in these circumstances, the final rule provides that a covered swap entity should collect initial margin in cash and post and collect variation margin in cash in such jurisdictions but would not require the covered swap entity to post initial margin to its counterparty.

Affiliate transactions. The final rule contains a special section for swaps with affiliates. This section provides that the requirements of the rule generally apply to a non-cleared swap with an affiliate unless the swap is excluded from coverage under § __.1(d) as added by the interim final rule published elsewhere in this **Federal Register** or a special rule applies. For instance, collection of initial margin is not addressed in this special section. As a result, a covered swap entity is required to collect initial margin from its affiliate pursuant to § __.3(a) under the final rule. Where a covered swap entity transacts with another covered swap entity that is an affiliate, this will

[43] An asset-backed security guaranteed by a U.S. GSE is eligible collateral for purposes of initial margin (and variation margin for transactions with financial end users) only if the GSE is operating with capital support or another form of direct financial assistance from the U.S. government.

[44] *See* § __.6 and appendix B of the final rule for a complete description of the eligible collateral requirements, including an additive 8 percent cross-currency haircut. The terms ''haircut'' and ''discount'' are used interchangeably.

[45] The segregation requirement therefore applies only to the minimum amount of initial margin that a covered swap entity is required to collect by the rule from a swap entity or financial end user with a material swaps exposure, but applies to all collateral (other than variation margin) that the covered swap entity posts to any counterparty.

[46] *See* § __.7 of the final rule for a complete description of the segregation requirements.

[47] *See* § __.9 of the final rule.

[48] *See* § __.9 of the final rule for a complete description of the treatment of cross-border swap transactions.

result in a collect and post regime for initial margin among affiliates.

The special rules for affiliates provide that a covered swap entity is not required to post initial margin to an affiliate that is not also a covered swap entity but must calculate the amount of initial margin that would be required to be posted to such an affiliate and provide documentation to each affiliate on a daily basis. In addition, each affiliate may be granted an initial margin threshold of $20 million. A covered swap entity that collects non-cash collateral from an affiliate may serve as the custodian for the collateral or have an affiliate serve as the custodian. In addition, a covered swap entity may use a holding period in its margin model equal to the shorter of five business days or the maturity of the portfolio for any swaps with an affiliate that are subject to an exemption from mandatory clearing, provided that the initial margin amount for these swaps are calculated separately from other swaps. In addition, a covered swap entity must collect and post variation margin with any affiliate counterparty as provided in § __.4 of the final rule.[49]

B. Capital Requirements

Sections 731 and 764 of the Dodd-Frank Act also require each Agency to issue, in addition to margin rules, joint rules on capital for covered swap entities for which it is the prudential regulator.[50] The Board, FDIC, and OCC (each a ''banking agency'' and, collectively, the ''banking agencies'') have had risk-based capital rules in place for banks to address over-the-counter (''OTC'') swaps since 1989 when the banking agencies implemented their risk-based capital adequacy standards (general banking risk-based capital rules)[51] based on the first Basel Accord.[52] The general banking risk-based capital rules have been amended and supplemented over time to take into account developments in the swaps market. These supplements include the addition of the market risk rule which requires banking organizations[53] meeting certain thresholds to calculate their capital requirements for trading positions through models approved by their primary Federal supervisor.[54] In addition, certain large, complex banking organizations are subject to the banking agencies' advanced approaches risk-based capital rule (advanced approaches rules), based on the advanced approaches of the Basel II Accord.[55]

In July 2013 the Board and the OCC issued a final rule (revised capital framework) implementing regulatory capital reforms reflecting agreements reached by the BCBS in ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems'' (Basel III framework).[56] The revised capital framework includes the capital requirements for OTC derivatives contracts, which are defined to include transactions that would also meet the definition of swaps described above, as well as a minimum supplementary leverage ratio for advanced approaches banking organizations that is reflective of their on- and off-balance sheet activities, including derivatives activities. The FDIC adopted an interim final rule that was substantively identical to the revised capital framework in July 2013 and later issued a final rule in April 2014 identical to the Board's and the OCC's final rule.[57]

FHFA's predecessor agencies used a methodology similar to that endorsed by the BCBS prior to the development of the Basel III framework to develop the risk-based capital rules applicable to those entities now regulated by FHFA. Those rules still apply to all FHFA-regulated entities.[58] FHFA is in the process of revising and updating these regulations for the Federal Home Loan Banks.

The FCA's risk-based capital regulations for Farm Credit System (''FCS'') institutions, except for the Federal Agricultural Mortgage Corporation (''Farmer Mac''), have been in place since 1988 and were last updated in 2005.[59] The FCA's risk-based capital regulations for Farmer Mac have been in place since 2001 and were updated in 2011.[60] The FCA proposed revisions to its capital rules for all FCS institutions, except Farmer Mac, that are comparable to the Basel III framework.[61]

As described below, the final rule requires a covered swap entity to comply with regulatory capital rules already made applicable to that covered swap entity as part of its prudential regulatory regime. Given that these existing regulatory capital rules

[49] The Agencies note the approach of the final rule is consistent with the approach of other applicable laws, which require transactions between banks and their affiliates to be on an arm's length basis. In particular, section 23B of the Federal Reserve Act provides that many transactions between a bank and its affiliates must be on terms and under circumstances, including credit standards, that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with or involving nonaffiliated companies. 12 U.S.C. 371c–1(a).

[50] 7 U.S.C. 6s(e)(2); 15 U.S.C. 78o–10(e)(2).

[51] *See* 54 FR 4186 (January 27, 1989). The general banking risk-based capital rules were at 12 CFR part 3, appendices A, B, and C (national banks); 12 CFR part 167 (federal savings banks); 12 CFR part 208, appendices A, B, and E (state member banks); 12 CFR part 225, appendices A, D, and E (bank holding companies); 12 CFR part 325, appendices A, B, C, and D (state nonmember banks); 12 CFR part 390, subpart Z (state savings associations).

[52] The BCBS developed the first international banking capital framework in 1988, entitled *International Convergence of Capital Measurement and Capital Standards.*

[53] Banking organizations include national banks, state member banks, state non-member banks, Federal savings associations, state savings associations, top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C)), as well as top-tier savings and loan holding companies domiciled in the United States, other than (i) savings and loan holding companies subject to the Board's Small Bank Holding Company Policy Statement and (ii) certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[54] The banking agencies' market risk capital rules are at 12 CFR part 3, subpart F (national banks and federal savings associations), 12 CFR part 217, subpart F (state member banks, bank holding companies, and savings and loan holding companies), and 12 CFR part 324, subpart F (state nonmember banks and state savings associations). The rules apply to banking organizations with trading activity (on a worldwide consolidated basis) that equals 10 percent or more of the institution's total assets, or $1 billion or more.

[55] *See* BCBS, *International Convergence of Capital Measurement and Capital Standards: A Revised Framework* (2006). The banking agencies implemented the advanced approaches of the Basel II Accord in 2007. *See* 72 FR 69288 (December 7, 2010). The advanced approaches rules are codified at 12 CFR part 3, subpart E (national banks and federal savings associations), 12 CFR part 217, subpart E (state member banks, bank holding companies, and savings and loan holding companies), and 12 CFR part 324, subpart E (state nonmember banks and state savings associations). The advanced approaches rules apply to banking organizations with consolidated total assets equal to $250 billion or more or consolidated total on-balance sheet foreign exposures equal to $10 billion or more (advanced approaches banking organizations).

[56] *See* BCBS, *Basel III: A Global Regulatory Framework For More Resilient Banks and Banking Systems* (2010), *available at www.bis.org/publ.bcbs189.htm.*

[57] 78 FR 62018 (October 11, 2013) (Board and OCC); 78 FR 20754 (April 14, 2014) (FDIC). These rules are codified at 12 CFR part 3 (national banks and federal savings associations), 12 CFR part 217 (state member banks, bank holding companies, and savings and loan holding companies), and 12 CFR part 324 (state nonmember banks and state savings associations).

[58] For the duration of the conservatorships of Fannie Mae and Freddie Mac (together, the ''Enterprises''), FHFA has directed that its existing regulatory capital requirements would not be binding. However, FHFA continues to closely monitor the Enterprises' activities. Such monitoring, coupled with the unique financial support available to the Enterprises from the U.S. Department of the Treasury and the likelihood that FHFA will promulgate new risk-based capital rules in due course to apply to the Enterprises (or their successors) once the conservatorships have ended, lead to FHFA's view that the reference to existing capital rules is sufficient to address the risks arising from swap transactions and activities of the Enterprises.

[59] *See* 53 FR 40033 (October 13, 1988); 70 FR 35336 (June 17, 2005); 12 CFR part 615, subpart H.

[60] *See* 66 FR 19048 (April 12, 2001); 76 FR 23459 (April 27, 2011); 12 CFR part 652.

[61] *See* 79 FR 52814 (Sept. 4, 2014).

specifically take into account and address the unique risks arising from swap transactions and activities, the Agencies will rely on these existing rules as appropriate and sufficient to offset the greater risk to the covered swap entity and the financial system arising from the use of swaps that are not cleared and to protect the safety and soundness of the covered swap entity.

C. The Final Rule and Community Banks

The Agencies expect that the final rule likely will have minimal impact on community banks. The Agencies anticipate that community banks will not engage in swap activity to the level that would require them to register as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant; and therefore, are unlikely to fall within the definition of a covered swap entity.[62] Because the final rule imposes requirements on covered swap entities, no community bank will likely be directly subject to the rule. Thus, a community bank that enters into non-cleared interest rate swaps with its commercial customers will not be required to apply to those swaps the final rule's requirements for initial margin or variation margin.

The TRIPRA also excluded certain swaps with community banks from the margin requirements of this rule.[63] In particular, section 2(h)(7)(A) of the Commodity Exchange Act excepts from clearing any swap where one of the counterparties is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the CFTC how it generally meets its financial obligations associated with entering into non-cleared swaps.[64] As authorized by the Dodd-Frank Act, the CFTC has excluded depository institutions, FCS institutions, and credit unions with total assets of $10 billion or less, from the definition of ''financial entity,'' thereby permitting those institutions to avail themselves of the clearing exception for end users.[65] Non-cleared swaps with those entities would be eligible for the TRIPRA exemption in the Agencies' margin rules, provided they met the other requirements for the clearing exception. As a consequence of TRIPRA, if a community bank with total assets of $10 billion or less enters into a swap with a covered swap entity that meets the requirements of the exception from clearing, that swap will not be subject to the margin requirements of this rule. As of June 30, 2015, of the 6,348 insured depository institutions, all but 111 institutions had total assets of $10 billion or less.[66]

When a community bank with total assets greater than $10 billion enters into a swap with a covered swap entity, the covered swap entity will be required to post and collect initial margin pursuant to the rule only if the community bank had a material swaps exposure and is not otherwise exempt pursuant to TRIPRA.[67] Further, if a community bank with total assets above $10 billion does not engage in swaps activities that would exceed its initial margin threshold amount, the final rule will only require a covered swap entity to collect initial margin that it determines is appropriate to address the credit risk posed by such a community bank. The Agencies believe covered swap entities currently apply this approach as part of their credit risk management practices.

The final rule requires a covered swap entity to exchange daily variation margin with a community bank with total assets below $10 billion, regardless of whether the community bank has material swaps exposure, provided the swap is not otherwise exempt pursuant to TRIPRA. In addition, the final rule requires a covered swap entity to exchange daily variation margin with a community bank with total assets above $10 billion, regardless of whether the community bank has material swaps exposure. However, the covered swap entity will only be required to collect variation margin from a community bank when the amount of both initial margin and variation margin required to be collected exceeds the minimum transfer amount of $500,000, as provided for in § __.5(b) of the final rule.

D. The Final Rule and Farm Credit System Institutions

The final rule should have a minimal impact on the FCS. Currently, no FCS institution, including Farmer Mac, engages in swap activity at the level that would require them to register as a swap dealer, major swap participant, security-based swap dealer, or a major security-based swap participant. For this reason, no FCS institution, including Farmer Mac, would fall within the definition of a covered swap entity and, therefore, become directly subject to this rule. Further, almost all swaps of FCS institutions are exempt from clearing and the margin requirements of this final rule as a result of TRIPRA. Most FCS institutions have total assets of less than $10 billion and, therefore, they may elect an exception from clearing under a CFTC regulation, 17 CFR 50.50(d), which implements section 2(h)(7)(C)(ii) of the Commodity Exchange Act.[68] Separately, FCS banks and associations, regardless of size, may elect not to clear swaps that (1) they enter into in connection with loans to their members; or (2) hedge or mitigate risks related to loans with their members, pursuant to 17 CFR 50.51.[69] Furthermore, TRIPRA exempts financial cooperatives from exchanging initial and variation margin on all their swaps that are subject to the exemption from clearing provided by the CFTC. Farmer Mac is the only FCS institution that does not have an exception or exemption from mandatory clearing because it has total assets that exceed $10 billion, and it is not a cooperative. For this reason, Farmer Mac is a financial end user and is subject to the initial margin requirements of this final rule to the extent its non-cleared swap transactions exceed the material swaps exposure or initial margin thresholds. Farmer Mac would also be subject to the variation margin requirements of this final rule.

[62] At the time the Agencies adopted this final rule, no community banks had registered in any of these capacities.

[63] The TRIPRA exceptions are reflected in § __.1(d), which is added by the interim final rule.

[64] A ''financial entity'' is defined to mean (i) a swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940; (vii) an employee benefit plan as defined in sections 3(3) and 3(32) of the Employment Retirement Income Security Act of 1974; (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. *See* 7 U.S.C. 2(h)(7)(C)(i).

[65] *See* 7 U.S.C. 2(h)(7)(C)(ii) and 77 FR 42560 (July 19, 2012); 77 FR 20536 (April 5, 2012).

[66] FDIC Quarterly Banking Profile, Second Quarter 2015, p. 7. *https://www5.fdic.gov/qbp/2015jun/qbp.pdf.* Of the 6,237 insured depository institutions with total assets of $10 billion or less as of June 30, 2015, 5,646 institutions had total assets of $1 billion or less and 591 institutions had total assets between $1 billion and $10 billion.

[67] The final rule defines material swaps exposure as an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days.

[68] The SEC has not yet enacted a comparable rule granting small deposit institutions, FCS institutions, and credit unions, an exemption from clearing.

[69] The CFTC enacted 17 CFR 50.51 pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act.

III. Section by Section Summary of Final Rule

A. Section __.1: Authority, Purpose, Scope, Exemptions and Compliance Dates

As in the proposal, §§ __.1(a) through (c) of the final rule are Agency-specific. Section __.1(a) of the final rule sets out each Agency's specific authority, and § __.1(b) describes the purpose of the rule, including the specific entities covered by each Agency's rule. Section __.1(c) of the final rule specifies the scope of the transactions to which the margin requirements apply. Under § __.1(c), the margin requirements apply to *all* non-cleared swaps into which a covered swap entity enters. Each Agency has set forth text for its Agency-specific version of § __.1(c) that specifies the entities to which that Agency's rule applies. Section __.1(c) further states that the margin requirements apply only to non-cleared swaps and non-cleared security-based swaps that are entered into on or after the relevant compliance dates set forth in § __.1(e). Section __.1(c) also provides that nothing in this final rule is intended to prevent, nor is it intended to require, a covered swap entity from independently collecting margin in amounts greater than the amounts required under this final rule. Section __.1(d), as added by the interim final rule, provides for exemptions from the rule for certain swaps and security-based swaps with certain commercial end users and others as described above and in the companion interim final rule. Section __.1(e) sets forth compliance dates. Section 1(f) provides that once a covered swap entity and its counterparty become subject to the margin requirements based on the compliance dates set forth in § __.1(e), the covered swap entity and its counterparty shall remain subject to the final rule. Section __.1(g) of the final rule specifies how the margin requirements apply in the event a covered swap entity's counterparty changes its status (for example, if the counterparty is a financial end user without material swaps exposure and thereafter becomes a financial end user with material swaps exposure).

1. Treatment of Swaps With Commercial End Users and Other "Low-Risk" Counterparties

Section __.1(d), as added by the interim final rule published elsewhere in this **Federal Register**, which is the same for all the Agencies, implements the provisions of TRIPRA and provides for exemptions from the rule for certain swaps with certain commercial end users and certain other counterparties. These exemptions are discussed further in the Agencies' interim final rule and request for comment, published elsewhere in the **Federal Register**.

The proposal applied to all swaps and security-based swaps, consistent with the original provisions of sections 731 and 764 of the Dodd-Frank Act. For certain swaps, however, such as those between a covered swap entity and a "commercial end user" (*i.e.,* a nonfinancial counterparty that is neither a swap entity nor a financial end user and engages in swaps to hedge commercial risk),[70] the Agencies proposed a reduced, risk-based, approach to margin. For those counterparties, which the proposal treated as "other counterparties," the proposal would have required only that a covered swap entity collect margin in such forms and amounts (if any) that the covered swap entity determined appropriately addressed the credit risk posed by the counterparty and the risks of the swap.[71]

As discussed earlier, TRIPRA, which was enacted on January 12, 2015, amends sections 731 and 764 of the Dodd-Frank Act to exempt certain transactions of certain financial and nonfinancial end users from the Agencies' margin requirements set out in this final rule.[72] Specifically, section 302 of TRIPRA amends sections 731 and 764 so that initial and variation margin requirements will not apply to a swap or security-based swap of a counterparty (to a covered swap entity) in which a counterparty is:

(1) A nonfinancial entity, including a captive finance company, that qualifies for the clearing exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act;[73]

(2) A cooperative entity that qualifies for an exemption from the clearing requirements issued under section 4(c)(1) of the Commodity Exchange Act;[74] or

(3) An affiliate that satisfies the criteria for an exception from clearing in section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act.[75]

The Agencies have implemented the TRIPRA exemptions in § __.1(d) of the interim final rule. These exemptions are transaction-based, as opposed to counterparty-based. For example, if a commercial end user enters into a non-cleared swap with a covered swap entity and the transaction is *not* for hedging purposes, then the covered swap entity would treat the swap in accordance with the "other counterparties" provisions in §§ __.3 and ___.4 of this final rule.[76] Finally, the Agencies note that the exception or exemption of a transaction from the margin requirements in no way prohibits a

[70] Although the term "commercial end user" is not defined in the Dodd-Frank Act, it is used in this preamble to mean a company that is eligible for the exception to the mandatory clearing requirement for swaps under section 2(h)(7)(A) of the Commodity Exchange Act and section 3C(g)(1) of the Securities Exchange Act, respectively. This exception is generally available to a person that (1) is not a financial entity, (2) is using the swap to hedge or mitigate commercial risk, and (3) has notified the CFTC or SEC how it generally meets its financial obligations with respect to non-cleared swaps or security-based swaps, respectively. *See* 7 U.S.C. 2(h)(7)(A) and 15 U.S.C. 78c–3(g)(1).

[71] *See* discussion below of §§ __.3(d) and __.4(c) of the proposed rule.

[72] Pub. L. 114–1, 129 Stat. 3.

[73] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g)(1). A "captive finance company" is an entity whose primary business is providing financing, and uses derivatives for the purpose of hedging underlying commercial risks related to interest rate and foreign currency exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company. *See* 7 U.S.C. 2(h)(7)(C)(iii). Section 2(h)(7)(C)(ii) of the Commodity Exchange Act and section 3C(g)(3)(B) of the Securities Exchange Act authorize the CFTC and the SEC, respectively, to exempt small depository institutions, small FCS institutions, and small credit unions with total assets of $10 billion or less from the mandatory clearing requirements for swaps and security-based swaps. *See* 7 U.S.C. 2(h)(7)(C)(ii) and 15 U.S.C. 78c–3(g)(3)(B). The CFTC has exempted these small institutions by rule, and therefore swaps entered into to hedge or mitigate commercial risk by those institutions are also exempt from this final rule by operation of TRIPRA. *See* 77 FR 42560 (July 19, 2012); 77 FR 20536 (April 5, 2012). On December 21, 2010, the SEC proposed to exempt security-based swaps used by small depository institutions, small FCS institutions, and small credit unions with total assets of $10 billion or less from clearing. 75 FR 79992 (December 21, 2010).

[74] *See* 7 U.S.C. 6(c)(1). The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted 17 CFR 50.51, which allows certain cooperative financial entities, including those with total assets in excess of $10 billion, to elect an exemption from mandatory clearing of swaps that: (1) they enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans or swaps with their members or arising from certain swaps with members.

[75] *See* 7 U.S.C. 2(h)(7)(D) and 15 U.S.C. 78c–3(g)(4). This exception applies to an affiliate of a person that qualifies for an exception from clearing (including affiliate entities predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person), only if the affiliate, acting on behalf of the person and as an agent, uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity. This exception does not apply to a person that is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, an issuer that would be an investment company, as defined in section 3 under the Investment Company Act but for paragraphs (c)(1) or (c)(7), a commodity pool, or a bank holding company with over $50 billion in consolidated assets.

[76] *See* discussion below of §§ __.3(d) and __.4(c) of the final rule.

covered swap entity from requiring initial and/or variation margin on such transactions but does not impose initial or variation margin requirements as a regulatory matter.

Section 303 of TRIPRA requires that the Agencies implement the provisions of Title III, ''Business Risk Mitigation and Price Stabilization Act of 2015,'' by promulgating an interim final rule, and seeking public comment on the interim final rule. The Agencies are adopting § __.1(d) as part of a companion interim final rule, and will be requesting comment, as required by TRIPRA, in a separate publication in the **Federal Register**. If necessary, the Agencies will amend § __.1(d) after receiving comments on the interim final rule.

2. Compliance Dates

Section __.1(e) of the final rule sets forth the compliance dates by which covered swap entities must comply with the minimum margin requirements for non-cleared swaps that are entered into on or after the applicable compliance date. The compliance dates are consistent with the modified compliance dates associated with the 2013 international framework.[77]

Under the 2014 proposal, the implementation of both initial and variation margin requirements would have started on December 1, 2015. With respect to initial margin requirements, the requirements would have been phased-in between December 1, 2015 and December 1, 2019. Variation margin requirements for all covered swap entities with respect to covered swaps with any counterparty would have been effective as of December 1, 2015. This proposed set of compliance dates was consistent with those set forth in the 2013 international framework. On March 18, 2015, the BCBS and IOSCO issued a press release announcing that the implementation of the 2013 international framework would be delayed by nine months.[78] This announcement was in response to the fact that to date in March 2015, no jurisdiction had yet finalized rules for margin requirements for non-centrally cleared derivatives. Accordingly, the final rule has been revised to delay the implementation of both initial and variation margin requirements by nine months from the compliance schedule set forth in the 2014 proposal. This delay results in a uniform approach with respect to compliance dates across the final rule and the international framework.

The changes to the proposed compliance dates in the final rule should help address concerns raised by commenters. For example, the proposal was revised, in part, to respond to commenters who stated that, to the extent practicable, there should be international harmonization of implementation dates for margin and capital requirements. While one commenter supported the proposed compliance date schedules set out in the 2014 proposal, a number of commenters argued that compliance with the final rule should be delayed for 18 months to two years in order to allow for operational changes that will be required for covered swaps entities to comply with the rule. With respect to phasing-in the implementation of the initial margin requirements, a commenter stated that the phase-in provisions should be revised to apply only to non-cleared swaps between covered swap entities. The commenter further stated that non-covered swap entities should not be required to comply with the initial margin requirements until December 2019. The Agencies also received a comment stating that the implementation of the compliance date schedule should not coincide with code freezes—*i.e.,* periods like year-end when companies typically do not change their information technology systems in anticipation of certain reporting deadlines.

The Agencies agree that the international harmonization of margin and capital requirements is prudent. In light of the concerns raised by the commenters and the delay of the implementation of the 2013 international framework, the Agencies have incorporated into the final rule provisions reflecting the implementation schedule for the 2013 international framework that was recently set out by the BCBS and IOSCO.

a. Compliance Date Schedule for Initial Margin.

For purposes of initial margin, as reflected in the table below, the compliance dates range from September 1, 2016, to September 1, 2020, depending on the average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps (''covered swaps'') of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April and May of that year.[79]

Compliance date	Initial margin requirements
September 1, 2016	Initial margin where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2016 that exceeds $3 trillion.
September 1, 2017	Initial margin where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2017 that exceeds $2.25 trillion.
September 1, 2018	Initial margin where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2018 that exceeds $1.5 trillion.
September 1, 2019	Initial margin where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2019 that that exceeds $0.75 trillion.
September 1, 2020	Initial margin for any other covered swap entity with respect to covered swaps with any other counterparty.

In calculating the amount of covered swaps as set forth in the table above, the final rule provides that a covered swap entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-

[77] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (March 2015), *available at https://www.bis.org/bcbs/publ/d317.htm.*, which extends the original compliance dates set out in the 2013 international framework by nine months.

[78] *http://www.bis.org/bcbs/publ/d317.htm.*

[79] ''Foreign exchange forward'' and ''foreign exchange swap'' are defined to mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)).

based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt from the Agencies' margin requirements under § __.1(d), as added by the interim final rule.[80] These provisions were not included in the proposed rule. The purpose of the first provision in the final rule is to prevent double counting of covered swaps between affiliates, a concern raised by a number of commenters, which could artificially increase a covered swap entity's average daily aggregate notional amount. The purpose of the second provision is to ensure that swaps that have been exempted from the margin requirements are fully exempted and do not influence other aspects of the rule such as whether an entity maintains a material swaps exposure.

The Agencies expect that covered swap entities likely will need to make a number of operational and legal changes to their current swaps business operations in order to achieve compliance with the provisions of the final rule relating to the initial margin requirements, including potential changes to internal risk management and other systems, trading documentation, collateral arrangements, and operational technology and infrastructure. In addition, the Agencies expect that covered swap entities that wish to calculate initial margin using an initial margin model will need sufficient time to develop such models and obtain regulatory approval for their use. Accordingly, the compliance dates have been structured to ensure that the largest and most sophisticated covered swap entities and counterparties that present the greatest potential risk to the financial system comply with the requirements first. These swap market participants should be able to make the required operational and legal changes more rapidly and easily than smaller entities that engage in swaps less frequently and pose less risk to the financial system.

b. Compliance Date Schedule for Variation Margin.

For purposes of variation margin, the compliance dates are September 1, 2016 and March 1, 2017. As set out in the table below, these compliance dates also depend on the average daily aggregate notional amount of covered swaps of the covered swap entity combined with its affiliates and each of its counterparties (combined with that counterparty's affiliates) for each business day in March, April and May of that year (the "calculation period").[81] Thus, a given covered swap entity may have multiple compliance dates depending on both the combined average daily aggregate notional amount of covered swaps of the covered swap entity and its affiliates during the calculation period as well as the combined average daily notional amount of covered swaps of each of its counterparties and that counterparty's affiliates during the calculation period.

Compliance date	Variation margin requirements
September 1, 2016	Variation margin where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average daily aggregate notional amount of covered swaps for March, April and May of 2016 that exceeds $3 trillion.
March 1, 2017	Variation margin for any other covered swap entity with respect to covered swaps with any other counterparty.

Calculating the amount of covered swaps set forth in the table above for the purposes of determining variation margin is done in the same manner as calculating the amount of covered swaps for purposes of determining initial margin.[82] A covered swap entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt from the Agencies' margin requirements under § __.1(d), as added by the interim final rule.

The final rule adopts a phase-in arrangement for variation margin requirements that is different from the 2014 proposal. Several commenters urged that the compliance date for variation margin requirements be phased in, in a manner similar to the compliance dates for the initial margin requirements. These commenters argued, among other things, that the phase-in of the variation margin requirements would allow covered swap entities the time to re-document all necessary swap contracts at one time. One commenter stated that variation margin requirements should be phased in based on decreasing notional amount thresholds over a two-year period commencing upon the latter of the publication of the margin rules for OTC derivatives in the United States, the EU and Japan or the publication of the Agencies' comparability determinations with respect to the EU and Japan. In response to these comments, the Agencies believe that a phase-in of variation margin requirements similar to the phase-in of initial margin requirements is not necessary because the collection of daily variation margin is currently an industry best practice and will not require many changes in current swaps business operations for covered swaps entities. However, the Agencies have revised the 2014 proposal to include the phase-in of compliance dates for variation margin as set forth above to align with the dates suggested by the BCBS and IOSCO on March 18, 2015.

c. The meaning of Swaps Entered Into After the Compliance Date

The rule's margin requirements apply to non-cleared swaps entered into on or after the applicable compliance date. Certain commenters also requested that the Agencies consider the following swaps as entered into prior to the compliance date: (1) swaps entered into prior to the applicable compliance date (legacy swaps) that are amended in a non-material manner; (2) novations; and (3) new derivatives that result from portfolio compression of legacy

[80] *See* § __.1(e) of the final rule.

[81] *See* § __.1(e) of the final rule.

[82] As a specific example of the calculation, consider a U.S.-.based financial end user (together with its affiliates) with a portfolio consisting of two non-cleared swaps (*e.g.,* an equity swap, an interest rate swap) and one non-cleared security-based credit swap. Suppose that the notional value of each swap is exactly $1 trillion on each business day of March, April and May of 2016. Furthermore, suppose that a foreign exchange forward is added to the entity's portfolio at the end of the day on April 29, 2016, and that its notional value is $1 trillion on every business day of May 2016. On each business day of March and April of 2016, the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $3 trillion. Beginning on May 1, 2016, the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $4 trillion. The daily average aggregate notional value for March, April and May 2016 is then (23x$3 trillion +21x$3 trillion + 21x$4 trillion)/(23+21+21)=$3.3 trillion, in which case this entity would have a gross notional exposure that would result in its compliance date beginning on September 1, 2016.

derivatives. These commenters urged that if a general exclusion for novated legacy swaps is not provided, there should be an exclusion for novated swaps between affiliates resulting from organizational restructuring or regulatory requirements such as the swaps push-out rule.

Notwithstanding these comments, the Agencies believe that classifying new swap transactions as ''swaps entered into prior to the compliance date'' could create significant incentives to engage in amendments and novations for the purpose of evading the margin requirements. Moreover, limiting the extension to ''material'' amendments or ''legitimate'' novations is difficult to effect within the final rule as the specific motivation for an amendment or novation is generally not observable. Finally, the Agencies believe that classifying some new swap transactions as transactions entered into prior to the compliance date would make the process of identifying those swaps to which the rule applies overly complex and non-transparent. Accordingly, the Agencies have elected not to extend the meaning of swaps entered into prior to the compliance date as was requested by some commenters.

d. Ongoing Applicability and Implementation of the Margin Requirements.

Section __.1(f) provides that once a covered swap entity and its counterparty must comply with the margin requirements for non-cleared swaps based on the compliance dates set forth in § __.1(e), the covered swap entity and its counterparty shall remain subject to the margin requirements from that point forward. For example, September 1, 2017 is the relevant compliance date where both the covered swap entity combined with all its affiliates and its counterparty combined with all its affiliates have an average aggregate daily notional amount of covered swaps that exceed $2.25 trillion must comply with these margin requirements. If the notional amount of the swap activity for the covered swap entity or the counterparty drops below that threshold amount of covered swaps in subsequent years, their swaps would nonetheless remain subject to the margin requirements. On September 1, 2020, any covered swap entity/counterparty combination that did not have an earlier compliance date will become subject to the initial margin requirements with respect to any non-cleared swaps.

One commenter urged that, during the phase-in period, only entities whose swap volume currently exceeds the applicable threshold should be subject to the margin requirements. The commenter stated that, if the swap activity of either party to a swap declines below the applicable threshold, that party should cease being subject to the initial margin requirements until such time as it exceeds the applicable threshold. The Agencies have declined to make this change to the final rule. The Agencies believe that allowing entities' coverage status to change over time results in additional complexity with little benefit since all entities will in any event be subject to the rule as of September 1, 2020. Accordingly, allowing an entity's coverage status to fluctuate would only be consequential for a limited period of time.

One commenter asked how the margin requirements would apply in the event of a change in status of the counterparty. The Agencies have added § __.1(g) to the final rule to clarify the applicability of the margin requirements in the event a covered swap entity's counterparty changes its status (for example, if the counterparty is a financial end user without material swaps exposure and becomes a financial end user with material swaps exposure).[83] Under § __.1(g)(1), in the event a counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to stricter margin requirements, then the covered swap entity shall comply with the stricter margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status. Section __.1(g)(2) states that in the event a counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to less strict margin requirements (such as when a counterparty changes status from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any swap or security-based swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding non-cleared swap or non-cleared security-based swap entered into after the applicable compliance date in § ___.1(e) and before the counterparty changed its status. As a specific example, if a covered swap entity's counterparty transitioned from a financial end user with material swaps exposure to a financial end user without material swaps exposure, initial margin that had been previously collected could be returned if agreed to by both parties since the rule would not require an exchange of initial margin on pre-existing or future non-cleared swaps.

[83] This could apply in other circumstances as well—*e.g.,* if an entity that is exempt pursuant to TRIPRA no longer qualifies for an exception or exemption.

e. Treatment of Swaps Executed Prior to the Applicable Compliance Date Under a Netting Agreement

As discussed in further detail below in § ___.5, a covered swap entity may enter into swaps on or after the final rule's compliance date pursuant to the same master netting agreement that governs existing swaps entered into with a counterparty prior to the compliance date. The final rule permits a covered swap entity to (1) calculate initial margin requirements for swaps under an eligible master netting agreement (''EMNA'') with the counterparty on a portfolio basis in certain circumstances, if it does so using an initial margin model; and (2) calculate variation margin requirements under the final rule on an aggregate, net basis under an EMNA with the counterparty. Applying the final rule in such a way would, in some cases, have the effect of applying it retroactively to swaps entered into prior to the compliance date under the EMNA.

The Agencies received several comments expressing concern that the 2014 proposal might require swaps entered into before the compliance dates to be documented under a different EMNA than swaps entered into after the compliance dates in order for the margin requirements not to apply to the pre-compliance dates swaps. As described further in § ___.5, the Agencies have revised the final rule to allow for the establishment of separate netting sets under a single ENMA to avoid this outcome.

3. Numerical Amounts Expressed in U.S. Dollar Terms in the Final Rule and Their Relation to Numerical Amounts Expressed in Euros in the 2013 International Framework

The 2014 proposal contained a number of numerical amounts that are expressed in U.S. dollar terms. The amounts include the effective date phase-in thresholds, the initial margin threshold amount, the material swaps exposure amount, and the minimum transfer amount. These numerical amounts are expressed in the 2013 international framework in terms of Euros. In the 2014 proposal, the Agencies translated the Euro amounts from the 2013 international framework

using a Euro-U.S. Dollar exchange rate that was broadly consistent with the exchange rate that prevailed at the time of the proposal's publication.

In the proposal, the Agencies sought comment on how to deal with fluctuations in exchange rates and how such fluctuations may create inconsistencies in the numerical amounts that are established across differing jurisdictions. One commenter suggested using an average exchange rate calculated over a period of time. Another commenter suggested that the Agencies should periodically recalibrate these amounts in response to broad movements in underlying exchange rates.

The Agencies believe that persistent and significant fluctuations in exchange rates could result in significant differences across jurisdictions that would complicate cross-border transactions and create competitive inequities. The Agencies do not agree, however, that the final rule's numerical amounts should be mechanically linked to either prevailing exchange rates or average exchange rates over a period of time as short term fluctuations in exchange rates would result in high frequency changes that would create significant operational and logistical burdens. Rather, and consistent with the view of one commenter, the Agencies expect to consider periodically the numerical amounts expressed in the final rule and their relation to amounts denominated in other currencies in differing jurisdictions. The Agencies will then propose adjustments, as appropriate, to these amounts.

In the final rule, the Agencies are adjusting the numerical amounts described above in light of significant shifts in the Euro-U.S. Dollar exchange rates since the publication of the 2014 proposal. Specifically, the Agencies are reducing the value of each numerical quantity expressed in dollars to be consistent with a one-for-one exchange rate with the Euro. As a specific example, the amount of the initial margin threshold is being changed from $65 million in the 2014 proposal to $50 million in the final rule. This change will align the U.S dollar denominated numerical amounts in the final rule with those in the 2013 international framework, will be consistent with amounts that have been proposed in margin rules by the European and Japanese authorities and will be more consistent with the Euro-U.S. Dollar exchange rate prevailing at the time the final rule is published.

B. Section __.2: Definitions

Section __.2 of the final rule defines its key terms.

1. Swap Counterparty Definitions

Section __.2 defines key terms used in the final rule, including the types of counterparties that form the basis of the rule's risk-based approach to margin requirements and other key terms needed to calculate the required amount of initial margin and variation margin.[84] As noted above, the final rule, like the proposal, distinguishes among four separate types of counterparties:[85] (i) counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure; and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks to the extent their swaps do not qualify for an exemption from clearing pursuant to § __.1(d) as added by the interim final rule.[86] Below is a general description of the significant terms defined in § __.2 of the final rule.[87]

a. Swap Entity

In the final rule, the Agencies have revised the definition of ''swap entity'' to clarify that the term applies to persons that have registered with the CFTC as a swap dealer or major swap participant or with the SEC as a security-based swap dealer or major security-based swap participant. The term ''swap entity'' is used in the final rule in the definition of ''covered swap entity'' to refer to such an entity that is supervised by one of the Agencies. The term ''swap entity'' is also used in describing requirements that apply when a covered swap entity engages in non-cleared swaps with a counterparty that is registered with the CFTC or SEC as a dealer or major participant in non-cleared swaps or security-based swaps but is not supervised by one of the Agencies.

The registration status with the CFTC or SEC is central to the scope of the rule's applicability to an entity that is supervised by one of the Agencies. The Commodity Exchange Act requires that ''each registered swap dealer and major swap participant for which there is a prudential regulator shall meet such minimum capital requirements and minimum initial and variation margin requirements as the prudential regulator shall by rule or regulation prescribe . . . .''[88] The Securities Exchange Act imposes a similar requirement for each registered security-based swap dealer and major security-based swap participant.[89]

For a person that meets the qualitative elements of one or more of the dealer or major participant definitions, whether it is required to register with the applicable Commission will require an application of the minimum thresholds that the Commissions established in their joint regulation. For purposes of this margin rule, ''swap entity'' refers only to those persons that have actually registered with the applicable Commission as a dealer or major participant in non-cleared swaps or security-based swaps.[90]

b. Financial End User

In order to provide certainty and clarity to counterparties as to whether they would be financial end users for purposes of this final rule, the financial

[84] ''Initial margin'' means the collateral as calculated in accordance with § __.8 that is posted or collected in connection with a non-cleared swap. *See* § __.2 of the final rule; *see also* § __.3 of the final rule (describing initial margin requirements). ''Variation margin'' means collateral provided by one party to its counterparty to meet the performance of its obligations under one or more non-cleared swaps or non-cleared security-based swaps between the parties as a result of a change in value of such obligations since the last time such collateral was provided. *See* § __.2 of the final rule; *see also* § __.4 of the final rule (describing variation margin requirements). The final rule's definition of ''variation margin'' and ''variation margin amount'' are described in § __.4.

[85] ''Counterparty'' is defined to mean, with respect to any non-cleared swap or non-cleared security-based swap to which a person is a party, each other party to such non-cleared swap or non-cleared security-based swap. This definition is modified slightly from the proposal to make clear that either party to the swap may be referred to as the counterparty.

[86] The treatment of other counterparties in the final rule thus is only relevant with respect to non-cleared swaps and non-cleared security-based swaps that are not exempt under § __.1(d) of the final rule.

[87] The term ''nonfinancial end user'' is not used in the final rule. Nonfinancial end users would be treated as ''other counterparties'' to the extent their swaps do not qualify for an exemption. *See* §§§ __.1(d), __.3(d) and __.4(c) of the final rule.

[88] 7 U.S.C. 6s(e)(1)(A). The Commodity Exchange Act imposes registration requirements on a ''person'' that acts as a swap dealer or security-based swap dealer, defining ''person'' to ''import[ing] the plural or singular, and includ[ing] individuals, associations, partnerships, corporations, and trusts.'' 7 U.S.C. 1a(38), 6s(a).

[89] 15 U.S.C. 78o–10(e)(1)(A). The Securities Exchange Act imposes registration requirements on a ''person'' that acts as a security-based swap dealer or major security-based swap participant, defining ''person'' to mean ''a natural person, company, government, or political subdivision, agency, or instrumentality or a government.'' 15 U.S.C. 78c(a)(9), 78o–10(a).

[90] An entity that is supervised by one of the Agencies that fails to register with the applicable Commission as a dealer or major participant in non-cleared swaps or security-based swaps would be subject to enforcement action by the applicable Commission as well as by the Agency that is its prudential regulator.

end user definition provides a list of entities that would be financial end users as well as a list of entities excluded from the definition. In the final rule, as under the proposed rule, the Agencies are relying, to the greatest extent possible, on the counterparty's legal status as a regulated financial entity.

Under the final rule, financial end user includes a counterparty that is not a swap entity but is:

• A bank holding company or an affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153; a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323);

• A depository institution; a foreign bank; a Federal credit union, a State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

• An entity that is state-licensed or registered as a credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; but excluding entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

• A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

• A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)) and any entity for which the Federal Housing Finance Agency or its successor is the primary federal regulator;

• Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.* that is regulated by the Farm Credit Administration;[91]

• A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53);

• A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 of the Securities and Exchange Commission (17 CFR 270.3a–7);

• A commodity pool, a commodity pool operator, or a commodity trading advisor as defined in, respectively, sections 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 7 U.S.C. 1a(11), 7 U.S.C 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

• An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

• An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

• An entity, person or arrangement that is, or holds itself out as being, an entity, person or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for the purpose of investing or trading or facilitating the investing or trading in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets; or

• An entity that is or would be a financial end user or swap entity, if it were organized under the laws of the United States or any State.

In developing this definition of financial end user, the Agencies sought to provide certainty and clarity to covered swap entities and their counterparties regarding whether particular counterparties would qualify as financial end users and be subject to the margin requirements of the final rule. The Agencies tried to strike a balance between the desire to capture all financial counterparties, without being overly broad and capturing commercial firms and sovereigns. This approach is consistent with the risk-based approach of the final rule, as financial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than is the case for other types of counterparties.[92] Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the covered swap entity.

In developing the list of financial entities, the Agencies sought to include entities that engage in financial activities that give rise to Federal or State registration or chartering requirements, such as deposit taking and lending, securities and swaps dealing, or investment advisory activities. The list also includes asset management and securitization entities. For example, certain investment funds as well as securitization vehicles are covered, to the extent those entities would qualify as private funds defined in section 202(a) of the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). In addition, certain real estate investment companies would be included as financial end users as entities that would be investment companies under section 3 of the Investment Company Act of 1940, as amended (the ''Investment Company Act''), but for section 3(c)(5)(C), and certain other securitization vehicles would be included as entities deemed not to be investment companies pursuant to Rule 3a-7 of the Investment Company Act.

[91] As discussed elsewhere in this preamble, FCS institutions are financial end users, although TRIPRA exempts almost all of the non-cleared swaps of all FCS institutions, except Farmer Mac, from the initial and variation requirements of this final rule.

[92] As noted above, TRIPRA also exempts certain swaps of nonfinancial end users and certain other counterparties from the requirements of this rule.

Because Federal law largely looks to the States for the regulation of the business of insurance, the definition of financial end user in the final rule broadly includes entities organized as insurance companies or supervised as such by a State insurance regulator. This element of the final rule's definition would extend to reinsurance and monoline insurance firms, as well as insurance firms supervised by a foreign insurance regulator.

The Agencies intend to cover, as financial end users, the broad variety and number of nonbank lending and retail payment firms that operate in the market. To this end, the Agencies have included State-licensed or registered credit or lending entities and money services businesses under the final rule's provision incorporating an inclusive list of the types of firms subject to State law. However, the Agencies recognize that the licensing of nonbank lenders in some states extends to commercial firms that provide credit to the firm's customers in the ordinary course of business. Accordingly, the Agencies are excluding an entity registered or licensed solely on account of financing the entity's direct sales of goods or services to customers.

Under the final rule, those cooperatives that are financial institutions,[93] such as credit unions, FCS banks and associations,[94] and other financial cooperatives[95] are financial end users because their sole business is lending and providing other financial services to their members, including engaging in swaps in connection with such loans.[96] The treatment of non-cleared swaps of these financial cooperatives may differ under the final rule due to TRIPRA, which became law after the proposal was issued. More specifically, almost all swaps of the cooperatives that are financial end users qualify for an exemption from clearing if certain conditions are met,[97] and therefore, these non-cleared swaps also would qualify for an exemption from the initial and variation margin requirements under § __.1(d) of the interim final rule. Non-cleared swaps of such financial cooperatives that do not qualify for an exemption would be treated as non-cleared swaps of financial end users under the final rule.

In order to address concerns, now or in the future, that one or more types of financial entities might escape classification under the specific Federal or State regulatory regimes included in the definition of a ''financial end user,'' the Agencies have inserted language that would cover an entity, person, or arrangement that is, or holds itself out as an entity, person or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for the purpose of investing or trading or facilitating the investing or trading in loans, securities, swaps, funds or other assets for resale or other disposition, or otherwise trading in loans, securities, swaps, funds or other assets.

The final rule's definition of ''financial end user'' is largely similar to the proposed definition, with a few modifications. In the final rule, the Agencies added as a financial end user a U.S. intermediate holding company (''IHC'') established or designated for purposes of compliance with the Board's Regulation YY (12 CFR 252.153). Pursuant to Regulation YY, a foreign banking organization with U.S. non-branch assets of $50 billion or more must establish a U.S. IHC and transfer its ownership interest in the majority of its U.S. subsidiaries to the IHC by July 1, 2016. As not all IHCs will be bank holding companies, the Agencies are explicitly identifying IHCs in the list of financial end users to clarify that they are included. To the extent an IHC that is not itself registered as a swap entity enters into non-cleared swaps with a covered swap entity, the IHC would be treated as a financial end user like other types of holding companies that are not swap entities (*e.g.,* bank holding companies and saving and loan holding companies).

In order to address concerns raised by commenters, the final rule removes the provision in the definition of ''financial end user'' that included any other entity that the relevant Agency has determined should be treated as a financial end user. A few commenters urged the Agencies to remove this provision due to concerns that it created uncertainty. In response to this concern, the Agencies have removed this provision from the final rule's definition of ''financial end user.'' The Agencies will monitor the margin arrangements of swap transactions of covered swap entities to determine if certain types of counterparties, in fact, are financial entities that some reason are not covered by the definition of ''financial end user'' in the final rule. In the event that the Agencies find that one or more types of financial entities escape classification as financial end users under the final rule, the Agencies may consider another rulemaking that would amend the definition of ''financial end user'' to cover such entities.

Many of the provisions in the financial end user definitions rely on whether an entity's financial activities trigger Federal or State registration or chartering requirements. The Agencies proposed to include foreign financial entities that are not subject to U.S. law but are engaged in the same types of activities as U.S. financial end users. The proposed definition of ''financial end user'' included any entity that would be a financial end user if it were organized under the laws of the United States or any State. A few commenters argued that the proposed test is difficult to apply because it would require a covered swap entity to analyze a foreign counterparty's business activities in light of a broad array of U.S. regulatory requirements.

The Agencies have not modified this provision of the final rule in response to these concerns raised by commenters. Although the Agencies acknowledge that the proposed test imposes a greater

[93] The Agencies expect that state-chartered financial cooperatives that provide financial services to their members, such as lending to their members and entering into swaps in connection with those loans, would be treated as financial end users, pursuant to this aspect of the final rule's coverage of credit or lending entities. However, these cooperatives could elect an exemption from clearing under a CFTC regulation, 17 CFR 50.51, and as a result, their non-cleared swaps would also be exempt from the margin requirements of the final rule pursuant to § __.1(d), as added by the interim final rule.

[94] Section IID of the preamble to § __.1 more fully discusses the status of FCS institutions as financial end users and their exemptions from clearing and the margin requirements.

[95] The National Rural Utility Cooperative Finance Cooperation (''CFC'') is an example of another financial cooperative. The CFC's comment letter requested that the Agencies exempt swaps entered into by nonprofit cooperatives from the margin requirement to the extent they that are already exempt from clearing requirements. Section __ .1(d)), as added by the interim final rule, responds to the CFC's concerns.

[96] Most cooperatives are producer, consumer, or supply cooperatives and, therefore, they are not financial end users. However, many of these cooperatives have financing subsidiaries and affiliates. These financing subsidiaries and affiliates would not be financial end users under this final rule if they qualify for an exemption under sections 2(h)(7)(C)(iii) or 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act. Moreover, certain swaps of these entities may be exempt pursuant to TRIPRA and § __.1(d)), as added by the interim final rule.

[97] Section 2(h)(7)(C)(ii) of the Commodity Exchange Act and section 3C(g)(4) of the Securities Exchange Act authorize the CFTC and the SEC, respectively, to exempt small depository institutions, small FCS institutions, and small credit unions with total assets of $10 billion or less from the mandatory clearing requirements for swaps and security-based swaps. *See* 7 U.S.C. 2(h)(7) and 15 U.S.C. 78c–3(g). Additionally, the CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, enacted 17 CFR part 50, subpart C, § 50.51, which allows cooperative financial entities, including those with total assets in excess of $10 billion, to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans or swaps with their members.

incremental burden in classifying foreign counterparties than it does in identifying U.S. financial end users, the Agencies have retained it in the final rule. On balance, the Agencies believe the approach in the final rule is the best alternative to capture the kinds of entities whose profitability and viability is most tightly linked to the health of the financial system. In this respect, the Agencies' financial end user definition is broad by design. Exclusion from the financial end user definition for any enterprise engaged extensively in financial and market activities should, as a practical matter, be the exception rather than the rule. The Agencies believe it is appropriate to require a covered swap entity that seeks to exclude a foreign financial enterprise from the rule's margin requirements to ascertain the basis for that exclusion under the same laws that apply to U.S. entities. The Agencies have included in the final rule not only an entity that is or would be a financial end user but also an entity that is or would be a swap entity, if it were organized under the laws of the United States or any State. Since a financial end user is defined as ''a counterparty that is not a swap entity,'' the purpose of this addition is to make clear that an entity that is not a registered swap entity in the United States but acts as a swap entity in a foreign jurisdiction would be treated as a financial end user under the final rule.

As explained above, in an attempt to provide a level of certainty to financial participants and to clarify the definition of a financial end user, the Agencies proposed an enumerated list which included several CFTC-registered entities. In the final rule, the Agencies have added three other CFTC-registered entities to the enumerated list, floor brokers, floor traders, and introducing brokers.

As defined in section 1a(22) of the Commodity Exchange Act, a floor broker generally provides brokering services on an exchange to clients in purchasing or selling any future, security future, swap, or commodity option. As defined in section 1a(23) of the Commodity Exchange Act, a floor trader generally purchases or sells on an exchange solely for that person's account, any future, security future, swap, or commodity option. As defined in section 1a(31) of the Commodity Exchange Act, an introducing broker generally means any person who engages in soliciting or in accepting orders for the purchase and sale of any future, security future, commodity option, or swap. In addition, it also includes anyone that is registered with the CFTC as an introducing broker.

In deciding to add these entities to the definition of financial end-user, the Agencies determined that these entities' services and activities are financial in nature and that these entities provide services, engage in activities, or have sources of income that are similar to financial entities already included in the definition. The Agencies believe that by including these financial entities in the definition of financial end user, the definition provides additional clarity to covered swap entities when engaging in non-cleared swaps with these entities. As noted above, financial entities are considered to pose greater systemic risk than nonfinancial entities and as such, the Agencies believe that these entities, whose activities, services, and sources of income are financial in nature, should be included in the definition of financial end user.

In the proposal, the Agencies included in the definition of a financial end user ''an entity that is, or holds itself out as being, an entity or arrangement that raises money from investors primarily for the purpose of investing in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets.'' In addition to asking whether the definition was too broad or narrow, as noted above, the Agencies asked questions as to whether this prong of the definition was broad enough to capture other types of pooled investment vehicles that should be treated as financial end users.

After reviewing all comments, the Agencies are broadening this prong of the definition to include other types of entities and persons that primarily engage in trading, investing, or in facilitating the trading or investing in loans, securities, swaps, funds or other assets. In broadening the definition, the Agencies believe that the enumerated list in the proposal of financial end users was not inclusive enough to cover certain financial entities that were not organized as pooled investment vehicles but that traded or invested their own or client funds (*e.g.,* high frequency trading firms) or that provided other financial services to their clients.

As noted above, the Agencies believe that financial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties. Accordingly, the Agencies have adopted a definition of financial end user that includes the types of firms that engage in the activities described above.

The final rule, like the proposal, excludes certain types of counterparties from the definition of financial end user. In particular, the final rule states that the term ''financial end user'' does not generally include any counterparty that is:

- A sovereign entity; [98]
- A multilateral development bank;[99]
- The Bank for International Settlements;
- A captive finance company that qualifies for the exemption from clearing under section 2(h)(7)(C)(iii) of the Commodity Exchange Act of 1936 and implementing regulations; or
- A person that qualifies for the affiliate exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act of 1936 or section 3C(g)(4) of the Securities Exchange Act of 1934 and implementing regulations.

The Agencies believe that this approach is appropriate as these entities generally pose less systemic risk to the financial system in addition to posing less counterparty risk to a covered swap entity. Thus, the Agencies believe that the application of margin requirements to swaps with these counterparties is not necessary to achieve the safety and soundness objectives of this rule.[100] Rather, the Agencies have included provisions in the final rule that would require covered swap entities to subject these ''other counterparties'' to margin requirements to the extent that their

[98] Sovereign entity is defined to mean a central government (including the U.S. government) or an agency, department, or central bank of a central government. *See* § __.2 of the final rule. A sovereign entity would include the European Central Bank for purposes of this exclusion. At least one commenter expressed support for the exclusion of sovereign entity from the financial end user definition.

[99] Multilateral development bank is defined to mean the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the relevant Agency determines poses comparable credit risk. *See* § __.2 of the final rule.

[100] As further discussed below, the final rule specifically excludes these entities from the definition of ''financial end users.'' Instead, they are treated as ''other counterparties'' with respect to the rule's initial and variation margin requirements to the extent the swaps they enter into with covered swap entities are not otherwise exempt from the requirements of this rule. With respect to the initial margin requirements, the ''other counterparties'' category also includes financial end users that do not have a material swaps exposure.

own internal risk management procedures would require that these counterparty relationships be margined.

A few commenters argued that the exclusion from financial end user for a person that qualifies for the affiliate exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act requires an entity to be acting *as agent* for an affiliate and thus would not capture equivalent entities that act *as principal* for an affiliate. These commenters contended that many such entities act as principal for an affiliate and that the CFTC has issued no-action letters, effectively exempting such entities from clearing.[101] As noted above, the Agencies intend to align the exclusions from the definition of financial end user as much as possible with statutory exceptions as well as exclusions implemented by the CFTC by rule. The Agencies note that to the extent the CFTC acts to exempt such entities from clearing by rule, these entities would also be excluded from the definition of financial end user for purposes of this rule.

A few commenters requested that the Agencies exclude from the definition of financial end user those entities guaranteed by a foreign sovereign or multilateral development bank.[102] As described above, the final rule excludes from the definition of financial end user a ''sovereign entity'' defined to mean a central government (including the U.S. government) or an agency, department, or central bank of a central government. An entity guaranteed by a sovereign entity is not explicitly excluded from the definition of financial end user in the final rule, unless that entity qualifies as a central government agency, department, or central bank. The existence of a government guarantee does not in and of itself exclude the entity from the definition of financial end user.

Similarly, the Agencies note that States would not be excluded from the definition of financial end user in the final rule, as the term ''sovereign entity'' includes only central governments. This does not mean, however, that States are categorically classified as financial end users. Whether a State or particular part of a State (*e.g.,* counties, municipalities, special administrative districts, agencies, instrumentalities, or corporations) would be a financial end user depends on whether that part of the State is otherwise captured by the definition of financial end user. For example, a State entity that is a ''governmental plan'' under the Employment Retirement Income Security Act of 1974 (''ERISA''), as amended, (29 U.S.C. 1002), would meet the definition of financial end user. Commenters requested that the Agencies exclude a number of other financial entities from the requirements of the final rule including certain small depository institutions that qualify for an exception from clearing, certain financial cooperatives, employee benefit plans (such as pension plans), and covered bond issuers. Depository institutions, financial cooperatives, employee benefit plans, structured finance vehicles, and covered bond issuers are financial end users for purposes of the final rule. However, as discussed earlier, § __.1(d), as added by the interim final rule published elsewhere in this **Federal Register**, addresses some of the commenters' concerns by exempting the non-cleared swaps of certain small depository institutions and financial cooperatives from the margin requirements of the final rule because these entities already qualify for exemption from clearing. The non-cleared swaps of small depository institutions and financial cooperatives that do not qualify for the exemptive treatment would be treated as swaps of financial end users under the final rule.

With respect to employee benefit plans, commenters generally argued that these plans should not be subject to margin requirements because they are highly regulated, highly creditworthy, have low leveraged and are prudently managed counterparties whose swaps are used primarily for hedging and, as such, pose little risk to their counterparties or the broader financial system. One commenter urged the Agencies to exclude both U.S. and non-U.S. public and private employee benefit plans where swaps are hedging risk. This commenter also contended that there may be ambiguity whether certain pension plans are financial end users if they are not subject to ERISA. Another commenter argued that current market practice is not to require initial margin for pension plans. The Agencies have considered these comments in light of the purpose and intent of the statute and continue to believe that pension plans should be covered as financial end users under the final rule. Congress explicitly listed an employee benefit plan as defined in paragraph (3) and (32) of section 3 of ERISA in the definition of ''financial entity'' in the Dodd-Frank Act, meaning that a pension plan would not benefit from an exclusion from clearing even if the pension plan uses swaps to hedge or mitigate commercial risk. The Agencies believe that, similarly, when a pension plan enters into a non-cleared swap with a covered swap entity, the pension plan should be treated as a financial end user and subject to the requirements of the final rule.

The definition of employee benefit plan in the final rule is the same as in the proposal and is defined by reference to paragraphs (3) and (32) of ERISA. Paragraph (3) provides that the term ''employee benefit plan'' or ''plan'' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan. Paragraph (32) describes certain governmental plans. In response to concerns raised by commenters, the Agencies believe that these broad definitions would cover all pension plans regardless of whether the pension plan is subject to ERISA. In addition, non-U.S. employee benefit plans would be included as an entity that would be a financial end user, if it were organized under the laws of the United States or any State thereof.

A number of commenters also requested that the Agencies exclude from financial end user structured finance vehicles including securitization special purpose vehicles (''SPVs'') and covered bond issuers. These commenters argued that imposing margin requirements on structured finance vehicles would restrict their ability to hedge interest rate and currency risk and potentially force these vehicles to exit swaps markets since these vehicles generally do not have ready access to liquid collateral. Certain of these commenters also expressed concerns about consistency with the treatment under the EU proposal. One commenter stated that the EU proposal has special criteria for covered bond issuers and that covered bond issuers should be able to use collateral arrangements other than the requirements in the Agencies' proposal. Moreover, commenters argued that covered swap entities that enter into a swap may be protected by other means—*e.g.,* a security interest granted in the assets of a securitization SPV. Commenters also urged that these types of entities make payments on a monthly payment cycle using collections

[101] *See* CFTC No-Action Letter No. 13–22 (June 4, 2013); CFTC No-Action Letter No. 14–144 (Nov. 26, 2014).

[102] Some commenters requested additional clarity that certain entities would be included as multilateral development banks. The definition in the final rule includes any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which the relevant Agency determines poses comparable credit risk. Entities that meet this part of the definition would be treated as multilateral development banks for purposes of the final rule.

received on the underlying assets during the previous month and would not be able to make daily margin calls. These commenters argued that significant structural changes would be necessary for securitization SPVs to post and collect variation margin. These commenters urged the Agencies to follow the approach of the proposed European rules, under which securitization vehicles would be defined as non-financial entities and would not be required to exchange initial or variation margin. With respect to covered bond issuers, commenters similarly urged the Agencies to follow the EU margin proposal which provided a special set of criteria for covered bond issuers and requested that the Agencies develop rules that would permit covered bond issuers to use other forms of collateral arrangements.

The Agencies have not modified the definition of financial end user to exclude structured finance vehicles or covered bonds issuers. The Agencies believe that all of these entities should be classified as financial end users; their financial and market activities comprise the same range of activities as the other entities encompassed by the final rule's definition of financial end user. The Agencies note that the increased material swaps exposure in the final rule should address some of the concerns raised by these commenters with respect to the applicability of initial margin requirements.

c. Material Swaps Exposure

The final rule, like the proposal, distinguishes between swaps with financial end user counterparties depending on whether the counterparty has a ''material swaps exposure.'' In the final rule, ''material swaps exposure'' for an entity means that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days.[103] The final rule's definition also provides that an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time and that, for purposes of this calculation, an entity shall not count a swap or security-based swap that is exempt pursuant to § __.1(d), as added by the interim final rule.

The final rule increases the level of the aggregate notional amount of transactions that gives rise to material swaps exposure to $8 billion from the proposed level of $3 billion. A number of commenters argued that the Agencies should raise the level of material swaps exposure to the threshold of €8 billion set out in the 2013 international framework to be consistent with the EU and Japanese proposals.[104] In the 2014 proposal, the Agencies had calibrated the proposed $3 billion threshold to the size of a potential swap portfolio between a covered swap entity and a financial end user for which the initial margin amount would often exceed the proposed initial margin threshold amount of $65 million, with an eye towards reducing the burden of calculating initial margin amounts for smaller portfolios. However, some commenters expressed the view that the international implementation of material swaps exposure threshold treats the threshold more as a scope provision, to define the group of financial firms in the swaps market whose activities rise to a level appropriate to the exchange of initial margin as a policy matter.[105] While commenters representing public interest groups and CCPs expressed policy concerns about whether the $3 billion threshold was conservative enough, focusing on the collective systemic risk posed by all smaller counterparties in the aggregate, other commenters representing covered swap entities and financial end users expressed concerns about the additional initial margin they would be required to exchange compared to foreign firms, and the associated competitive impacts.

The material swaps exposure threshold of $8 billion in the final rule is broadly consistent with the €8 billion established by the 2013 international framework and has been calibrated relative to this level in the manner described previously. At this time, the Agencies believe the better course is to calibrate the final rule's material swaps exposure threshold to the higher international amount, in recognition of each financial end user's overall potential future swaps exposure to the market rather than its potential future exposure to one dealer. In this regard, the Agencies note that variation margin will still be exchanged without any threshold, and further that the $8 billion threshold may warrant further discussion among international regulators in future years, if implementation of the threshold proves to create concerns about market coverage for initial margin.

The time period for measuring material swaps exposure is June, July, and August of the previous calendar year under the final rule, the same period as in the proposal.[106] As discussed in the proposed rule, the Agencies believe that using the average daily aggregate notional amount[107] during June, July, and August of the previous year, instead of a single as-of date, is appropriate to gather a more comprehensive assessment of the financial end user's participation in the swaps market, and to address the possibility that a market participant might ''window dress'' its exposure on an as-of date such as year-end in order to avoid the Agencies' margin requirements. A covered swap entity would calculate material swaps exposure each year on January 1 based on June, July, and August of the previous year. For example, for the period January 1, 2017 through December 31, 2017, an entity would determine whether it had a material swaps exposure with reference to June, July and August of 2016.[108]

[103] The final rule also includes a new definition of ''business day'' that means any day other than a Saturday, Sunday, or legal holiday. This definition is described further below.

[104] *See supra* note 20.

[105] For example, one commenter acknowledged data described by the Agencies in the proposed rule indicating that bilateral initial margin exposures between one covered swap entity and a financial end user could exceed $50 million for a portfolio with a gross notional value well below the USD-equivalent of the international €8 billion threshold. But the commenter urged the Agencies to shift their focus from the $65 million amount, as a bilateral constraint, and recognize that a financial end user will often use multiple dealers. Accordingly, the commenter urged the Agencies to treat the material swaps exposure threshold as a focus on a financial end user's multilateral exposures with all its dealers, which provides the rationale for the higher international threshold.

[106] One commenter suggested that the period to determine material swaps exposure should match the compliance date period. The Agencies have decided to use June, July and August of the previous year to determine material swaps exposure as these dates are close to year end but provide swap users with a period of time to gather and verify the required data before performing the required calculation at the end of the year.

[107] A few commenters suggested that a daily aggregate notional measure was burdensome and that the Agencies should use a month-end notional amount like the EU proposal and consistent with the 2013 international framework.

[108] As a specific example of the calculation for material swaps exposure, consider a U.S.-.based financial end user (together with its affiliates) with a portfolio consisting of two non-cleared swaps (*e.g.,* an equity swap, an interest rate swap) and one non-cleared security-based credit swap. Suppose that the notional value of each swap is exactly $10 billion on each business day of June, July and August of 2016. Furthermore, suppose that a foreign exchange forward is added to the entity's portfolio at the end of the day on July 31, 2016, and that its notional value is $10 billion on every business day

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The definition of ''material swaps exposure'' also clarifies questions raised about the treatment of affiliates in the proposed definition. Commenters urged the Agencies to make clear that inter-affiliate swaps would not be included for purposes of determining the material swaps exposure. Some of these commenters also expressed concern that the proposal could require an entity to double count inter-affiliate swaps in assessing material swaps exposure. In order to address concerns about double counting affiliate swaps, the final rule provides that an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time. The purpose of this modification is to clarify that an entity should not double count swaps with an affiliate in calculating material swaps exposure.[109] The Agencies also believe that the revised definition of affiliate in the final rule (described below) should help mitigate some of the concerns raised by commenters about the inclusion of affiliate swaps in determining material swaps exposure.[110]

The final rule's definition of material swaps exposure also states that for purposes of this calculation, an entity shall not count a swap that is exempt pursuant to § __.1(d), as added by the interim final rule.[111] This change is consistent with the statutory exemptions provided by Congress in TRIPRA and ensures that exempt swaps do not count toward determining whether an entity has material swaps exposure.

Commenters argued that certain other swaps should not be counted for purposes of the material swaps exposure calculation. A few commenters argued that foreign exchange swaps and foreign exchange forwards that are exempt from the definition of swap by Treasury determination should not be included for purposes of determining material swaps exposure.[112] Other commenters argued that hedging positions should not be counted toward material swaps exposure. One commenter urged that swaps entered into before the effective dates for mandatory clearing should not be counted for determining material swaps exposure. The Agencies are not incorporating requests by commenters to alter the calculation of the threshold amount in these or other related ways.[113] Although commenters advanced various rationales for each of the requested changes, all the changes had the effect of excluding certain portions of a financial end user's derivatives portfolio from the threshold. The Agencies believe the final rule's approach is appropriate since it strikes a reasonable balance between assessing a swap counterparty's overall size and risk exposure and providing for a simple and transparent measurement of exposure that presents only a modest operational burden. The Agencies believe that the increase in the level of the material swaps exposure to $8 billion in the final rule should address many of the concerns raised by commenters about the inclusion of particular categories of swaps. Moreover, given that the Agencies are viewing the final rule's material swaps exposure as an indicator of a financial end user's overall exposure in the market and revising the threshold upward to $8 billion, the Agencies believe the inclusiveness of the calculation adopted in the final rule is appropriate. A few commenters urged the Agencies to make clear that a covered swap entity may rely on representations of its counterparties in assessing whether it is transacting with a financial end user with material swaps exposure. Although the final rule does not explicitly provide how a covered swap entity should determine if a financial end user counterparty has material swaps exposure, the Agencies believe that it would be reasonable for a covered swap entity to rely in good faith on reasonable representations of its counterparty in making such assessments.

One commenter urged the Agencies to clarify what happens when a financial end user counterparty that had a material swaps exposure falls below the threshold. Because the material swaps exposure determination applies to a financial end user for an entire calendar year, depending on whether the financial end user exceeded the threshold during the third calendar quarter of the previous year, it is possible for a covered swap entity to have a portfolio of swaps with a financial end user whose status under the material swaps exposure test changes from time to time. New § ___.1(g) of the final rule addresses this concern and explains what happens upon a change in counterparty status. For example, if a financial end user is moving below the threshold for the upcoming calendar year, the covered swap entity is not obligated under the final rule to exchange initial margin with that end user during that calendar year, either for new swaps entered into that year or existing swaps from a prior year. Financial end users without material swaps exposure are treated as ''other counterparties'' for purposes of the initial margin requirements in the final rule. Moreover, any margin that had previously collected while the counterparty had a material swaps exposure would not be required under the final rule for as long as the counterparty did not have a material swaps exposure. In addition, a covered swap entity's swaps with a financial end user without material swaps exposure would continue to be subject to the variation margin requirements of the final rule. If a financial end user is moving above the threshold for the upcoming calendar year, the treatment of the existing swaps and the new swaps is the same as described for swaps before and after the rule's compliance implementation date. As described in more detail below under § ___.5, the parties have the option to document the old and new swaps as separate portfolios for netting purposes under an EMNA, and exchange initial margin

of August 2016. On each business day of June and July 2016, the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $30 billion. Beginning on August 1, 2016, the aggregate notional amount of non-cleared swaps, security-based swaps and foreign exchange forwards and swaps is $40 billion. The daily average aggregate notional value for June, July and August 2016 is then (22x$30 billion +20x$30 billion + 23x$40 billion)/(22+20+23)=$33.5 billion, in which case this entity would be considered to have a material swaps exposure for every date in 2017.

[109] The Agencies made a similar change to the definition of ''initial margin threshold amount'' as described in § __.3.

[110] For example, the revised definition of ''affiliate'' generally would not treat investment funds that share an investment adviser or investment manager as affiliates unless they otherwise meet the definition of affiliate.

[111] The Agencies made a similar change to the definition of ''initial margin threshold amount'' as described in § __.3.

[112] Some of these commenters expressed heightened concern about the impact of the Agencies' approach on financial end users that engage in significant foreign exchange transactions that are not subject to margin requirements together with relatively few marginable swaps. The final rule defines ''foreign exchange forward and foreign exchange swap'' to mean any foreign exchange forward, as that term is defined in section 1a(24) of the Commodity Exchange Act (7 U.S.C. 1a(24)), and foreign exchange swap, as that term is defined in section 1a(25) of the Commodity Exchange Act (7 U.S.C. 1a(25)). *See* § __.2 of the final rule.

[113] For example, one commenter urged the Agencies to conform with the 2013 international framework where material swaps exposure is based on derivatives (not swaps). Another commenter urged the Agencies to exclude registered swap dealers from the material swaps exposure calculation as this could cause affiliates of the swap dealer to exceed the material swaps exposure threshold. The final rule does not exclude registered swap dealers from the material swaps exposure threshold. The Agencies believe that financial affiliates of a registered swap dealer should be treated as having a material swaps exposure based on their level of risk.

only for the new portfolio of swaps entered into during the new calendar year after the financial end user triggered the material swaps exposure threshold determination.

d. Non-Cleared Swap and Non-Cleared Security-Based Swap

The requirements of this rule are, as a threshold matter, applicable to non-cleared swaps between covered swap entities and their counterparties. The final rule defines ''non-cleared swap'' to mean a swap that is not cleared by a derivatives clearing organization registered with the Commodity Futures Trading Commission pursuant to section 5b(a) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(a)) or by a clearing organization that the Commodity Futures Trading Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(h)). The final rule defines ''non-cleared security-based swap'' to mean a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the U.S. Securities and Exchange Commission pursuant to section 17A(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)(1)) or by a clearing agency that the U.S. Securities and Exchange Commission has exempted from registration by rule or order pursuant to section 17A(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(k)).

In the proposal, the Agencies defined a ''non-cleared swap'' as a swap that is not a cleared swap as defined in section 1a(7) of the Commodity Exchange Act. Under section 1a(7) of the Commodity Exchange Act, the term ''cleared swap'' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the CFTC. ''Non-cleared security-based swap'' was defined in the proposal to mean a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the SEC.[114]

A few commenters urged the Agencies to define non-cleared swaps and non-cleared security-based swaps to exclude swaps cleared through non-U.S. clearing organizations that are not registered with the CFTC or SEC. The Agencies have modified the definition of these terms in the final rule to address these comments.

Under sections 731 and 764, the Agencies are directed to impose initial and variation margin requirements on all swaps that are not cleared by a registered derivatives clearing organization and on all security-based swaps that are not cleared by a registered clearing agency. The Agencies are interpreting this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or registered clearing agency or a derivatives clearing organization or clearing agency that the CFTC or SEC has exempted from registration as provided under the Commodity Exchange Act and Securities Exchange Act, respectively. In particular, the Commodity Exchange Act prohibits persons from engaging in a swap that is required to be cleared unless they submit such swaps for clearing to a derivatives clearing organization that is either registered with the CFTC as a derivatives clearing organization or exempt from registration. Section 5b(h) of the Commodity Exchange Act allows the CFTC to exempt, conditionally or unconditionally, a derivatives clearing organization from registration for the clearing of swaps, where the derivatives clearing organization is subject to ''comparable, comprehensive supervision and regulation'' by the appropriate government authorities in its home country. The Agencies understand that the CFTC has granted, by order, relief from registration to a derivatives clearing organization pursuant to section 5b(h)[115] and would consider granting relief to other derivatives clearing organizations before the implementation date of these rules. The Securities Exchange Act contains similar language that allows the SEC to exempt a clearing agency from registration. Accordingly, the Agencies are excluding from the definition of non-cleared swap those swaps that are cleared by a derivatives clearing organization that is either registered with or has received an exemption by order or rule from registration from the CFTC. The Agencies are similarly excluding from non-cleared swap those swaps that are cleared by a clearing agency that is either registered with or has received an exemption by order or rule from registration from the SEC.

e. Foreign Bank

In the final rule, the Agencies have revised the definition of ''foreign bank'' to clarify that the term applies only to an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside of the United States. The proposed definition, which cross-referenced section 1 of the International Banking Act of 1978 (12 U.S.C. 3101), was broader in scope since it included any subsidiary or affiliate of any such organization.

f. Other Definitions

The final rule also defines a number of other terms, including several that were not defined in the proposal. The Agencies believe that these definitions will help provide additional clarity regarding the application of the margin requirements contained in the final rule.

i. Affiliate and Subsidiary

The final rule defines a company to be an ''affiliate'' of another company[116] if:

- Either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;
- Both companies are consolidated with a third company's on a financial statement prepared in accordance with such principles or standards;
- For a company that is not subject to such principles or standards, if consolidation as described in the first or second paragraph would have occurred if such principles or standards had applied; or
- [Agency] has determined that a company is an affiliate of other company, based on [Agency's] conclusion that either company provides significant support to, or is materially subject to the risks of losses of, the other company.

Similarly, the final rule defines a company to be a ''subsidiary'' of another company if:

- The company is consolidated by the other company on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;
- For a company that is not subject to such principles or standards, if consolidation as described in the first

[114] Clearing agency is defined to have the meaning specified in section 3(a)(2) of the Securities Exchange Act (15 U.S.C. 78c(a)(23)) and derivatives clearing organization is defined to have the meaning specified in section 1a(15) of the Commodity Exchange Act (7 U.S.C. 1a(15)).

[115] *See* In the Matter of the Petition of ASX Clear (Futures) Pty Limited For Exemption from Registration as a Derivatives Clearing Organization (Aug. 18, 2015).

[116] For additional clarity, the final rule also contains a newly defined term ''company'' that means a corporation, partnership, limited liability company, business trust, special purpose entity, association, or similar organization.

paragraph would have occurred if such principles or standards had applied; or

- [Agency] has determined that the company is a subsidiary of another company, based on [Agency's] conclusion that either company provides significant support to, or is materially subject to the risks of loss of, the other company.

Section __.11 is a special section of the rule that applies to affiliate swaps. In addition, the term ''affiliate'' is used in a number of other places in the rule, including the definition of initial margin threshold amount. That definition refers to a credit exposure of $50 million that is applicable to non-cleared swaps between a covered swap entity and its affiliates with a counterparty and its affiliates. The inclusion of affiliates in this definition is meant to make clear that the initial margin threshold amount applies to an entity and its affiliates. Similarly, the term ''affiliate'' is also used in the definition of ''material swaps exposure,'' because material swaps exposure takes into account the exposures of an entity and its affiliates. The term ''affiliate'' is also used for determining the compliance date for a covered swap entity and its counterparty in § __.1(e) of the final rule. The term ''subsidiary'' is used throughout the cross-border provisions in § __.9 to describe certain entities that are eligible for an exclusion from the rules as well as substituted compliance.

The proposed rule defined ''affiliate'' to mean any company that controls, is controlled by, or is under common control with another company, while ''subsidiary'' meant a company that is controlled by another company.[117] The proposal provided that ''control'' of another company means: (i) Ownership, control, or power to vote 25 percent or more of a class of voting securities of the company, directly or indirectly or acting through one or more other persons; (ii) ownership or control of 25 percent or more of the total equity of the company, directly or indirectly or acting through one or more other persons; or (iii) control in any manner of the election of a majority of the directors or trustees of the company.[118]

Commenters raised a number of concerns with the proposal's definitions of ''affiliate'' and ''subsidiary,'' and most of these concerns centered on both definitions' reliance on the definition of ''control.'' The Agencies have responded to the commenters' concerns by omitting the proposed definition of ''control'' from the final rule. The term ''control'' is no longer used in the definitions of ''affiliate'' and ''subsidiary.''

While one commenter expressed support for the proposal's definition of control, the vast majority of commenters argued for a modified definition of control that did not use the 25 percent threshold. One suggestion was that these terms should be defined by reference to whether an affiliate or subsidiary is consolidated under accounting standards. A number of these commenters urged the Agencies to use a majority ownership test (51 percent or more) for determining control.

Commenters also expressed particular concerns about the application of these definitions to investment funds, including during the seeding period. A number of commenters urged the Agencies to use the same criteria as the 2013 international framework as the basis for determining whether or not an investment fund is an affiliate of a fund sponsor.[119] Commenters also argued that seed capital contributed by a fund sponsor should not be viewed as control even if the ownership by the fund sponsor exceeds 25 percent. One commenter, for example, suggested that passive investors should not be deemed to control even where they own more than 51 percent of the ownership interests of a fund.

Commenters also expressed particular concerns about how the definitions applied to pension funds. One commenter argued that the sponsor of a pension should not be an affiliate of the pension fund by virtue of appointing trustees or directors of the pension fund. This commenter urged that pension plans should not be deemed to have any affiliates other than those entities to whom a covered swap entity has recourse for swap transactions with the pension fund. Other commenters argued that pension plans should be exempted from the definition of affiliate, expressing concerns that it could conflict with fiduciary obligations under ERISA.

Using financial accounting as the trigger for affiliation, rather than a legal control test, should address many of the concerns raised by commenters. Although consolidation tests under relevant accounting standards must also be applied on a case-by-case basis, like the proposed rule's ''control'' test, the analysis has already been performed for companies that prepare their financial statements in accordance with relevant accounting standards. For companies that do not prepare these statements, the Agencies believe industry participants are more familiar with the relevant accounting standards and tests, and they will be less burdensome to apply. Additionally, the accounting consolidation analysis typically results in a positive outcome (consolidation) at a higher level of an affiliation relationship than the 25 percent voting interest standard of the legal control test, which is responsive to commenters' concerns that the proposed definitions were over-inclusive. Because there are circumstances where an entity holds a majority ownership interest and would not consolidate, the Agencies have reserved the right to include any other entity as an affiliate or subsidiary based on an Agency's conclusion that either company provides significant support to, or is materially subject to the risks or losses of, the other company. This provision is meant to leave discretion to the Agencies in order to prevent evasion—for example, where a swap dealer sets up shell joint ventures that are not consolidated in order to execute swap transactions and avoid the requirements of this rule.

The Agencies believe that the modifications to the definitions of affiliate and subsidiary will address some of the concerns raised by commenters, including with respect to investment and pension funds. Investment funds generally are not consolidated with the asset manager other than during the seeding period or other periods in which the manager holds an outsized portion of the fund's interests though this may depend on the facts and circumstances. The Agencies believe that during these periods, when an entity may own up to 100 percent of the ownership interest of an investment fund, the investment fund should be treated as an affiliate. This approach to investment funds is similar to that in the 2013 international framework. The Agencies acknowledge that some accounting standards, such as GAAP

[117] The proposal's definitions of ''affiliate'' and ''subsidiary'' was similar to the definitions in the Bank Holding Company (''BHC'') Act and the Board's Regulation Y. *See* sections 2(d) & 2(k) of the BHC Act, 12 U.S.C. 1841(d) & (k); 12 CFR 225.2(o).

[118] The proposal's definition of control was similar to the definition under the BHC Act. *See,* section 2(a)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(a)(2).

[119] The 2013 international framework states that investment funds that are managed by an investment adviser are considered distinct entities that are treated separately when applying the threshold as long as the funds are distinct legal entities that are not collateralized by or otherwise guaranteed or supported by other investment funds or the investment adviser in the event of fund insolvency or bankruptcy. One commenter suggested an investment fund separateness test to determine whether an investment fund is a separate legal entity. This commenter also urged the agencies to incorporate the concept of ''effective control'' as developed by the Financial Accounting Standards Board (''FASB'') to cover variable interest entities and special purpose entities.

and IFRS variable interest standards, sometimes require consolidation between a sponsor or manager and a special purpose entity created for asset management, securitization, or similar purposes, under circumstances in which the manager does not hold interests comparable to a majority of equity or voting control share. On balance, the Agencies believe it is appropriate to treat these consolidated entities as affiliates of their sponsors or managers; they are structured with legal separation to address the concerns of passive investors, but the manager retains such levels of influence and exposure as to indicate its status is beyond that of another minority or passive investor. In the case of pension funds that are associated with a nonfinancial end user, the Agencies believe that consolidation of the pension fund with its parent would be the exception to the rule under applicable accounting standards. Even if consolidation is applicable for some pension funds, the swaps of the parent would, as a general matter, be exempt from the rule under TRIPRA, and would not be included in threshold amount calculations.

ii. Cross-Currency Swap

The final rule defines a cross-currency swap with only minor modifications from the definition in the proposal, as a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange at a later date that is agreed upon when the swap is entered into.[120] As explained in greater detail below, the final rule, like the proposal, provides that the initial margin requirements for cross-currency swaps do not apply to the portion of the swap that is the fixed exchange of principal. This treatment of cross-currency swaps is consistent with the treatment recommended in the 2013 international framework. This treatment of cross-currency swaps also aligns with the determination by the Secretary of the Treasury to exempt foreign exchange swaps from the definition of swap as explained further below. Non-deliverable forwards would not be treated as cross-currency swaps for purposes of the final rule, and thus would be subject to the margin requirements set forth under the rule.

No comments were received on this definition.

iii. Major Currencies

''Major currency'' is defined in the proposed and final rules to mean: (i) United States Dollar (USD); (ii) Canadian Dollar (CAD); (iii) Euro (EUR); (iv) United Kingdom Pound (GBP); (v) Japanese Yen (JPY); (vi) Swiss Franc (CHF); (vii) New Zealand Dollar (NZD); (viii) Australian Dollar (AUD); (ix) Swedish Kronor (SEK); (x) Danish Kroner (DKK); (xi) Norwegian Krone (NOK); or (xii) any other currency as determined by the relevant Agency.[121] No comments were received on this definition. Immediately available cash funds that are denominated in a major currency are eligible collateral for initial margin for non-cleared swaps with all counterparties and variation margin for non-cleared swaps with financial end users, as described further in § __.6.

iv. Prudential Regulator

Both the proposed and final rules define prudential regulator to have the meaning specified in section 1a(39) of the Commodity Exchange Act.[122] Section 1a(39) of the Commodity Exchange Act defines the term ''prudential regulator'' for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. No comments were received on this definition. The entities for which each of the Agencies is the prudential regulator is set out in § __.1 of each Agency's rule text.

v. Eligible Master Netting Agreement

The final rule defines eligible master netting agreement as any written, legally enforceable netting agreement that creates a single legal obligation for all individual transactions covered by the agreement upon an event of default (including conservatorship, receivership, insolvency, liquidation, or similar proceeding) provided that certain conditions are met. These conditions include requirements with respect to the covered swap entity's right to terminate the contract and liquidate collateral and certain standards with respect to legal review of the agreement to ensure it meets the criteria in the definition. The legal review must be sufficient so that the covered swap entity has a well-founded basis to conclude that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition.

Since the proposal was issued, the Board and the OCC have issued an interim final rule (''QMNA IFR'') that became effective January 1, 2015, that modifies the definition of qualifying master netting agreement (''QMNA'') used in their risk-based capital rules.[123] This final rule contains a revised definition of EMNA that aligns with the QMNA definition in the QMNA IFR. The Agencies are aligning the definitions of QMNA and EMNA in order to minimize operational burden for a covered swap entity, which otherwise would have to make a separate determination as to whether its netting agreements meet the requirements of this rule as well as comply with the regulatory capital rules.[124] However, like the proposal, the final rule uses the term ''*eligible* master netting agreement'' to avoid confusion with and distinguish from the term used under the capital rules.

Like the QMNA definition, the EMNA definition, includes a requirement that the agreement not include a walkaway clause, which is defined as 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 of the defaulter is a net creditor under the agreement.

The proposed EMNA definition included additional language in the definition of walkaway clause that would expressly preclude an EMNA from including a clause that permits a non-defaulting counterparty to ''suspend or condition payment'' to a defaulter or the estate of a defaulter, even if the defaulter or the estate of the defaulter is or otherwise would be, a net creditor under the agreement. In the interest of aligning the EMNA definition with the QMNA definition, this additional language is not being included in the final rule's definition of EMNA.[125]

[120] The proposal used the term ''inception of the swap'' in this definition which the final rule replaces with ''the date the swap is entered into'' for consistency with other provisions in the final rule.

[121] *See* the CFTC's regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries for this list of major currencies, 75 FR 55410 at 55412 (September 10, 2010).

[122] *See* 7 U.S.C. 1a(39).

[123] *See* 12 CFR 3.2, 12 CFR 217.2, and 12 CFR 324.2. Regulatory Capital Rules, Liquidity Coverage Ratio: Interim Final Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions, 79 FR 78287 (Dec. 30, 2014). The FDIC has proposed to make the same modification to its risk-based capital rule. 80 FR 5063 (Jan. 30, 2015).

[124] *See* § __.12 of the final rule.

[125] The Agencies had also proposed to add to the walkaway clause in the proposed EMNA definition, ''or otherwise would be,'' which is not included in the final rule, also in the interest of aligning the

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Several commenters argued that the ''suspend or condition payment'' language should be removed because it would prohibit an existing provision in the ISDA Master Agreement that permits a non-defaulting party to suspend payment to a defaulting counterparty. Because the Agencies have decided to delete the ''suspend or condition payment'' language in order to align the EMNA and QMNA definitions, these commenters' concerns regarding the impact of the additional proposed language on current provisions in the ISDA Master Agreement are moot.[126]

Commenters generally expressed support for the recognition of foreign stays in the proposal's definition of EMNA.[127] Like the proposal, the final rule's definition of EMNA contains a stay condition regarding certain insolvency regimes where rights can be stayed. In the final rule, the second clause of this condition has been modified to provide that any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than (i) in receivership, conservatorship, or resolution by an Agency exercising its statutory authority, or substantially similar laws in foreign jurisdictions that provide for limited stays to facilitate the orderly resolution of financial institutions, or (ii) in an agreement subject by its terms to any of the foregoing laws.[128]

A few commenters argued that a limited stay under State insolvency and receivership laws applicable to insurance companies also should be recognized under this provision. The Agencies are not, at this time, modifying the final rule's definition of EMNA to recognize stays under State insolvency and receivership laws for insurance companies. Such a change would be inconsistent with the QMNA definition in the capital rules.

Finally, a number of commenters expressed various concerns with the provision of the EMNA that requires a covered swap entity to conduct sufficient legal review to conclude with a well-founded basis (and to maintain sufficient written documentation of that legal review) that the agreement meets the requirements with respect to the covered swap entity's right to terminate the contract and liquidate collateral and that in the event of a legal challenge (including one resulting from default or from 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 the relevant jurisdictions.[129] These commenters urged that requiring a legal opinion would be expensive and may not be able to be given without qualification, meaning parties can never be certain that a contract is enforceable. The Agencies did not modify the substance of this provision of the EMNA definition in the final rule.[130] These provisions are based on the QMNA definition, which has long been applied by depository institutions and holding companies pursuant to the banking agencies' capital rules.[131] Neither the capital rules nor this final rule require an unqualified legal opinion; the rules set an outcome-based standard for a review that is sufficient so that an institution may conclude with a well-founded basis that, among other things, the contract would be found legal, binding, and enforceable under the law of the relevant jurisdiction and that the contract meets the other requirements of the definition.

vi. State

''State'' is defined in both the proposal and final rule to mean any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands. No comments were received on this definition. The purpose of this definition is to make clear these jurisdictions are within the United States for purposes of § __.9, which addresses the cross-border application of margin requirements.

vii. U.S. Government-Sponsored Enterprises

Under the final rule, ''U.S. Government-sponsored enterprise'' means an entity established or chartered by the U.S. government to serve public purposes specified by Federal statute, but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States. This definition in the final rule is the same as that in the proposal, and no comments were received on this definition. U.S. Government-sponsored enterprises currently include FCS banks, associations, and service corporations, Farmer Mac, the Federal Home Loan Banks, Fannie Mae, Freddie Mac, the Financing Corporation, and the Resolution Funding Corporation. In the future, Congress may create new U.S Government-sponsored enterprises, or terminate the status of existing U.S. Government-sponsored entities. This term is used in the definition of eligible collateral as described further in § __.6.

viii. Entity Definitions

The Agencies are including a number of other definitions including ''bank holding company,'' ''broker,'' ''dealer,'' ''depository institution,'' ''futures commission merchant,'' ''savings and loan holding company,'' and ''securities holding company'' that are defined by cross-reference to the relevant statute. Many of these terms are also used in the definition of ''financial end user'' or ''market intermediary,'' which is defined to mean a securities holding company, a broker, a dealer, a futures commission merchant, a swap dealer, or a security-based swap dealer. No comments were received on these definitions, and the Agencies have adopted them as proposed.

EMNA and QMNA definitions. Walkaway clauses, including those that permit a party to suspend or condition payment, are not enforceable against the FDIC when acting as receiver or conservator of an insured depository institution or as receiver of a financial company under Title II of the Dodd-Frank Act, or against the FHFA when acting as a receiver or conservator of Fannie Mae, Freddie Mac, or a Federal Home Loan Bank. *See* 12 U.S.C. 1821(e)(8)(G); 12 U.S.C. 5390(c)(8)(F); and 12 U.S.C. 4617(d)(8)(G).

[126] One commenter urged the Agencies not to ''outsource'' the EMNA definition to ISDA, noting that the vast majority of existing master netting agreements are governed by the ISDA Master Agreement. The commenter argued that the ISDA Master Agreement contains provisions that may be contrary to the interests of counterparties other than ISDA's large swap entity members, such as mandatory arbitration covenants. So long as an agreement meets the requirements of the EMNA definition, however, the Agencies are not endorsing, requiring, or prohibiting use of a particular master netting agreement in the final rule.

[127] However, at least one commenter expressed concern that allowing for foreign jurisdiction and contractual stays could limit important bankruptcy protections for commercial end users and argued that the rule should recognize and clearly state that market participants' rights to avoid stays and other limitations of their close-out rights should be protected. The Agencies note that the stay is very brief, applicable to all counterparties, and its potential value to systemic stability is quite high; therefore, on balance, the Agencies believe the brief stay is warranted.

[128] *See* § __.2 of the final rule. Minor technical modifications have been made to this provision in the final rule to align with the QMNA IFR.

[129] One commenter, for example, urged ''would'' should be changed to ''should'' as ''would'' is difficult to satisfy in bankruptcy courts making it difficult to state with certainty.

[130] To maintain consistency with the QNMA IFR, the Agencies revised paragraph (4)(i)(A), which identifies the scope of the legal review, to focus on paragraph (2), which specifies the parties' liquidation rights on a net basis.

[131] The QMNA IFR, which was issued after the swap margin proposed rule, contains a provision that requires an institution to comply with the same requirements and no comments were received on this provision in the QMNA IFR.

ix. Business Day and Day of Execution

The terms ''business day'' and ''day of execution'' are newly defined terms in the final rule that were not defined in the proposal. ''Business day'' is defined to mean any day other than a Saturday, Sunday, or legal holiday. ''Day of execution'' is defined with reference to the time at which the parties enter into a non-cleared swap. Because the location of the covered swap entity may be in a different time zone than the location of the counterparty, the ''day of execution'' definition provides special accommodations for the difference. The definition of ''day of execution'' is discussed in greater detail below under § __.3. These terms, which are used in §§ __.3 and __.4, are meant to provide additional clarity regarding the timing of margin requirements and address related concerns raised by commenters, as described in those sections below.

C. Section __.3: Initial Margin

After reviewing the comments to the 2014 proposal, the Agencies have decided to adopt § __.3 of the rule largely as proposed, albeit with a limited number of changes to address concerns raised by commenters with respect to the calculation, collection, and posting of initial margin.

Consistent with the 2014 proposal, the final rule requires a covered swap entity to collect initial margin when it engages in a non-cleared swap with another covered swap entity. Because all swap entities will be subject to a prudential regulator, CFTC, or SEC margin rule that requires them to collect initial margin, the proposed rule will result in a collect-and-post system for all non-cleared swaps between swap entities.

When a covered swap entity engages in a non-cleared swap with a financial end user with material swaps exposure,[132] the final rule will require the covered swap entity to collect *and* post initial margin with respect to the non-cleared swap. Under the final rule, a covered swap entity transacting with a financial end user with material swaps exposure must (1) calculate its initial margin collection amount using an approved internal model or the standardized look-up table, (2) collect an amount of initial margin that is at least as large as the initial margin collection amount less any permitted initial margin threshold amount (which is discussed in more detail below), and (3) post at least as much initial margin to the financial end user with material swaps exposure as the covered swap entity would be required to collect if it were in the place of the financial end user with material swaps exposure.

The Agencies are not adopting a ''collect only'' approach for financial end user counterparties recommended by a number of financial industry commenters. The posting requirement under the final rule is one way in which the Agencies seek to reduce overall risk to the financial system, by providing initial margin to non-dealer swap market counterparties that are interconnected participants in the financial markets.[133] Commenters representing public interest groups and asset managers supported this aspect of the Agencies' approach, stating that it not only would better protect financial end users from concerns about the failure of a covered swap entity, but also would require covered swap entities to account more fully for the risks of their swaps business.

The final rule permits a covered swap entity to select from two methods (the standardized look-up table or the internal margin model) for calculating its initial margin requirements as described in more detail in § __.8. In all cases, the initial margin amount required under the final rule is a minimum requirement; covered swap entities are not precluded from collecting additional initial margin (whether by contract or subsequent agreement with the counterparty) in such forms and amounts as the covered swap entity believes is appropriate.

1. Initial Margin Threshold

The final rule does not require a covered swap entity to collect or post initial margin collateral to the extent that the aggregate un-margined exposure either to or from its counterparty remains below $50 million.[134] In this regard, the final rule is generally consistent with the 2013 international framework and the 2014 proposal. The initial margin threshold amount of $50 million has been adjusted relative to the $65 million threshold in the proposed rule in the manner previously described.

The Agencies believe that allowing covered swap entities to apply initial margin thresholds of up to $50 million is consistent with the rule's risk-based approach, as it will provide relief to smaller and less systemically risky counterparties while ensuring that initial margin is collected from those counterparties that pose greater systemic risk to the financial system. The initial margin threshold also should serve to reduce the aggregate amount of initial margin collateral required by the final rule.

Under the final rule, the initial margin threshold applies on a consolidated entity level. It will be calculated across all non-exempted[135] non-cleared swaps between a covered swap entity and its affiliates and the counterparty and the counterparty's affiliates.[136] The requirement to apply the threshold on a fully consolidated basis applies to both the counterparty to which the threshold is being extended and the counterparty that is extending the threshold.[137] Applying this threshold on a consolidated entity level precludes the possibility that covered swap entities and their counterparties could create legal entities and netting sets that have no economic basis and are constructed solely for the purpose of applying additional thresholds to evade margin requirements. Although some commenters suggested the Agencies should not implement the threshold across the covered swap entity and counterparties on a consolidated basis, and instead rely on general anti-evasion authority to address efforts to exploit the threshold, the Agencies have not done so. The revisions to the affiliate and subsidiary definitions in the final rule, described above under § __.2, simplify implementation of the consolidated approach and should help address some of the concerns raised by commenters in this respect.

[132] The calculation of ''material swaps exposure'' is addressed in more detail in the discussion of the definitions above under § __.2.

[133] Some of these commenters contrasted the Agencies' 2014 proposed approach with those of European and Japanese regulators. In the United States, many financial end users operate outside of the jurisdiction of the prudential regulators to impose margin requirements. Thus, unlike the proposed Japanese and European requirements, which would cover a broader array of financial entities, a collect-only regime in the United States would be applicable only to covered swap entities and thus could leave a large number of financial entities with significant un-margined potential future exposures to their swap dealers.

[134] The final rule defines initial margin threshold amount in § __.2.

[135] To the extent that a non-cleared swap transaction is exempt from the margin requirements pursuant to § __.1(d), as added by the interim final rule, consistent with TRIPRA, the final rule excludes the exempted swap transaction from the calculation of the initial margin threshold amount.

[136] The threshold may be allocated among entities within the consolidated group, at the agreement of the covered swap entity and the counterparties, but the total must remain below $50 million on a combined basis. For an example illustrating allocations, see the 2014 proposal at 79 FR 57348, 57366 (Sept. 24, 2014).

[137] As discussed in connection with § __.11, below, calculation of the initial margin threshold for non-cleared swaps between a covered swap entity and its own affiliate is determined on a per-affiliate basis, with a $20 million per-affiliate threshold.

The Agencies note that the initial margin threshold represents a minimum requirement and should not be viewed as preventing parties from contracting with each other to require the collection of initial margin even when their exposures to one another are less than $50 million. For such transactions, the Agencies expect covered swap entities to make their own internal credit assessments when making determinations as to the credit and other risks presented by their specific counterparties. Therefore, a covered swap entity dealing with a counterparty it judges to be of high credit quality may determine that a counterparty-specific threshold of up to $50 million is appropriate.

In response to commenters, and to clarify the Agencies' intent, the Agencies note that the $50 million threshold is measured as the amount of initial margin for the relevant portfolio of non-cleared swaps and non-cleared security-based swaps, pursuant to either the internal model or standardized initial margin table used by the covered swap entity.[138] The Agencies have not incorporated suggestions by a commenter that the Agencies permit the threshold to be calculated in foreign currencies; conversion to USD can be readily accomplished and provides a measure of relative consistency in application from counterparty to counterparty within and across covered swap entities.

In addition, the Agencies have not incorporated suggestions by commenters for separate treatment of various arrangements under which the assets of a single investment fund vehicle or pension plan are treated as separate portfolios or accounts, each assigned some portion of the fund's or plan's total assets for purposes of managing them pursuant to different investment strategies or by different investment managers as agent for the fund or plan.[139] Commenters said these ''separate accounts'' are generally managed under documentation that caps the asset manager's ability to incur liabilities on behalf of the fund or plan at the amount of the assets allocated to the account. While the Agencies recognize these types of asset management approaches are well-established industry practice, and that separate managers acting for the same fund or plan do not currently take steps to inform the fund or plan of their non-cleared swap exposures on behalf of their principal on a frequent basis, the Agencies are not persuaded that it would be appropriate to extend each separate account its own initial margin threshold. Based on the comments, it appears the liability cap on each account manager often will be reflected in the fund's or plan's contract with the manager. If one manager breaches its limit, there could be cross-default implications for other managed accounts, and in periods of market stress, the cumulative effect of multiple managers' non-cleared swaps could, in turn, strain the fund's or plan's resources. Because all the swaps are transacted on behalf of a single legal principal, the Agencies do not believe that the subdivision of these separately managed accounts is sufficient to merit the extension of separate thresholds.[140] Nevertheless, the Agencies expect that in most cases, two separate investment funds of a single asset manager would not be consolidated under the relevant accounting standards and thus would not be affiliates under this rule.

2. Timing

The final rule establishes the timing under which a covered swap entity must comply with the initial margin requirements set out in § __.3(a) and (b). Under § __.3(c) of the final rule, a covered swap entity, with respect to any non-cleared swap to which it is a party, must, on each business day, comply with the initial margin requirements for a period beginning on or before the business day following the day of execution of the swap and ending on the date the non-cleared swap is terminated or expires. ''Business day'' is defined in § __.2 to mean any day other than a Saturday, Sunday, or legal holiday.[141]

In practice, each covered swap entity typically will have a portfolio of swaps with a specific counterparty, and the covered swap entity will collect and post initial margin for that portfolio with that counterparty on a rolling basis. The final rule requires the covered swap entity to collect and post initial margin each business day for this portfolio of swaps, based on the initial margin amount calculated for that portfolio by the covered swap entity on the previous business day.[142]

As the covered swap entity and its counterparty enter into new swaps, adding them to the portfolio, these new swaps need to be incorporated into the covered swap entity's calculation of initial margin amounts to be posted and collected on this daily cycle. When a covered swap entity and its counterparty are located in the same or adjacent time zones, this is a straightforward process. However, when the covered swap entity is located in a distant time zone from the counterparty, or the two parties observe different sets of legal holidays, this can be less straightforward.

The Agencies have added new provisions to the final rule to accommodate practical considerations that arise in these circumstances.[143] The final rule requires the covered swap entity to post and collect initial margin on or before the end of the business day after the ''day of execution,'' as defined in § __.2 of the rule. The ''day of execution'' is determined with reference to the point in time at which the parties enter into the non-cleared swap. When the location of the covered swap entity is in a different time zone than the location of the counterparty, the ''day of execution'' definition provides three special accommodations for the difference. These accommodations are made in recognition of the fact that each of the two parties to the swap will, as a practical necessity, observe its own ''business day'' in transmitting

[138] Although one central clearing commenter urged the Agencies to require covered swap entities to make granular disclosures about the utilization of the initial margin threshold to their investors, credit providers, and the central counterparties of which the covered swap entity is a member, the suggestion is beyond the scope of this margin rulemaking. The Agencies note the final rule does not prohibit a covered swap entity from providing this information, should it wish to negotiate that arrangement with an interested party.

[139] One industry group commenter also cited as an example a securitization vehicle that creates separate issuances of asset-backed securities through use of a series trust.

[140] Some commenters expressing this concern made the same point with respect to application of the material swaps exposure threshold, which is also calculated on a legal entity basis. The Agencies have the same reservations about subdividing the material swaps exposure test at the managed account level, and these reservations are even somewhat compounded given that the Agencies have revised the threshold to $8 billion in reflection of the financial end user's overall market exposure, instead of a covered-swap-entity-specific exposure.

[141] A ''business day'' under the final rule is not limited by or tied to typical business hours. A swap dealer seeking to post or collect margin may make the transfer during a ''business day'' but at a time which is before or after typical business hours. So, for example, a posting that takes place at 10 p.m. local time on a Monday is still recognized as being made on Monday's business day under the final rule.

[142] Of course, if the initial margin amounts have not changed, or the change to the posting or collecting amount (combined with changes in the variation margin amount, as applicable) is less than the minimum transfer amount specified in § __.5(b), no posting or collection will be required.

[143] The approach is patterned on principles incorporated in the CFTC's rulemaking on clearing execution, with differences the Agencies believe are appropriate in consideration of the bilateral nature of non-cleared swap margin and the non-standardized terms of non-cleared swaps. *See* Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act, 77 FR 74,284 (Dec. 13, 2012), *available at: http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-29211a.pdf.*

instructions to the third-party custodian.

First, if at the time the parties enter into the swap, it is a different calendar day at the location of each party, the day of execution is deemed to be the latter of the two calendar days. For example, if a covered swap entity located in New York enters into a swap at 3:30 p.m. on Monday with a counterparty located in Japan, in the Japanese counterparty's location, it is 4:30 a.m. on Tuesday, and the day of execution (for both parties) will be deemed to be Tuesday.

Second, if a non-cleared swap is entered into between 4:00 p.m. and midnight in the location of a party, then such non-cleared swap shall be deemed to have been entered into on the immediately succeeding day that is a business day for both parties, and both parties shall determine the day of execution with reference to that business day. For example, if a covered swap entity located in New York enters into a swap at noon on Friday with a counterparty located in the U.K., in the U.K. counterparty's location, it is 5:00 p.m. on Friday, and the U.K. counterparty will be deemed to enter into the swap the following Monday. Or, if a covered swap entity located in New York enters into a swap at noon on Friday with a counterparty located in Japan, in the Japanese counterparty's location, it is 1:00 a.m. on Saturday, and the Japanese counterparty will be deemed to enter into the swap the following Monday. In both examples, the day of execution (for both parties) will be Monday.

Third, if the day of execution determined under the foregoing rules is not a business day for both parties, the day of execution shall be deemed to be the immediately succeeding day that is a business day for both parties. For example, this addresses the outcome arising from a non-cleared swap entered into by a covered swap entity in New York at noon on Friday with a counterparty in Japan, where it would be 1:00 a.m. on Saturday. Under the first provision, the latter calendar day would be deemed the day of execution, which would be Saturday. Accordingly, this third provision would operate to move the deemed day of execution to the next business day for both parties, *i.e.,* Monday. As a further example under the same circumstances, if the Monday were a legal holiday in New York, the day of execution would then be deemed to be Tuesday for both parties.

When a covered swap entity adds a new non-cleared swap to its portfolio with a specific counterparty, these three provisions may result in different outcomes as to the ''day of execution'' for that swap pursuant to the definition in § __.2. However, § __.3(c) consistently requires the covered swap entity to begin posting and collecting initial margin reflecting that swap no later than the end of the business day following that day of execution and thereafter collect and post on a daily basis. The Agencies believe the final rule should provide adequate time for the covered swap entity to include the new swap in the regular initial margin cycle, under which the covered swap entity calculates the initial margin posting and collection requirements each business day for a portfolio of swaps covered by an EMNA with a counterparty, and the independent custodian(s) for both parties to hold segregated eligible margin collateral in those amounts by the end of the next business day, pursuant to the respective instructions of the parties. The covered swap entity is required to continue including the swap in its determination of the initial margin posting and collection requirements for that portfolio until the date the swap expires or is terminated.

All commenters that addressed the Agencies' proposed timing requirement for initial margin collection opposed it as unworkable. The basis for these objections included the fact that the settlement and delivery periods for many types of eligible margin securities are longer than the time allowed for margin collection under the proposed rule; the potential inability of financial end users to arrange for collateral transfers under the proposed rule's timeframes; and the difficulties encountered where the parties are in distant time zones. Other concerns included the fact that valuations are typically determined after market close and that the proposed rule did not include time for portfolio reconciliation and dispute resolution. Commenters proposed a number of alternatives, including moving to a T+2 basis; requiring prompt margin calls no later than a T+1 or T+2 basis, with margin transfer occurring one or two days thereafter or according to the standard settlement cycle for the type of collateral; requiring margin collection and settlement weekly; or simply requiring margin collection on a prompt or reasonable basis.

The Agencies have made limited adjustments to the final rule to accommodate operational concerns created by differences in time zones and legal holidays between the counterparties, but otherwise have retained the proposed approach. The Agencies recognize that the final rule requires initial margin to be posted and collected so quickly that covered swap entities and their counterparties may be required to take steps such as pre-positioning eligible margin collateral securities at the custodian and using readily-transferrable forms of eligible collateral, such as cash, to place additional margin quickly with the custodian from time to time, or to initially supply readily-transferrable forms of eligible collateral and subsequently arrange to substitute other eligible margin collateral securities after the initial margin collateral has been delivered to the custodian and the minimum margin requirements have been satisfied. The Agencies also recognize that the final rule will require portfolio reconciliation and dispute resolution to be performed after initial margin has been collected, as adjustments to the original margin call, rather than before. While the Agencies recognize the incremental regulatory burden embedded in the final rule's timing requirement, the Agencies believe the additional delay that would be introduced by the commenters' alternatives would reduce the overall effectiveness of the margin requirements.

3. Transactions With Other Counterparties and Transactions Exempt from the Margin Requirements Pursuant to the Terrorism Risk Insurance Program Reauthorization Act

The provisions of the final rule requiring a covered swap entity to collect initial margin amounts calculated under the standardized approach or an improved internal model apply only with respect to counterparties that are financial end users with material swaps exposure or swap entities.[144] For other counterparties, § __.3(d) of the final rule directs covered swap entities to collect initial margin at such times and in such forms and amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such swaps.

Consistent with the proposed rule, the types of counterparties covered by § __.3(d) are financial end users *without* a material swaps exposure, as well as financial entities the final rule specifically excludes from the definition of a ''financial end user'' (*e.g.,* multilateral development banks).[145] In

[144] The same is true with respect to the final rule's requirements for documentation, eligible collateral, and custody of initial margin collected by a covered swap entity.

[145] These exclusions are contained in paragraph (2) of the definition of ''financial end user'' in § __.2 of the final rule.

the proposed rule, the Agencies also applied § __.3(d) to all other counterparties. After the proposed rule was issued, Congress enacted TRIPRA which exempts the non-cleared swaps and security-based swaps of specific counterparties (that are not swap entities) from these regulatory margin requirements.[146] Accordingly, § __3(d) of the final rule will apply to other nonfinancial counterparties on an even more limited scope than the Agencies proposed, covering nonfinancial counterparties outside the group of entities eligible for the clearing exceptions and exemptions referenced in TRIPRA and § __.1(d) as added by the interim final rule, as well as entities that are within that group but that are engaging in specific non-cleared swaps in a manner that does not satisfy the criteria for hedging or mitigating commercial risk within the meaning of those clearing exceptions and exemptions.[147]

Some commenters representing public interest groups raised concerns about the proposed rule's treatment of other counterparties. These concerns ranged from fears that large market players (such as the type of entities that once included Enron, among others) would be able to participate in the markets on an unmargined basis to disappointment that the Agencies did not at least include a prudential requirement for a specific internal exposure limit for commercial counterparties.[148] Commenters representing commercial end users generally supported the proposed rule's approach and described it as consistent with prudent current market practice. While some commenters also questioned whether the proposed rule's treatment of other counterparties was consistent with the statutory directive to impose margin and capital requirements on all non-cleared swaps, the Agencies believe the approach is consistent with the Dodd-Frank Act's risk-based approach to establishing margin requirements.

E. Section __.4: Variation Margin

1. Overview of the Final Rule

After carefully reviewing the comments to the 2014 proposal, the Agencies have decided to adopt § __.4 of the rule largely as proposed, but also make a limited number of changes in the final rule to address concerns raised by commenters with respect to the calculation and exchange of variation margin.

Consistent with the 2014 proposal and the final rule's provisions on initial margin, § ___.4 of the final rule requires a covered swap entity to collect variation margin when it engages in a non-cleared swap transaction with another covered swap entity. Because all swap entities will be subject to a prudential regulator, CFTC, or SEC margin rule that requires them to collect variation margin, the final rule will result in a collect-and-post system for all non-cleared swaps between swap entities.

When a covered swap entity engages in a non-cleared swap transaction with a financial end user, regardless of whether or not the financial end user has a material swaps exposure, the final rule will require the covered swap entity to collect *and* post variation margin with respect to the non-cleared swap. The final rule requires a covered swap entity to collect or post (as applicable) variation margin on non-cleared swaps in an amount that is at least equal to the increase or decrease (as applicable) in the value of such swaps since the previous exchange of variation margin.

Consistent with the 2014 proposal, a covered swap entity may *not* establish a threshold amount below which it need not exchange variation margin on swaps with a swap entity or financial end user counterparty (although transfers below the minimum transfer amount would not be required, as discussed in § __.5).

The Agencies believe the bilateral exchange of variation margin will support the safety and soundness of the covered swap entity as well as effectively reduce systemic risk by protecting both the covered swap entity and its counterparty from the effects of a counterparty default.

2. ''Collecting'' and ''Posting'' Variation Margin

Unlike the 2014 proposal, which used the terms ''pay'' and ''paid'' to refer to the transfer of variation margin, the final rule refers to variation margin in terms of ''post'' and ''collect.'' After carefully reviewing the comments on the 2014 proposal that addressed the appropriate characterization of the transfer of variation margin, the Agencies have determined that it is more appropriate to refer to variation margin collateral as having been ''posted,'' rather than ''paid,'' consistent with the treatment of initial margin.

Among the reasons underlying the Agencies' proposal to refer to variation margin in terms of payment was the existing market practice of swap dealers to exchange variation margin with other swap dealers in the form of cash. As is discussed below in the final rule's provisions on eligible collateral, the Agencies have concluded that it is appropriate to permit financial end users to use other, non-cash forms of collateral for variation margin. This revision to the nomenclature of the final rule is consistent with the Agencies' inclusion of eligible non-cash collateral for variation margin.

In the context of cash variation margin, commenters also expressed concerns that the Agencies' choice of the ''pay'' nomenclature reflected an underlying premise of current settlement that may be inconsistent with various operational, accounting, tax, legal, and market practices. The Agencies use of the ''post'' and ''collect'' nomenclature for the final rule is not intended to reflect upon or alter the characterization of variation margin exchanges—either as a transfer and settlement or a provisional form of collateral—for other purposes in the market.

3. Variation Margin Definitions and Calculation of Market Value

Under the final rule, ''variation margin'' means the collateral provided by one party to its counterparty to meet the performance of its obligations under one or more non-cleared swaps or non-cleared security-based swaps between

[146] As directed by TRIPRA, the Agencies are issuing § __.1(d) as an interim final rule with request for public comment.

[147] One commenter raised concerns about certain non-cleared matched commodity swaps that economically offset each other and that are used to hedge municipal prepayment transactions for the supply of long-term natural gas or electricity (referred to as ''Municipal Prepayment Transactions''). This commenter contended that each side of this matched pair of swaps could be subject to different margin treatment that could make these transactions prohibitively expensive. In particular, according to this commenter, the first or ''front-end'' swap in this matched pair would be between a nonfinancial end user (typically a government gas supply agency) and a swap entity, while the second swap or ''back-end'' swap generally would be between a swap entity and a prepaid gas supplier that is a swap entity or other financial entity. The Agencies note that covered swap entities that are parties to these and other types of matched or offsetting swap transactions would need to evaluate each swap to determine whether the requirements of the final rule apply. Under the final rule, it is possible that one swap may be exempt from the requirements of the rule while an offsetting swap is subject to the final rule's requirements as these requirements are set on a risk-basis as required under the statute. This commenter also contended that the rule would cause counterparties to matched commodity swaps to face increased costs to the extent that the rules apply a capital charge to a covered swap entity in connection with these matched swaps. As provided in § __.12, the final rule references existing capital rules including any associated capital charge under existing capital rules.

[148] Another public interest group commenter stated that the treatment of other counterparties under the proposed rule should adhere to the CFTC end user exemptions to more clearly protect small commercial end users from procyclical margin requirements. The Agencies note the TRIPRA amendments appear to address this point.

the parties as a result of a change in value of such obligations since the last time such collateral was provided.[149] The amount of variation margin to be collected or posted (as appropriate) is the amount equal to the cumulative mark-to-market change in value to a covered swap entity of a non-cleared swap or non-cleared security-based swap, as measured from the date it is entered into (or, in the case of a non-cleared swap or non-cleared security-based swap that has a positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a non-cleared swap or non-cleared security-based swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such non-cleared swap or non-cleared security-based swap.[150] The covered swap entity must collect this amount if the amount is positive, and post this amount if the amount is negative.

Several financial end user commenters stated that this aspect of the 2014 proposal was unclear with regard to the calculation of minimum variation margin requirements. Specifically, these commenters stated that the 2014 proposal appeared to require a covered swap entity to determine minimum variation margin requirements based on the market value of a swap calculated only from the covered swap entity's own perspective, rather than at a mid-market price consistent with current market practice. Commenters stated that the proposed approach would result in dealer exposures being over-collateralized and their counterparties' exposures being under-collateralized.

The Agencies wish to clarify that the reference in the rule text to the ''cumulative mark-to-market change in value to a covered swap entity of a non-cleared swap or non-cleared security-based swap'' is not designed or intended to have the effect suggested by commenters. The market value used to determine the cumulative mark-to-market change will be mid-market prices, if that is consistent with the agreement of the parties.[151] The final rule is consistent with market practice in this respect. The rule text's reference to ''change in value to a covered swap entity'' refers to whether the value change is positive or negative from the covered swap entity's standpoint. This ties to the final rule's requirement for the covered swap entity to post variation margin when the variation margin amount is positive, or collect variation margin when the variation margin amount is negative.

The final rule also permits the calculation of variation margin amounts to recognize netting across the portfolio of non-cleared swaps transacted between the covered swap entity and its counterparty, subject to a number of conditions. These provisions of the rule have been relocated to § __.5 of the final rule, as discussed later in this **SUPPLEMENTARY INFORMATION**.

4. Frequency

The final rule largely retains the proposed rule's requirement for variation margin to be posted or collected on a T+1 timeframe. The final rule requires variation margin to be posted or collected no less than once per business day, beginning on the business day following the day of execution. These provisions of the final rule operate in the same way as those discussed earlier in this **SUPPLEMENTARY INFORMATION**, in the description of the final rule's initial margin requirements.

5. Transactions with ''Other Counterparties'' and Transactions Exempt from the Margin Requirements Pursuant to the Terrorism Risk Insurance Program Reauthorization Act

Consistent with the 2014 proposal, the final rule requires a covered swap entity to exchange variation margin for non-cleared swaps with swap entities, and financial end users (regardless of whether the financial end user has a material swaps exposure). However, as discussed earlier in this **SUPPLEMENTARY INFORMATION**, the enactment of TRIPRA exempts certain nonfinancial counterparties from the scope of this rulemaking for non-cleared swaps that hedge or mitigate commercial risk.[152]

For other counterparties, § __.4(c) of the final rule directs covered swap entities to collect variation margin at such times and in such forms and amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such swaps, consistent with the 2014 proposal. These other counterparties include sovereign counterparties, financial entities the final rule specifically excludes from the definition of financial end user, nonfinancial counterparties outside the group of entities covered by the TRIPRA exemption, and nonfinancial counterparties within that group of entities but that are engaging in specific non-cleared swaps or in a manner that does not satisfy the criteria for hedging or mitigating commercial risk.

Overall, this aspect of the variation margin provisions of the final rule is consistent with those for initial margin. The one difference is that all transactions with financial end user counterparties are subject to the variation margin requirements, while only financial end user counterparties with material swaps exposure are subject to initial margin requirements. The Agencies generally believe it is appropriate to apply the minimum variation margin requirements to transactions with all financial entity counterparties, not just those with a material swaps exposure, because the daily exchange of variation margin is an important risk mitigant that (i) reduces the build-up of risk that may ultimately pose systemic risk; (ii) imposes a lesser liquidity burden than does initial margin; and (iii) reflects both current market practice and a risk management best practice.

F. Section __.5: Netting Arrangements, Minimum Transfer Amount and Satisfaction of Collecting and Posting Requirements

1. Netting Arrangements

Section __.5(a) of the final rule permits a covered swap entity to calculate initial margin (using an initial margin model) or variation margin on an aggregate net basis across non-cleared swap transactions with a counterparty that are executed under an EMNA.[153] Although the proposal provided that the margin requirements would not apply to non-cleared swaps entered into before the rule's compliance dates, as a general

[149] *See* § __.2 of the final rule.

[150] *See* § __.2 of the final rule defining ''variation margin amount.''

[151] Additionally, the Agencies note that the final margin requirements should be viewed as minimums. To the extent that two counterparties agree to transfer collateral in addition to the minimum amount required by the final rule, and assuming that doing so would be consistent with safety and soundness, the final rule will not impede them.

[152] The Agencies proposed that covered swap entities collect variation margin from these so-called ''commercial end user'' counterparties at such times and in such forms and amounts (if any) that the covered swap entity determined appropriately addresses the credit risk posed by the counterparty and the risks of the non-cleared swaps. This is the same treatment the prudential regulators proposed with respect to initial margin, and the views of commenters discussed earlier in this Supplementary Information on this aspect of the initial margin proposal were equally applicable to this aspect of the variation margin proposal.

[153] Initial margin and variation margin amounts may not be netted against each other under the final rule. In addition, initial margin netting is only for the purposes of calculating the collection amount or post amount under an approved initial margin model, and these amounts may not be netted against each other.

rule, the proposal provided that if an EMNA covered non-cleared swaps that were entered into before the applicable compliance date, those non-cleared swaps would be subject to the requirements of the rule and must be included in the aggregate netting portfolio for purposes of calculating the required margin.

However, as discussed by several commenters, the Agencies recognize that covered swap entities and their counterparties may wish to separate netting portfolios under a single EMNA. Accordingly, the final rule provides that an EMNA may identify one or more separate netting portfolios that independently meet the requirement for close-out netting [154] and to which, under the terms of the EMNA, the collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other non-cleared swaps covered by the agreement. (These separate netting portfolios are commonly covered by separate credit support annexes to the EMNA.) This rule facilitates the ability of the parties to document two separate netting sets, one for non-cleared swaps that are subject to the final rule and one for swaps that are not subject to the margin requirements.[155] A netting portfolio that contains only non-cleared swaps entered into before the applicable compliance date is not subject to the requirements of the final rule. The rule does not prohibit the parties from including one or more pre-compliance-date swaps in the netting portfolio of non-cleared swaps subject to the margin rule, but they will thereby become subject to the final rule's margin requirement, as part of the netting portfolio. Similarly, any netting portfolio that contains any non-cleared swap entered into after the applicable compliance date will subject the entire netting portfolio to the requirements of the final rule.

The netting provisions of the final rule also address the implications of status changes for counterparties. As discussed above, the final rule imposes a requirement to exchange initial margin only with respect to financial end users whose swap portfolios exceed the material swaps exposure threshold. This means a covered swap entity may accumulate a portfolio of swaps with a financial end user below the threshold, subject to a variation margin requirement, and later if the financial end user crosses the threshold, additional swaps entered into after that change in the financial end user's status will be subject to both initial and variation margin requirements. To address this possibility, the final rule extends the treatment of separate netting portfolios under a single ENMA beyond pre-compliance-date swaps to include separate netting portfolios for swaps entered into before and after a financial end user's change into a higher risk status.[156]

Also, to address circumstances in which, for example, a covered swap entity enters into a netting agreement with a counterparty whose liquidation regime is somewhat specialized and the covered swap entity cannot conclude after sufficient legal review on a well-founded basis that a netting agreement meets the definition of EMNA in § __.2, § __.5(a)(4) of the final rule requires the covered swap entity to collect the gross margin amount required but may still apply the netting provisions of the rule in determining the amount of margin it must post to the counterparty.

The netting provisions in the final rule are modified from the proposal in order to provide clarifications that address implementation concerns raised by commenters. The proposed rule provided that if non-cleared swaps entered into prior to the applicable compliance date were included in the EMNA, those swaps would be subject to the margin requirements.[157] Under the proposal, a covered swap entity would have needed to establish a new EMNA to cover swaps entered into after the compliance date in order to exclude pre-compliance date swaps. A number of commenters argued that, in order to allow close-out netting, the final rule should not require new master agreements to separate pre- and post-compliance date swaps, and that parties should be permitted to use credit support annexes that are part of the EMNA instead of new master agreements to distinguish pre- and post-compliance date swaps.[158] The final rule addresses these concerns and preserves close-out netting by allowing an EMNA to identify one or more separate netting portfolios to which the requirements of the final rule apply on an aggregate net basis. Thus, under the final rule, pre-compliance date swaps in the same EMNA as post-compliance date swaps would be subject to the requirements of the final rule unless they are treated under the EMNA as a separately identified netting portfolio.

A few commenters also contended that counterparties should be able to exchange margin on a net basis even where a counterparty is subject to an insolvency regime that may not satisfy the EMNA definition (*e.g.,* certain U.S. pension funds and insurance companies). Certain commenters similarly urged that the final rule should permit the collection and posting on a net basis in foreign jurisdictions without legal frameworks that recognize concepts such as netting. The Agencies believe it would be inconsistent with the purposes and objectives of the rule to permit a covered swap entity to net a counterparty's non-cleared swap obligations to the covered swap entity in determining margin collection amounts, unless the covered swap entity can conclude on a well-founded basis that the netting provisions of the agreement can be enforced against the counterparty (as required in accordance with the final rule's definition of the EMNA). However, commenters noted that requiring covered swap entities to post collateral on a gross basis under circumstances in which there is a risk the counterparty's liquidating agent or receiver might not observe the netting requirement actually exposes the covered swap entity to greater risk. The final rule addresses these concerns by allowing the covered swap entity to post the net amount to the counterparty where it cannot conclude that an agreement meets the EMNA definition. In cases where the EMNA does not meet the definition in § __.2, however, the covered swap entity must still collect the gross amount of margin required under the final rule, even if it negotiates to post margin to the counterparty on a net basis.

Certain commenters urged that non-cleared swaps should be permitted to be netted against any other products and exposures if such netting is legally enforceable. The Agencies declined to incorporate this request in the final rule. The Agencies do not believe that it

[154] *See* § __.2 of the final rule (paragraph (1) of the EMNA definition).

[155] In addition, a covered swap entity may use a holding period equal to the shorter of five business days or the maturity of the portfolio for any swap that would be subject to clearing with an affiliate, provided these swaps must be netted separately from other swaps.

[156] As discussed earlier, the change in status might also occur as a counterparty moves in or out of financial end user status entirely, or moves in or out of ''other counterparty'' status. The final rule extends the separate netting portfolio treatment to all status changes equally.

[157] The netting provisions in the proposal were in § __.4(d) for variation margin and § __.8(b)(2) for initial margin.

[158] One commenter also requested clarification that the use of an EMNA does not prevent use of a master-master netting agreement. The final rule requires that any non-cleared swaps that are netted for purposes of calculating the margin requirements under the final rule are subject to an EMNA that meets the definition in § __.2 of the final rule regardless of whether or not there is a master-master EMNA.

would be appropriate for margin requirements for non-cleared swaps to be offset by netting other products or exposures across markets against other products that may present different concerns about safety and soundness or financial stability, or that are not subject to similar associated margin requirements. Such treatment appears inconsistent with the purposes of the Dodd-Frank Act.

2. Minimum Transfer Amount

The final rule provides for a minimum transfer amount for the collection and posting of margin by covered swap entities. The final rule does not require a covered swap entity to collect or post margin from or to any individual counterparty unless and until the combined amount of initial and variation margin that must be collected or posted under the final rule, but has not yet been exchanged with the counterparty, is greater than $500,000.[159] This minimum transfer amount is consistent with the 2013 international framework and has been adjusted relative to the amount that appeared in the 2014 proposal in the manner previously described.

The Agencies received a few comments suggesting that the minimum transfer amount should be applied separately to initial margin and variation margin. The final rule has been modified from the proposal to make clear that the minimum transfer amount applies to the combined amount of initial and variation margin. The Agencies believe that the proposal's minimum transfer amount of $500,000 is appropriately sized to generally alleviate the operational burdens associated with making *de minimis* margin transfers and that the amount applies to both initial and variation margin transfers on a combined basis. Another commenter requested confirmation that the rule allows a minimum transfer amount but does not require it. In response to this comment, the Agencies confirm that the minimum transfer amount is allowed but not required under the final rule, and parties are free to collect and post margin below that amount.

3. Satisfaction of Collecting and Posting Requirements

Under § __.5(c) of the final rule, a covered swap entity shall not be deemed to have violated its obligation to collect or post initial or variation margin from or to a counterparty if: (1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and (2) the covered swap entity has (i) made the necessary efforts to collect or post the required margin, or has otherwise demonstrated upon request to the satisfaction of the appropriate Agency that it has made appropriate efforts to collect or post the required margin, or (ii) commenced termination of the non-cleared swap with the counterparty promptly following the applicable cure period and notification requirements.

The Agencies received a comment on this provision suggesting that, since financial end users would be required to exchange margin with a covered swap entity in amounts determined by the covered swap entity's models, the final rule should allow for a dispute resolution process acceptable to both the covered swap entity and its counterparty. Under the final rule, disputes that may arise between a covered swap entity and its counterparty should be handled pursuant to the terms of the relevant contract or agreement and in the normal course of business. A covered swap entity would not be deemed to have violated its obligation to collect or post initial or variation margin from, or to a counterparty, if the counterparty is acting in accordance with agreed-upon practices to settle a disputed trade.

G. Section __.6: Eligible Collateral

After reviewing the comments to the 2014 proposal, the Agencies have decided to make a number of changes to the final rule with respect to the list of eligible collateral.

1. Variation Margin

With respect to variation margin, the 2014 proposal would have limited eligible collateral to immediately available cash funds, denominated either in USD or in the currency in which payment obligations under the non-cleared swap are required to be settled. However, after reviewing comments from financial end users of derivatives, such as insurance companies, mutual funds, and pension funds, the Agencies have expanded the list of eligible variation margin for non-cleared swaps between a covered swap entity and financial end users. These commenters generally argued that limiting variation margin to cash is inconsistent with current market practice for financial end users; is incompatible with the 2013 international framework agreement; and would drain the liquidity of these financial end users by forcing them to hold more cash. In response to these comments, the final rule permits assets that are eligible as initial margin to also be eligible as variation margin for swap transactions between a covered swap entity and financial end user, subject to the applicable haircuts for each type of eligible collateral.[160]

This change aligns the rule more closely with market practice. Commenters indicated many types of financial end users exchange variation margin with their swap dealers in the form of non-cash collateral that is compatible with the assets they hold as investments. This practice permits them to maximize their investment income and minimize margin costs, even though these assets are subject to valuation haircuts when posted as variation margin.

The Agencies note however (as described in the 2014 proposal) that most of the variation margin by total volume continues to be in the form of cash exchanged between swap dealers.[161] Therefore, consistent with the 2014 proposal, variation margin exchanged by a covered swap entity with another swap entity must be in the form of immediately available cash funds. Some commenters representing public interest groups favored limiting variation margin exchanged between covered swap entities to cash, whereas some commenters representing the financial sector expressed concern that regulators in other key market jurisdictions have not proposed comparable variation margin restrictions. The Agencies continue to believe that limiting variation margin exchanged between swap entities to cash is consistent with regulatory and industry initiatives to improve standardization and efficiency in the OTC swaps market. Swap entities have access to cash, and its continued use as variation margin between swap entities will reduce the potential for disputes over the value of variation margin collateral, due to the absence of

[159] *See* § __.5(b) of the final rule. The minimum transfer amount only affects the timing of margin collection; it does not change the amount of margin that must be collected once the $500,000 threshold is crossed. For example, if the margin amount due from (or to) the counterparty were to increase from $500,000 to $800,000, the covered swap entity would be required to collect the entire $800,000 (subject to application of any applicable initial margin threshold amount).

[160] Variation margin is never subject to the segregation requirements set forth in § _.7 of the final rule, regardless of whether it consists of cash or non-cash collateral.

[161] According to the 2015 ISDA margin survey, 77 percent of variation margin received and 77 percent of variation margin delivered is in the form of cash, *https://www2.isda.org/functional-areas/research/surveys/margin-surveys/.*

associated market and credit risks. Also, in periods of severe market stress, the ultimate liquidity of cash variation margin exchanged between covered swap entities—which occupy a key position to provide and maintain trading liquidity in the market for non-cleared swaps—should assist in preserving the financial integrity of that market and the stability of the U.S. financial system.

However, for reasons discussed below, the Agencies are revising the final rule to expand the denominations of immediately available cash funds that are eligible. Whereas the 2014 proposal only recognized USD or the currency of settlement, the final rule expands the category to include any major currency.[162]

2. Initial Margin

With respect to initial margin, the final rule includes an expansive list of eligible collateral that is largely consistent with the list set forth in the 2014 proposal.[163] Specifically, in addition to immediately available cash funds, denominated in any major currency or the currency of settlement, the final rule provides that the following collateral may be posted or collected, as appropriate, in satisfaction of the minimum initial margin requirements:

- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;
- A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of the Treasury) whose obligations are fully guaranteed by the full faith and credit of the U.S. government;
- A security that is issued by, or fully guaranteed as to the timely payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under applicable regulatory capital rules;
- A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the timely payment of principal and interest by a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;
- A publicly traded debt security, but not an asset-backed security, that is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government and that the covered swap entity determines is ''investment grade'' (as defined by the appropriate prudential regulator);
- A security that is issued by or unconditionally guaranteed as to the timely payment of principal and interest by the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;
- A publicly traded debt security that the covered swap entity determines is ''investment grade'' (as defined by the appropriate prudential regulator);
- A publicly traded common equity security that is included in the Standard and Poor's Composite 1500 Index, an index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for the purposes of including publicly traded common equity as initial margin, or any other index for which a covered swap entity can demonstrate that the equities represented are as liquid and readily marketable as those included in the Standard and Poor's Composite 1500 Index;
- Certain redeemable government bond funds, described below; and
- Gold.

In contrast to broad commenter concerns about the proposal's restrictive treatment of eligible collateral for variation margin, commenters addressing initial margin eligible collateral either generally supported the proposed asset categories or sought limited modifications. Commenters representing public interest groups supported the Agencies' rationale in the 2014 proposal of limiting initial margin collateral so as to exclude assets prone to excessive exposures to credit, market, or foreign exchange risk in times of market stress. Some of these commenters questioned the Agencies' inclusion of equities, expressing concern about the idiosyncratic risks of equity issuers. The Agencies are preserving this aspect of the proposal in the final rule, including the requirement for a minimum 15 percent haircut on equities in the S&P 500 Index and a minimum 25 percent haircut for those in the S&P 1500 Composite Index but not in the S&P 500 Index.[164] The Agencies note that, even with these restrictions designed to address liquidity and volatility, covered swap entities should also take concentrations into account, and prudently manage their acceptance of initial margin collateral, with the idiosyncratic risk of equity—and publicly traded debt—issuers in mind. Some public interest group commenters urged the Agencies to perform annual reviews of the eligible collateral categories and the haircuts. However, the Agencies believe that it is important to consider longer time periods incorporating periods of market stress, and the Agencies calibrated the rule's minimum haircuts accordingly.

Commenters representing the interests of asset managers, mutual funds, and other institutional asset managers asked the Agencies to expand the list of eligible collateral to include money market mutual funds and bank certificates of deposit, in the interests of providing financial end users with a higher yield than cash held by the margin custodian and more liquidity than direct holdings of government or corporate bonds. To accommodate this concern, the final rule adds redeemable securities in a pooled investment fund that holds only securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and cash funds denominated in USD. To provide a parallel collateral option for non-cleared swap portfolios in denominations other than USD, the pooled investment fund may be structured to invest in a pool of securities that are denominated in a common currency and issued by, or fully guaranteed as to the timely payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under applicable regulatory capital rules, and cash denominated in the same currency.

The final rule requires these pooled investment vehicles to issue redeemable securities representing the holder's proportional interest in the fund's net assets, issued and redeemed only on the basis of the fund's net assets prepared each business day after the holder

[162] The final rule defines the following as a ''major currency'': United States Dollar (USD); Canadian Dollar (CAD); Euro (EUR); United Kingdom Pound (GBP); Japanese Yen (JPY); Swiss Franc (CHF); New Zealand Dollar (NZD); Australian Dollar (AUD); Swedish Kronor (SEK); Danish Kroner (DKK); Norwegian Krone (NOK); and any other currency as determined by the prudential regulator of the covered swap entity.

[163] In the proposed rule, the FCA proposed a new definition of ''investment grade'' for collateral posted or collected by FCS institutions that is identical to 12 CFR 1.2(d). The FCA did not receive any comments on this proposed definition of ''investment grade.'' The FCA is adopting this definition in the final rule because it implements section 939A of the Dodd-Frank Act and is compatible with the FCA's safety and soundness authority.

[164] Although equities included in the S&P 500 Index are also included in the S&P 1500 Composite Index, equities in the S&P 500 Index are subject to the 15 percent minimum haircut, not the 25 percent minimum haircut.

makes its investment commitment or redemption request to the fund. These criteria are similar to those used for bank trust department common trust funds and common investment funds, to facilitate liquidity of the redeemable securities while still protecting holders of the fund's securities from dilution. The final rule also provides that assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or similar arrangements. This is to ensure consistency with the prohibition under § __.7 against custodian rehypothecation of initial margin collateral.

Consistent with the 2014 proposal, the final rule generally does not include asset-backed securities (''ABS''), including mortgage-backed securities (''MBS''), within the permissible category of publicly traded debt securities. However, ABS are included as eligible collateral if they are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury or another U.S. government agency whose obligations are fully guaranteed by the full faith and credit of the United States government; or if they are fully guaranteed by a U.S. GSE that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables repayment of the securities.

Publicly traded debt securities (that are not ABS) issued by GSEs are included in eligible collateral as long as the issuing GSE is either operating with capital support or another form of direct financial assistance received from the U.S. government that enables full repayment of principal and interest on these securities, or the covered swap entity determines the securities are ''investment grade'' (as defined by the appropriate prudential regulator).

Although the Agencies received several comments concerning the proposal's treatment of GSE securities, only modest changes have been made in the final rule. Commenters who asked the Agencies to consider GSE securities as eligible collateral for variation margin joined many others who opposed limiting variation margin collateral to cash only, a topic that was addressed in greater detail above.

Commenters stated that GSE debt securities already are widely used as collateral for non-cleared swaps and should continue to be eligible under the final rule given their historically low levels of volatility. A smaller number of the commenters argued that GSE MBS also should be eligible collateral given that markets have accepted GSE MBS as liquid, high-quality securities along with other GSE debt. A number of commenters suggested that GSE debt securities and MBS should qualify as eligible collateral, regardless of whether or not the GSE is operating with capital support or another form of financial assistance from the United States. Some commenters also questioned why the minimum haircut for debt securities of GSEs (operating without capital support or other financial assistance from the United States) is not lower than the minimum haircuts applicable to corporate debt. Another concern that some commenters raised is that the capital and margin rule for non-cleared swaps differs in its treatment of GSE securities from the liquidity coverage ratio rule that the Board, OCC, and FDIC issued in 2014.[165]

In the final rule, the Agencies recognize the unique nature of GSE securities by placing them in a category separate from both securities issued directly by U.S. government agencies and those from non-GSE, private sector issuers. However, the Agencies continue to believe the final rule should treat GSE securities differently depending on whether or not the GSE enjoys explicit government support, in the interests of both the safety and soundness of covered swap entities and the stability of the financial system. GSE debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government. Existing law, however, authorizes the U.S. Treasury to provide lines of credit, up to a specified amount, to certain GSEs in the event they face specific financial difficulties. An act of Congress would be required to provide adequate support if, for example, a GSE were to experience severe difficulty in selling its securities in financial markets because investors doubted its ability to meet its financial obligations.[166] The treatment of GSE securities by market participants as if those securities were nearly equivalent to U.S. Treasury securities in the absence of explicit U.S. Treasury support creates a potential threat to financial market stability, especially if vulnerabilities arise in markets where one or more GSEs are dominant participants, as occurred during the summer of 2008. The final rule's differing treatment of GSE collateral based on whether or not the GSE has explicit support of the U.S. government helps address this source of potential financial instability and recognizes that securities issued by an entity explicitly supported by the U.S. government might well perform better during a crisis than those issued by an entity operating without such support. The final rule adopts the approach that was used in the proposed rule and assigns the same minimum haircut to both corporate obligations and the debt securities of GSEs that are operating without capital support or another form of financial assistance from the United States. From the Agencies' perspective, this approach facilitates appropriate due diligence when a party considers the creditworthiness of a GSE security that it may accept as collateral.

To avoid so-called ''wrong-way risk,'' the final rule retains the 2014 proposal's provision excluding any securities issued by the counterparty or any of its affiliates. To avoid general wrong-way risk, the final rule continues to exclude securities issued by a bank holding company, a savings and loan holding company, a foreign bank, a depository institution, a market intermediary, or any company that would be one of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of one of the foregoing institutions. For the same reason, the Agencies have expanded this restriction in the final rule also to exclude securities issued by a non-bank systemically important financial institution designated by the Financial Stability Oversight Council. These entities are financial in nature and, like banks or market intermediaries, would be expected to come under significant financial stress in the event of a period of financial stress. Accordingly, the Agencies believe that it is also appropriate to restrict securities issued by these entities as eligible margin collateral to ensure that collected collateral is free from significant sources of ''wrong-way risk''.

The final rule does not allow a covered swap entity to fulfill the rule's minimum margin requirements with any assets not included in the eligible collateral list, which is comprised of assets that should remain liquid and readily marketable during times of financial stress. The use of alternative types of collateral to fulfill regulatory margin requirements would introduce concerns with pro-cyclicality (for example, the changes in the liquidity, price volatility, or wrong-way risk of collateral during a period of financial stress could exacerbate that stress) and could undermine efforts to ensure that collateral is subject to low credit, market, and liquidity risk. Therefore,

[165] *See* 79 FR 61439 (October 10, 2014) (*Liquidity Coverage Ratio: Liquidity Risk Measurement Standards*).

[166] Congress provided such support with the passage of the Agricultural Credit Act of 1987 and with the Housing and Economic Recovery Act of 2008.

the final rule limits the recognition of margin collateral to the aforementioned list of assets.

Counterparties that wish to make use of assets that do not qualify as eligible collateral under the final rule still would be able to pledge those assets with a lender in a separate collateral transformation arrangement, using the cash or other eligible collateral received from that separate arrangement to meet the minimum margin requirements.

3. Currency of Settlement, Collateral Valuation, and Haircuts

For those assets whose values may show volatility during times of stress, the final rule imposes an 8 percent cross-currency haircut, and standardized prudential supervisory haircuts that vary by asset class. When determining how much collateral will be necessary to satisfy the minimum initial margin requirement for a particular transaction, a covered swap entity must apply the relevant standardized prudential supervisory haircut to the value of the eligible collateral. The final rule's haircuts guard against the possibility that the value of non-cash eligible margin collateral could decline during the period between when a counterparty defaults and when the covered swap entity closes out that counterparty's swap positions.

The Agencies have revised the cross-currency haircut applicable to eligible collateral under the final rule. The cross-currency haircut will apply whenever the eligible collateral posted (as either variation or initial margin) is denominated in a currency other than the currency of settlement, except that in the case of variation margin in immediately available cash funds in any major currency are never subject to the haircut. The amount of the cross-currency haircut remains 8 percent, as it was in the 2014 proposal. The Agencies' have decided to eliminate the haircut on variation margin provided in immediately available cash funds denominated in all major currencies because the cash funds are liquid at the point of counterparty default, and there are robust markets in the major currencies that allow conversion or hedging to the currency of settlement or termination at relatively low cost. The Agencies are including in the final rule the cross-currency haircut for all eligible non-cash variation and initial margin collateral, in consideration of the limitations on market liquidity that can frequently arise on those assets in periods of market stress.

In response to commenters' request for clarification, the Agencies have revised the final rule text for the cross-currency haircut to refer to the ''currency of settlement,'' and have eliminated the corresponding formulation offered for comment in the 2014 proposal.[167] Commenters requested that the Agencies provide guidance about the rule's application to current market practice incorporating contractual provisions specifying an agreed-upon currency of settlement, transport, transit currencies and termination currencies.[168]

In identifying the ''currency of settlement'' for purposes of this final rule, the Agencies will look to the contractual and operational practice of the parties in liquidating their periodic settlement obligations for a non-cleared swap in the ordinary course, absent a default by either party. To provide greater clarity, the Agencies have added a new definition of ''currency of settlement'' to the rule. The Agencies have defined ''currency of settlement'' to mean a currency in which a party has agreed to discharge payment obligations related to a non-cleared swap, a non-cleared security-based swap, a group of non-cleared swaps, or a group of non-cleared security-based swaps subject to a master agreement at the regularly occurring dates on which such payments are due in the ordinary course.

For eligible non-cash initial margin collateral, the final rule expressly carves out of the cross-currency haircut assets denominated in a single termination currency designated as payable to the non-posting counterparty as part of the EMNA. The final rule accommodates agreements under which each party has a different termination currency. If the non-posting counterparty has the option to select among more than one termination currency as part of the agreed-upon termination and close-out process, the agreement does not meet the final rule's single termination currency condition. However, the single termination currency condition does not rule out an EMNA establishing more than one discrete netting set and establishing separate margining and early termination provisions for such a select netting set with its own single termination currency.[169]

As an alternative to the 8 percent cross-currency haircut, commenters urged the Agencies to permit any cross-currency sensitivity between the swap portfolio credit exposure and the margin collateral provided against that exposure to be measured as a component of the margin required to be exchanged under the rule. The Agencies are concerned this alternative presupposes the covered swap entity's certain knowledge, at the time margin amounts must be determined, of the collateral denomination to be posted by the counterparty in response to the margin call and the denomination of future settlement payments. The likelihood of such information being predictably available to the covered swap entity is not consistent with commenters' depiction of the amount of optionality exercised with respect to these factors by swap market participants in current market practice.

The 8 percent foreign currency haircut—to the extent it arises in application of the final rule—is additive to the final rule's standardized prudential supervisory haircuts that vary by asset class. These haircuts—set forth in Appendix B to the final rule—are unchanged from the 2014 proposal. They have been calibrated to be broadly consistent with valuation changes observed during periods of financial stress, as noted above. Although commenters suggested the Agencies permit covered swap entities to determine haircuts through the firm's internal models, the Agencies believe the simpler and more transparent approach of the standardized haircuts is more than adequate to establish appropriately conservative discounts on eligible collateral. The final rule permits initial margin calculations to be performed using an initial margin model in recognition of the fact that swaps and swap portfolios are characterized by a number of complex and inter-related risks that depend on the specifics of the swap and swap portfolio composition and are difficult to quantify in a simple, transparent and cost-effective manner. The exercise of establishing appropriate haircuts based on asset class of eligible collateral across long exposure periods is much simpler as the risk associated

[167] The 2014 proposal was formulated as ''the currency in which payment obligations under the swap are required to be settled.'' Proposed Rule, § __.6(a)(1)(ii). In the Supplementary Information published as part of the 2014 proposal, the Agencies addressed this language, noting that the entirety of the contractual obligations between the parties should be considered, including the terms of a master agreement governing the non-cleared swaps. The Agencies requested comment whether current market practices that would raise difficulties or concerns about identifying the appropriate settlement currency, from a contractual or operational standpoint. 79 FR 57348, 57371 (September 24, 2014).

[168] The guidance the Agencies are providing about currencies of settlement is specific to the application of this final rule on margin collecting and posting requirements for non-cleared swaps.

[169] As discussed above, the final rule permits discrete netting sets under a single eligible master netting agreement, subject to conditions specified in § __.5(a)(3)(ii).

with a position in any particular margin eligible asset can be reasonably and transparently determined with readily available data and risk measurement methods that are widely accepted.

Finally, because the value of collateral may change, a covered swap entity must monitor the value and quality of collateral previously collected or posted to satisfy minimum initial margin requirements. If the value of such collateral has decreased, or if the quality of the collateral has deteriorated so that it no longer qualifies as eligible collateral, the covered swap entity must collect or post additional collateral of sufficient value and quality to ensure that all applicable minimum margin requirements remain satisfied on a daily basis.

4. Other Collateral

Commenters representing commercial end users, such as energy sector firms, agricultural producers and processors, and manufacturing firms, requested that the Agencies confirm that these counterparties, which were not subject to minimum initial margin determined under the standardized approach or internal model of the covered swap entity in the 2014 proposal, could continue using the diverse types of assets and guarantees they currently employ in securing and supporting their non-cleared swap transactions with swap dealers. Consistent with the 2014 proposal, § __.6(f) of the final rule states that covered swap entities may collect or post initial variation margin that is not required pursuant to the rule in any form of collateral.

The Dodd-Frank Act provides that in prescribing margin requirements, the Agencies shall permit the use of noncash collateral, as the Agencies determine to be consistent with (1) preserving the financial integrity of markets trading swaps; and (2) preserving the stability of the U.S. financial system. The Agencies believe that the eligibility of certain non-cash collateral, subject to the conditions and restrictions contained in the final rule, is consistent with the Dodd-Frank Act, because the use of such non-cash collateral is consistent with preserving the financial integrity of markets by trading swaps and preserving the stability of the U.S. financial system. The non-cash collateral permitted is highly liquid and resilient in times of stress and the rule does not permit collateral exhibiting significant wrong-way risk. The use of different types of eligible collateral pursuant to the requirements of the final rule should also incrementally increase liquidity in the financial system.

G. Section __.7: Segregation of Collateral

The final rule establishes minimum standards for the safekeeping of collateral. Section __.7(a) addresses requirements for when a covered swap entity posts any collateral other than variation margin. Posting collateral to a counterparty exposes a covered swap entity to risks in recovering such collateral in the event of its counterparty's insolvency. To address these risks and to protect the safety and soundness of the covered swap entity, § __.7(a) requires a covered swap entity that posts any collateral other than variation margin with respect to a non-cleared swap to require that such collateral be held by one or more custodians that are not the covered swap entity, its counterparty, or an affiliate of either counterparty. This requirement applies to initial margin posted by a covered swap entity pursuant to § __.3(b), as well as other collateral that is not variation margin that is not required by this rule but is posted by a covered swap entity for other reasons, including negotiated arrangement with its counterparty, such as initial margin posted to a financial end user that does not have material swaps exposure or initial margin posted to another covered swap entity even though the amount was less than the $50 million initial margin threshold amount.

Section __.7(b) addresses requirements for when a covered swap entity collects initial margin required by § __.3(a). Under § __.7(b), the covered swap entity shall require that initial margin collateral collected pursuant to § __.3(a) be held at one or more custodians that are not the covered swap entity, its counterparty, or an affiliate of either counterparty. Because the collection of initial margin does not expose the covered swap entity to the same risk of counterparty default as when a covered swap entity posts collateral, the segregation requirements for initial margin that a covered swap entity collects are less stringent than the requirements for posting collateral. As a result, § __.7(b) applies only to initial margin that a covered swap entity collects as required by § __.3(a), rather than all collateral collected.

For collateral subject to § __.7(a) or (b), § __.7(c) requires the custodian to act pursuant to a custodial agreement that is legal, valid, binding, and enforceable under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or similar proceedings. Such a custodial agreement must prohibit the custodian from rehypothecating, repledging, reusing or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement, or other means) the funds or other property held by the custodian. Cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase other forms of eligible collateral, such eligible noncash collateral is segregated pursuant to § __.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin.[170]

Section ___.7(d) provides that, notwithstanding this prohibition on rehypothecating, repledging, reusing or otherwise transferring the funds or property held by the custodian, the posting party may substitute or direct any reinvestment of collateral, including, under certain conditions, collateral collected pursuant to § __.3(a) or posted pursuant to § __.3(b).

In particular, for initial margin collected pursuant to § ___.3(a) or posted pursuant to § ___.3(b), the posting party may substitute only funds or other property that meet the requirements for eligible collateral under § __.6 and where the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § __.3. The posting party also may direct the custodian to reinvest funds only in assets that would qualify as eligible collateral under § __.6 and ensure that the amount net of applicable discounts described in Appendix B would be sufficient to meet the initial margin requirements of § __.3. In the cases of both substitution and reinvestment, the final rule requires the covered swap entity to ensure that the value of eligible collateral net of discounts that is collected or posted remains equal to or above the minimum requirements contained in § __.3. In addition, the restrictions on the substitution and reinvestment of collateral described above do not apply to cases where a covered swap entity has posted or collected more collateral than is required under §__.3. In such cases, the initial margin that has been posted or collected in satisfaction of § __.3 is subject to the restrictions, but any additional collateral that has been posted is not subject to the restrictions. As noted above, any additional collateral that has been *collected* by the

[170] As described in § __.6, collateral other than certain forms of cash is subject to a haircut. As a result, when cash collateral is used to purchase other forms of eligible collateral, a haircut will need to be applied.

covered swap entity is not subject to any of the requirements of § __.7.

No segregation of variation margin. Section 7 does not require collateral that is collected or posted as variation margin to be held by a third-party custodian or subject such collateral to restrictions on rehypothecation, repledging, or reuse. Consequently, subject to negotiations between the counterparties, a covered swap entity could collect cash posted to it in satisfaction of § __.4(b) from a counterparty without establishing a separate account for the counterparty. Similarly, a covered swap entity's counterparty would not be required to segregate cash funds posted as variation margin by the covered swap entity. The same is true with respect to eligible non-cash collateral exchanged as variation margin with a financial end user pursuant to § __.6(b); the segregation and custody requirements of § __.7 do not apply.

Section __.6(b) of the final rule permits eligible non-cash collateral to be posted as variation margin for swaps between a covered swap entity and a financial end user. In such circumstances, a covered swap entity or its financial end user counterparty could reach an agreement under which either party could itself hold non-cash collateral posted by the other and such non-cash collateral could be rehypothecated, repledged, or reused.

The Agencies received several comments regarding § __.7. Several commenters that operate as custodian banks requested clarification whether the final rule's prohibition against the custodian rehypothecating, repledging, reusing or otherwise transferring initial margin funds or property means that a custodian bank is not permitted to accept cash funds that it holds pursuant to § __.7 as a general deposit, and use such funds as it would any other funds placed on deposit with it.

Under § __.6, eligible collateral for initial margin includes ''immediately available cash funds'' that are denominated in a major currency or the currency of settlement for the non-cleared swap. It is not practical for cash funds to be held by a custodian as currency that remains the property of the posting party with a security interest being granted to its counterparty, *e.g.,* by placing such currency in a safety deposit box or in the custodian's vault. Rather, the custodian banks explained in their joint comment letter that, under their current business practices, when a customer provides them with cash funds to hold as a custodian, the custodian bank accepts the funds as a general deposit, with the funds becoming property of the custodian bank and the customer holding a contractual debt obligation, *i.e.,* a general deposit account, of the custodian bank. When holding cash under the arrangement described by the custodian bank commenters, a custodian is, in fact, not a custodian of a discrete asset but rather a recipient of cash funds under a contractual arrangement that establishes a debt obligation to be paid on demand—*i.e.,* the custodian is acting as a bank. When such a customer has pledged cash funds as collateral under the arrangements described by the custodian bank commenters, the customer's property interest is the deposit account liability that the custodian bank owes to the customer.

Posting a general deposit account as initial margin raises unique concerns that are not present when eligible non-cash collateral is posted as initial margin. Permitting initial margin collateral to be held in the form of a deposit liability of the custodian bank is inconsistent with the final rule's prohibition against rehypothecation of such collateral. In addition, employing a deposit liability of the custodian bank—or another depository institution—is inconsistent with the final rule's prohibition in § __.6(d) against use of obligations issued by a financial firm, because of ''wrong way'' risk. On the other hand, as a practical matter, it is very difficult to eliminate cash entirely. For example, the final rule's T+1 margin collection requirement means that it will often be necessary to use cash to cover the first days of a margin call. In addition, income generated by non-cash assets in custody will be paid in cash. Collateral reinvestments involving replacement of one category of non-cash asset with another category of non-cash asset may create cash balances between settlements. While the parties all have strong business incentives to manage and limit these cash fund balances, eliminating them entirely would result in a number of inefficiencies.

To address these concerns, the Agencies have revised the final rule to allow cash funds that are placed with a custodian bank in return for a general deposit obligation to serve as eligible initial margin collateral only in specified circumstances. However, the rule requires the posting party to direct the custodian to re-invest the deposited funds into eligible non-cash collateral of some type, or the posting party to deliver eligible non-cash collateral to substitute for the deposited funds. As noted above, the appropriate haircut must be applied. This reinvestment must occur within a reasonable period of time after the initial placement of cash collateral to satisfy the initial margin requirement, and the amount of eligible collateral must be sufficient to cover the initial margin amount in light of the applicable haircut on the non-cash collateral pursuant to Appendix B of the final rule.

Covered swap entities must appropriately oversee their own initial margin collateral posting and that of their counterparties in order to constrain the use of cash funds, and achieve efficient reinvestment of cash funds in excess of operational and liquidity needs into eligible margin securities. The banking agencies have long required banking organizations that engage in material swaps activities to create and maintain counterparty credit risk exposure management practices, including policies and procedures appropriate to evaluate and manage exposures that could arise not only from margin collateral liquidity and operational concerns, but also collateral-product correlations, volatility, and concentrations.[171] In connection with implementing the final rule, covered swap entities should ensure these procedures are adequate to assess the levels of cash necessary under the circumstances of each counterparty relationship, and to ensure the custodian will be directed to reinvest the remainder in non-cash collateral promptly, or that the posting party will substitute non-cash assets promptly, as applicable.

Several commenters supported the requirement that initial margin be held at a third party custodian that was not affiliated with either the covered swap entity or its counterparty. Some commenters, however, requested that the final rule allow affiliated custodians. These commenters expressed concern about complexities that additional parties bring to the relationship, as well as reservations about the capacity and availability of established custodians in the marketplace. After considering these comments, the Agencies have retained the requirement that the custodian be unaffiliated with either the covered swap entity or its counterparty. On balance, the Agencies are more concerned that customer confidence in a particular covered swap entity could be correlated with customer confidence in the affiliated custodian, especially in times of high market stress, whereas the use of independent custodians should offer counterparties a greater measure of confidence. Thus, the Agencies believe

[171] *See, e.g.,* Interagency Supervisory Guidance on Counterparty Credit Risk Management (2011).

that it is necessary for the safety and soundness of covered swap entities and to minimize risk to the financial system that collateral be held by a custodian that is neither a counterparty to the swap nor an affiliate of either counterparty. This arrangement protects both counterparties from the risk of the initial margin being held as part of one counterparty's estate (or its affiliate's estate) in the event of failure, and therefore not available to the other counterparty.

Section __.7(c)(2) requires that the custodial agreement be a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions. Some commenters requested that the final rule clarify that the only relevant jurisdiction is that of the custodian. The ultimate purpose of the custody agreement is twofold: (1) that the initial margin be available to a covered swap entity when its counterparty defaults and a loss is realized that exceeds the amount of variation margin that has been collected as of the time of default; and (2) that the initial margin be returned to the covered swap entity after its swap obligations have been fully discharged.

The jurisdiction of the custodian is one of the relevant jurisdictions for these purposes. Thus, a covered swap entity must conduct sufficient legal review to conclude with a well-founded basis and maintain sufficient written documentation of that legal review that in the event of a legal challenge, including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceedings of the custodian, the relevant court or administrative authorities would find the custodial agreement to be legal, valid, binding, and enforceable by the covered swap entity under the law applicable to the custodian. A covered swap entity would also be expected to establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to be legal, valid, binding, and enforceable under that law.

The jurisdiction of a covered swap entity's counterparty, however, is also a relevant jurisdiction. The covered swap entity would need to ascertain whether, if a counterparty were to become insolvent, or otherwise be placed under the control of a resolution authority, there would be a legal basis to set aside the custodial arrangement, allowing the resolution authority to reclaim for the estate assets that the counterparty had placed with the custodian. Thus, the covered swap entity would have to conduct a sufficient legal review to conclude with a well-founded basis that in the event of a legal challenge, including one resulting from default or from receivership, conservatorship, insolvency, liquidation, or similar proceedings of the counterparty, the relevant court or administrative authorities would find the custodial agreement to be legal, valid, binding, and enforceable by the covered swap entity under the law applicable to the counterparty.

Several commenters requested that the segregation requirement be optional, rather than required. The Agencies proposed the mandatory custodian requirements in § __.7 aware that sections 4s(l) of the Commodity Exchange Act and section 3E(f) of the Securities Exchange Act require a swap dealer and security-based swap dealer, respectively, to provide a counterparty with the option of requiring that its funds or other property supplied as initial margin be held in a segregated account at an independent third-party custodian. The Agencies continue to believe that requiring initial margin collateral to be segregated at an independent third-party custodian will help to ensure the safety and soundness of covered swap entities subject to the rule and offset the risk to the financial system arising from the use of non-cleared swaps.

The Agencies believe that requiring a covered swap entity to place initial margin collateral it collects at an independent third party custodian will provide greater customer confidence that the collateral will be available to be returned upon the closeout of a swap, particularly in times of financial stress. Additionally, the Agencies believe requiring a covered swap entity to ensure that any initial margin collateral it posts is placed at an independent third-party custodian will enhance the safety and soundness of the covered swap entity by protecting it from the risk that initial margin collateral could be held as part of the counterparty's estate in the event of the counterparty's failure.

Several commenters requested that the final rule allow greater flexibility in segregation arrangements. These commenters requested that the final rule permit arrangements such as title transfer and charge-back of margin, segregation of margin on the books of the covered swap entity or within an affiliate if such collateral is insulated from the covered swap entity's insolvency. The Agencies do not believe that the alternative arrangements suggested by the commenters adequately ensure the safety and soundness of the covered swap entity nor adequately offset the risk to the financial system arising from the use of non-cleared swaps.

One commenter recommended that the final rule allow limited rehypothecation that would meet the requirements of the 2013 international framework if a model for such rehypothecation could be developed for use by counterparties. The commenter also noted that other regulators may permit rehypothecation and, if so, a prohibition would create a competitive disadvantage for market participants subject to the Agencies' rule. However the commenter did not propose a specific model for limited rehypothecation. The Agencies have not revised the proposed regulation to accommodate a potential future model that may be developed. Should such a model be developed, the Agencies could consider such a model at that time.

One commenter requested that the final rule clarify that the required custodian arrangements be tri-party, *i.e.,* entered into pursuant to an agreement between the covered swap entity, its counterparty, and the custodian. The commenter expressed concern that if a covered swap entity's counterparty is not a party to the custodial agreement, it would not be in contractual privity with the unaffiliated custodian, and the covered swap entity essentially would exercise exclusive control over its counterparty's initial margin. The Agencies believe the specific structure of the custody arrangements required by the rule are better left, on balance, to negotiations of the parties, in accordance with the specific concerns of those parties. Tri-party custody may be an optimal arrangement for some firms, while for others, it has not typically been sought under established market practice.

H. Section __.8: Initial Margin Models and Standardized Amounts

1. Initial Margin Models

As in the proposed rule, the final rule adopts an approach whereby covered swap entities may calculate initial margin requirements using an approved initial margin model. As in the case of the proposal, the final rule also requires that the initial margin amount be set equal to a model's calculation of the potential future exposure of the non-cleared swap consistent with a one-tailed 99 percent confidence level over a 10-day close-out period. More specifically, under the final rule, initial margin models must capture all of the material risks that affect the non-cleared swap including material non-linear

price characteristics of the swap.[172] For example, the initial margin calculation for a swap that is an option on an underlying asset, such as an option on a credit default swap contract, would be required to capture material non-linearities arising from changes in the price of the underlying asset or changes in its volatility. Moreover, the margin calculations for derivatives in distinct product-based asset classes, such as equity and credit, must be performed separately without regard to derivatives contracts in other asset classes. Each derivative contract must be assigned to a single asset class in accordance with the classifications in the final rule (*i.e.,* foreign exchange or interest rate, commodity, credit, and equity). The presence of any common risks or risk factors across asset classes cannot be recognized for initial margin purposes.

The Agencies' belief is that these modeling standards should ensure a robust initial margin regime for non-cleared swaps that sufficiently limits systemic risk and reduces potential counterparty exposures.

Some commenters suggested that the proposal's requirement that the model include all material non-linear price characteristics in the underlying non-cleared swap was too stringent and should be relaxed. The Agencies have decided to retain this aspect of the quantitative modeling requirements in the final rule. The Agencies are concerned that the non-cleared swap market will be comprised of a large number of complex and bespoke swaps that will display significant non-linear price characteristics that will have a direct effect on their risk exposure. Accordingly, the final rule requires that all *material* non-linear price characteristics of the non-cleared swap be considered in assessing the risk of the swap. There may be non-linear price characteristics of a particular non-cleared swap that are not material in assessing its risk profile. In such cases these non-linear price characteristics need not be explicitly included in the initial margin model. The Agencies expect that in determining whether or not a given non-linear price characteristic is material, covered swap entities will engage in a holistic review of the non-cleared swap's risk profile and make determinations based on the totality of the non-cleared swap's risks.

All initial margin models must be approved by a covered swap entity's prudential regulator before being used for margin calculation purposes. In the event that a model is not approved, initial margin calculations would have to be performed according to the standardized initial margin approach that is detailed in appendix A and discussed below.

In addition to the requirement that the models appropriately capture all material sources of risk, as discussed above, the final rule contains a number of standards and criteria that must be satisfied by initial margin models. These standards relate to the technical aspects of the model as well as broader oversight and governance standards. These standards are broadly similar to modeling standards that are already required for internal regulatory capital models of banks.

More specifically, under the final rule a covered swap entity must periodically, and no less than annually, review its initial margin model in light of developments in financial markets and modeling technologies and make appropriate adjustments to the model. Relatedly, the data used to calibrate and execute the initial margin model must also be reviewed no less frequently than annually to ensure that the data is appropriate for the products for which initial margin is being calculated. Different, additional or more granular data series may, at certain times, become available that would provide more accurate measurements of the risks that the initial margin model is intended to capture.

In addition to this regular review process, the final rule also requires that robust oversight, control and validation mechanisms be in place to ensure the integrity and validity of the initial margin model and related processes. More specifically, the final rule requires that the model be independently validated prior to implementation and on an ongoing basis which would also include a monitoring process that includes back-tests of the model and related analyses to ensure that the level of initial margin being calculated is consistent with the underlying risk of the swap being margined. Initial margin models must also be subject to explicit escalation procedures that would make any significant changes to the model subject to internal review and approval before taking effect. Under the final rule, any such review and approval must be based on demonstrable analysis that the change to the model results in a model that is consistent with the requirements of § __.8. Furthermore, under the final rule, any such changes or extensions of the initial margin model must be communicated to the relevant Agency 60 days prior to taking effect to give the Agency the opportunity to rescind its prior approval or subject it to additional conditions.

Some commenters suggested that the model governance, control and oversight standards of the proposed rule were too strict and should not be so closely aligned with the model governance requirements for bank capital models. One commenter suggested that since initial margin amounts must be agreed to between counterparties, it is not practical to require strict model governance standards.

The Agencies believe that strong model governance, oversight and control standards are crucial to ensuring the integrity of the initial margin model so as to provide for margin requirements that are commensurate with the risk of non-cleared swaps. Moreover, the Agencies are aware that there will be incentives to economize on initial margin and that strong governance standards that are intended to result in robust and risk-appropriate initial margin amounts is of critical importance. One commenter suggested that the initial margin model not be required to be back-tested against the initial margin requirements for similar cleared swaps. In light of the clear competitive forces that will exist between cleared and non-cleared swaps, the Agencies believe that it is appropriate to compare the initial margin requirements of non-cleared swaps to those of similar cleared swaps. Further, the Agencies understand that comparable cleared swaps with observable initial margin standards may not always be available given the complexity and variety of non-cleared swaps. Nevertheless, the Agencies believe that where similar swaps trade on a cleared and non-cleared basis, such comparisons are useful and informative.

One commenter suggested that where a covered swap entity is regulated by a foreign regulator and the foreign regulator has approved an initial margin model on the basis of comparable standards, the Agencies should defer to the approval of the foreign regulator and should not require Agency approval of the initial margin model. While the Agencies appreciate the global nature of the swaps market as well as the requirement to engage in close cross-border coordination with foreign regulators, the Agencies are required by statute to require initial and variation margin requirements that are appropriate for the risk of the non-cleared swaps. Accordingly, each Agency must find that any covered swap entity subject to its regulation is in compliance with all aspects of that Agency's margin requirements including the standards for initial margin models. Accordingly, while the

[172] *See* § __.8(d)(9) of the final rule.

Agencies expect to coordinate and communicate with foreign regulators regarding covered swap entities that are regulated by both the Agencies and foreign regulators, the final rule requires any quantitative initial margin model to adhere to the standards of the final rule and be approved by the relevant Agency.

One commenter suggested that the frequency with which data must be reviewed and revised as necessary should be annual rather than monthly to better align with other aspects of the proposal that require certain governance processes to be conducted on an annual rather than monthly basis. The Agencies believe that harmonizing the frequency with which certain model governance processes must be performed will reduce the costs associated with the regular oversight and maintenance of the initial margin model without meaningfully altering the overall standards for model governance. Accordingly, the final rule requires that data used in the initial margin model be reviewed and revised as necessary on an annual rather than monthly basis.

Initial margin models will be reviewed for approval by the appropriate Agency upon the request of a covered swap entity. Models that are reviewed for approval will be analyzed and subjected to a number of tests by the appropriate Agency to ensure that the model complies with the requirements of the final rule. Given that covered swap entities may engage in highly specialized business lines with varying degrees of intensity, it is expected that specific initial margin models may vary across covered swap entities. Accordingly, the specific analyses that will be undertaken in the context of any single model review may have to be tailored to the specific uses for which the model is intended. The nature and scope of initial margin model reviews are expected to be generally similar to reviews that are conducted in the context of other model review processes such as those relating to the approval of internal models for bank regulatory capital purposes. Initial margin models will also undergo periodic supervisory reviews to ensure that they remain compliant with the requirements of the proposed rule and are consistent with existing best practices over time.

Given the complexity and diverse nature of non-cleared swaps it is expected that covered swap entities may choose to make use of vendor supplied products and services in developing their own initial margin models. The final rule does not place any limits or restrictions on the use of vendor supplied model components such as specific data feeds, computing environments or calculation engines beyond those requirements that must be satisfied by any initial margin model. In particular, the relevant Agency will conduct a holistic review of the entire initial margin model and assess whether the model and related inputs and processes meet the requirements of the final rule.

To the extent that a covered swap entity uses vendor supplied inputs in conjunction with its own internal inputs and processes, an Agency's model approval decision will apply to the specific initial margin model used by a covered swap entity and not to a generally available vendor supplied model. To the extent that one or more vendors provide models or model-related inputs (*e.g.,* calculation engines) that, in conjunction with the covered swap entities' own internal methods and processes, are part of an approved initial margin model, an Agency may also approve those vendor models. Model-related inputs may also be approved for use by other covered swap entities though that determination will be made on a case-by-case basis depending on the entirety of the processes that are employed in the application of the vendor supplied inputs and models by a covered swap entity.

a. Ten-Day Close-Out Period Assumption.

Since non-cleared swaps are expected to be less liquid than cleared swaps, the final rule specifies a minimum close-out period for the initial margin model of 10 business days, compared with a typical requirement of 3 to 5 business days used by CCPs.[173] Moreover, the required 10-day close-out period assumption is consistent with counterparty credit risk capital requirements for banks. Accordingly, to the extent that non-cleared swaps are expected to be less liquid than cleared swaps and to the extent that related capital rules which also mitigate counterparty credit risk similarly require a 10-day close-out period assumption, the Agencies' view is that a 10-day close-out period assumption for margin purposes is appropriate.[174]

Under the final rule, the initial margin model calculation must be performed directly over a 10-day close out period. In the context of bank regulatory capital rules, a long horizon calculation (such as 10 days) may, under certain circumstances, be indirectly computed by making a calculation over a shorter horizon (such as 1 day) and then scaled to the longer 10-day horizon according to a fixed rule to be consistent with the longer 10-day horizon. The rule does not provide this option to covered swap entities using an approved initial margin model. The Agencies' view is that the rationale for allowing such indirect calculations that rely on scaling shorter horizon calculations to longer horizons has largely been based on computational and cost considerations that were material in the past but are much less now, in light of advances in computational speeds and reduced computing costs.

The Agencies received a number of comments concerning the length of the assumed close-out period used in the initial margin calculations. One commenter suggested the 10-day period was too long and suggested a close-out period of three to five days was adequate to ensure sufficient time to close out or hedge a defaulting counterparty's swap contract. Another commenter suggested a 10-day close-out period was too short and the resulting initial margins would not always be larger and more conservative than initial margins charged on cleared swaps.

The Agencies believe that a ten-day close-out period is appropriate for determining the level of initial margin in the final rule. Non-cleared swaps are expected to be less liquid and less frequently traded than cleared swaps which typically require initial margin amounts consistent with a three to five day close-out period. Accordingly, it is appropriate that the close-out period applied to non-cleared swaps be longer than that which is generally applied to cleared swaps. At the same time, the Agencies are aware that it may not be the case that the regulatory minimum required initial margin on a non-cleared swap will always be larger than the initial margin required on any related cleared swap as margining practices at CCPs vary from one CCP to another and may exceed minimum required margin levels due to the specific risk of the swap in question or the margining practices of the CCP. Moreover, given the complexity and diversity of the non-cleared swap market, the Agencies believe that it is not possible and unnecessary to prescribe a specific and different close-out horizon for each type of non-cleared swap that may exist in the marketplace. The Agencies do believe that it is appropriate for a covered swap entity to use a close-out period longer than ten-days in those

[173] *See* § __.8(d)(1) of the final rule.

[174] In cases where a swap has a remaining maturity of less than 10 days, the remaining maturity of the swap, rather than 10 days, may be used as the close-out period in the margin model calculation.

circumstances in which the specific risk of the swap indicates that doing so is prudent. In terms of specifying a regulatory *minimum* requirement, however, the Agencies believe that a ten-day close-out period is sufficiently long to generally guard against the heightened risk of less liquid, non-cleared swaps.

b. Recognition of Portfolio Risk Offsets.

The final rule permits a covered swap entity to use an internal initial margin model that reflects offsetting exposures, diversification, and other hedging benefits within four broad risk categories: commodities, credit, equity, and foreign exchange and interest rates (considered together as a single asset class) when calculating initial margin for a particular counterparty if the non-cleared swaps are executed under the same EMNA.[175] The final rule does *not* permit an initial margin model to reflect offsetting exposures, diversification, or other hedging benefits *across* those broad risk categories.[176] As a specific example, if a covered swap entity entered into two non-cleared credit swaps and two non-cleared commodity swaps with a single counterparty under an EMNA, the covered swap entity could use an approved initial margin model to perform two separate initial margin calculations: The initial margin collection amount calculation for the non-cleared credit swaps and the initial margin collection amount calculation for the non-cleared commodity swaps. Each calculation could recognize offsetting and diversification within the non-cleared credit swaps and within the non-cleared commodity swaps. The result of the two separate calculations would then be summed together to arrive at the total initial margin collection amount for the four non-cleared swaps (two non-cleared credit swaps and two non-cleared commodity swaps).

The Agencies received comments on a range of issues that broadly relate to the recognition of portfolio risk offsets.

c. Single Commodity Asset Class

One commenter requested that the rule specify only a single commodity asset class rather than the four separate asset classes that were specified in the proposal (agricultural commodities, energy commodities, metal commodities and other commodities). Under the proposal, initial margin on non-cleared commodity swaps would be calculated separately for each sub-asset class within the broader commodities asset class. The commenter suggested that there are significant and relatively stable correlations across related commodity categories that should not be ignored for hedging and margining purposes. The commenter also noted that commodity index swaps are a significant source of non-cleared commodity swap activity and that these swaps comprise exposures to each of the four commodity sub-asset classes that were identified in the proposal. Accordingly, the commenter suggested, implementing the proposal's four separate sub-asset class categories would not be appropriately risk sensitive and would be difficult and burdensome to implement for a significant class of commodity swaps.

The Agencies have considered this comment and have decided to group all non-cleared commodity swaps into a single asset class for initial margin calculation purposes. The Agencies believe that there is enough commonality across different commodity categories to warrant recognition of conceptually sound and empirically justified risk offsets. Moreover, the Agencies note that both the proposal and the final rule take a relatively broad view of the other asset classes: Equity, credit, interest rates and foreign exchange. In prescribing the granularity of the asset classes there is a clear trade-off between simplicity and certainty around the stability of hedging relationships in narrowly defined asset classes and the greater flexibility and risk sensitivity that is provided by broader asset class distinctions. Therefore, the Agencies have decided to adopt a commodity asset class definition that is consistent with the other three asset classes and is appropriate in light of current market practices and conventions.

d. Risk Offsets Between Asset Classes

One commenter suggested that the margin requirements should be more reflective of risk offsets that exist between disparate asset classes such as equity and commodities. As was expressed in the proposal, however, the Agencies are of the view that the qualitative and quantitative basis for allowing for risk offsets among non-cleared swaps within a given, and relatively broad, asset class such as equities is conceptually stronger and better supported by historical data and experience than is the basis for recognizing such offsets across disparate asset classes such as foreign exchange and commodities. Non-cleared swaps that trade within a given asset class, such as equities, are likely to be subject to similar market fundamentals and dynamics as the underlying instruments themselves trade in related markets and represent claims on related financial assets. In such cases, it is more likely that a stable and systematic relationship exists that can form the conceptual and empirical basis for applying risk offsets.

To the contrary, non-cleared swaps in disparate asset classes such as foreign exchange and commodities are generally unlikely to be influenced by similar market fundamentals and dynamics that would generally suggest a stable relationship upon which reasonable risk offsets could be based. Rather, to the extent that empirical data and analysis suggest some degree of risk offset exists between swaps in disparate asset classes, this relationship may change unexpectedly over time in ways that could demonstrably change and weaken the assumed risk offset. Accordingly, the Agencies have decided to allow for risk offsets that have a sound conceptual and empirical basis across non-cleared swaps within the broad asset classes of equity, credit, commodity, and interest rates and foreign exchange but not to allow risk offsets across swaps in differing asset classes. Moreover, the Agencies note that the final asset class described above is interest rates and foreign exchange taken as a group. Accordingly, the final rule will allow conceptually sound and empirically supported risk offsets between an interest rate swap on a foreign interest rate and a currency swap in a foreign currency.

e. Offsets Across Risk Factors

Some commenters suggested that initial margin models should allow for offsets across risk factors even if these risk factors are present in non-cleared swaps across multiple asset classes such as equity and credit. For example, the commenters stated that both an equity swap and a credit swap may be exposed to some amount of interest rate risk. The commenters suggested that the interest rate risk inherent in the equity and credit swaps should be recognized on a portfolio basis so that any offsetting interest rate exposure across the two swaps could be recognized in the initial margin model. This approach would effectively require that all non-cleared swaps be described in terms of a number of ''risk factors'' and the initial margin model would consider the exposure to each risk factor separately. The initial margin amount required on a portfolio of non-cleared swaps would then be computed as the sum of the amounts required for each risk factor.

This ''risk factor'' based approach described above is different from the Agencies' proposal. Under the proposal,

[175] *See* § __.8(d)(3) of the final rule.

[176] *Id.*

initial margin on a portfolio of non-cleared swaps was calculated on a product-level basis. In terms of the above example, initial margin would have been calculated separately for the equity swap and calculated separately for the credit swap. In the case of both the equity and credit swap, interest rate risk in the swap would have been modeled and measured without regard to the interest rate exposure of the other swap. The total initial margin requirement would have been the sum of the initial margin requirement for the equity swap and the credit swap. Accordingly, no offset would have been recognized between any potentially offsetting interest rate exposure in the equity and credit swap.

The Agencies have considered the commenters' "risk factor" based approach described above and have decided not to adopt this approach, but to adopt the Agencies' proposed approach in the final rule for a number of reasons.

First, a product-based approach to calculating initial margin is clear and transparent. In many market segments it is quite common to report and measure swap exposures on a product-level basis.[177] As an example, the Bank for International Settlements regularly publishes data on the outstanding notional amounts of OTC derivatives on a product-level basis. In addition, existing trade repositories, such as the DTCC global trade repositories for interest rate and credit swaps, report credit and interest rate derivatives on a product-level basis. Moreover, a risk factor based approach has the potential to be opaque and unwieldy. Modern derivative pricing models that are used by banks and other market participants may employ hundreds of risk factors that are not standardized across products or models.

While it is the case that some swaps may have hybrid features that make it challenging to assign them to one specific asset class, the Agencies believe that the incidence of this occurrence will be relatively uncommon and can be dealt with under the final rule. In particular, as of December 2014, the Bank for International Settlements reported that of the roughly $630 trillion in gross notional outstanding, roughly 3.6 percent of these contracts cannot be allocated to one of the following broad asset categories: Foreign exchange, interest rate, equity, commodity and credit. The Agencies also note that this fraction has declined from roughly 6.6 percent in June 2012 which suggests that the challenges associated with such hybrid swaps are declining over time. In such cases where the allocation of a particular non-cleared swap to a specific asset class is not uncontroversial, the Agencies expect an allocation to be made based on whichever broad asset class represents the preponderance of the non-cleared swap's overall risk profile.

Second, a product-level initial margin model is well aligned with current practice for cleared swaps. Some clearinghouses that offer multiple swaps for clearing, such as the CME, do allow for risk offsets within an asset class but do not generally allow for any risk offsets across asset classes. Again, as a specific example, the CME offers both cleared interest rate and credit default swaps. The CME's initial margin model is a highly sophisticated risk management model that does allow for offsetting among different credit swaps and among different interest rate swaps but does not allow for risk offsets between interest rate and credit swaps. This approach to calculating initial margin also provides a significant amount of transparency as market participants, regulators and the public can assess the extent to which trading activity in specific asset classes generates counterparty exposures that require initial margin. To the extent that some risk factors may cut across more than one asset class, the use of a risk-factor-based margining approach would make evaluating the quantum of risk posed by the trading activity in any one set of products difficult to measure and manage on a systematic basis which poses significant challenges to users of non-cleared swaps as well as regulators and the broader public who have an interest in monitoring and evaluating the risks of different non-cleared swap activities.

Third, the Agencies note that the final rule's product-level approach to initial margin explicitly allows for risk offsets though the precise form of these offsets differs from a "risk factor" based approach. The Agencies believe that conceptually sound and empirically justified risk offsets for initial margin are appropriate and have included such offsets in the final rule. In general, there are a large number of possible approaches that could be taken to allow for such offsets. The Agencies have considered the alternatives raised by the commenters and have adopted in the final rule an approach to recognizing risk offsets that provides for a significant amount of hedging and diversification benefits while also promoting transparency and simplicity in the margining framework.

f. Product Offsets

Some commenters suggested that for the purposes of calculating model-based initial margin amounts, portfolio offsets should be recognized between non-cleared swaps, cleared swaps and other products such as positions in securities. The Agencies' authority under the Dodd-Frank Act for prescribing margin requirements on non-cleared swaps relates only to non-cleared swaps and not to other products even if those products are themselves, at times, traded in conjunction with non-cleared swaps. In particular, sections 731 and 764 of the Dodd-Frank Act require that the margin requirements be "imposed on all swaps that are not cleared" and that those requirements "be appropriate for the risk associated with non-cleared swaps held as a swap dealer or major swap participant." [178] The Agencies believe that it is appropriate for the margin requirements to be reflective of the risks in a covered swap entity's portfolio of non-cleared swaps and not to recognize risks—either as offsets or sources of additional risk—from other products that are not subject to the margin requirements of the final rule.

g. Stress Calibration

In addition to a time horizon of 10 trading days and a one-tailed confidence level of 99 percent, the final rule requires the initial margin model to be calibrated to a period of financial stress.[179] In particular, the initial margin model must employ a stress period calibration for each broad asset class (commodity, credit, equity, and interest rate and foreign exchange). The stress period calibration employed for each broad asset class must be appropriate to the specific asset class in question. While a common stress period calibration may be appropriate for some asset classes, a common stress period calibration for all asset classes would be considered appropriate only if it is appropriate for each specific underlying asset class. Also, the time period used to inform the stress period calibration must include at least one year, but no more than five years of equally-weighted historical data. This final rule's requirement is intended to balance the tradeoff between shorter and longer data spans. Shorter data spans are sensitive to evolving market conditions but may also overreact to short-term and idiosyncratic spikes in volatility, resulting in procyclical margin requirements. Longer data spans are less sensitive to short-term market

[177] *http://www.bis.org/statistics/dt1920a.pdf.*

[178] *See* Dodd-Frank Act sections 731 and 764.

[179] *See* § __.8(d)(13) of the final rule.

developments but may also place too little emphasis on periods of financial stress, resulting in lower initial margins. Also, the requirement that the data be equally weighted will establish a degree of consistency in model calibration while also ensuring that particular weighting schemes do not result in procyclical margin requirements during short-term bouts of heightened volatility.

Calibration to a stress period helps to ensure that the resulting initial margin requirement is robust to a period of financial stress during which swap entities and financial end user counterparties are more likely to default, and counterparties handling a default are more likely to be under pressure. The stress calibration requirement also reduces the systemic risk associated with any increase in margin requirements that might occur in response to an abrupt increase in volatility during a period of financial stress, as initial margin requirements will already reflect a historical stress event.

One commenter suggested that the overall level of the proposed initial margin requirements were too high and that the proposed requirement to calibrate the initial margin model to a period of financial stress was too conservative. The Agencies have considered this comment but continue to believe that the overall level of the initial margin requirements is consistent with the goals of prescribing margin requirements that are appropriate for the risk of non-cleared swaps and the safety and soundness of the covered swap entity. Moreover, the requirement to calibrate the initial margin model to a period of financial stress has two important benefits. First, margin requirements that are consistent with a period of financial stress will help to ensure that counterparties are sufficiently protected against the type of severe financial stresses that are most likely to have systemic consequences. Second, calibrating margins to a period of financial stress should have the effect of reducing the extent to which margins are pro-cyclical. Specifically, since margin levels will be consistent with a period of above average market volatility and risk, a moderate rise in risk levels should not require any increase or re-evaluation of margin levels. In this sense, margin requirements will be less likely to increase abruptly following a market shock. There may be circumstances in which the financial system experiences a significant financial stress that is even greater than the stress to which initial margins have been calibrated. In these cases, initial margin requirements will rise as margin levels are re-calibrated to be consistent with the new and greater stress level. The Agencies expect such occurrences to be relatively infrequent and, ultimately, any risk-sensitive and empirically-based method for calibrating a risk model must exhibit some sensitivity to changing financial market risks and conditions.

h. Cross-Currency Swaps

As discussed above, an approved initial margin model must generally account for all of the material risks that affect the non-cleared swap. An exception to this requirement has been made in the specific case of cross-currency swaps. In a cross-currency swap, one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs upon the inception of the swap, with a reversal of the exchange of principal at a later date that is agreed upon at the inception of the swap.

Under the final rule, an initial margin model need not recognize any risks or risk factors associated with the foreign exchange transactions associated with the fixed exchange of principal embedded in a cross-currency swap as defined in § __.2 of the final rule. The initial margin model must recognize all risks and risk factors associated with all other payments and cash flows that occur during the life of the cross-currency swap. In the context of the standardized margin approach, described in Appendix A and further below, the gross initial margin rates have been set equal to those for interest rate swaps. This treatment recognizes that cross-currency swaps are subject to risks arising from fluctuations in interest rates but does not recognize any risks associated with the fixed exchange of principal since principal is typically not exchanged on interest rate swaps.

i. Frequency of Margin Calculation

The final rule requires that an approved initial margin model be used to calculate the required initial margin collection amount on a *daily* basis. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be *collected* from a financial end user with material swaps exposure or a swap entity counterparty. In addition, when a covered swap entity faces a financial end user with material swaps exposure, the covered swap entity must also calculate the initial margin collection amount from the perspective of its counterparty on a *daily* basis. In the event that this amount increases, the covered swap entity must use this new amount as the basis for determining the amount of initial margin that it must *post* to its counterparty. In cases where this amount decreases, the new amount would represent the new minimum required amount of initial margin. Accordingly, any previously collected or posted collateral in excess of this amount would represent additional initial margin collateral that, subject to bilateral agreement, could be returned.

The use of an approved initial margin model may result in changes to the initial margin collection amount on a *daily* basis for a number of reasons. First, the characteristics of the swaps that have a material effect on their risk may change over time. As an example, the credit quality of a corporate reference entity upon which a credit default swap contract is written may undergo a measurable decline. A decline in the credit quality of the reference entity would be expected to have a material impact on the initial margin model's risk assessment and the resulting initial margin collection amount. More generally, as the swaps' relevant risk characteristics change, so will the initial margin collection amount. In addition, any change to the composition of the swap portfolio that results in the addition or deletion of swaps from the portfolio would result in a change in the initial margin collection amount. Second, the underlying parameters and data that are used in the model may change over time as underlying conditions change. As an example, in the event that a new period of financial stress is encountered in one or more asset classes, the initial margin model's risk assessment of a swap's overall risk may change as a result. While the stress period calibration is intended to reduce the extent to which small or moderate changes in the risk environment influence the initial margin model's risk assessment, a significant change in the risk environment that affects the required stress period calibration could influence the margin model's overall assessment of the risk of a swap. Third, quantitative initial margin models are expected to be maintained and refined on a continuous basis to reflect the most accurate risk assessment possible with available best practices and methods.[180] As best

[180] Section __.8(c)(3) of the final rule would require any material change to the model be communicated to the relevant Agency before taking effect. The Agencies, however, do anticipate that some changes will be made to initial margin models on an ongoing basis consistent with regular and

practice risk management models and methods change, so too may the risk assessments of initial margin models.

2. Standardized Initial Margins

Under the final rule, covered swap entities that are either unable or unwilling to make the technology and related infrastructure investments necessary to maintain an initial margin model may elect to use standardized initial margins. The standardized initial margins are detailed in Appendix A of the final rule.

a. Gross Initial Margins and Recognition of Offsets Through the Application of the Net-to-Gross Ratio

Under the final rule, standardized initial margins depend on the asset class (commodity, equity, credit, foreign exchange and interest rate) and, in the case of credit and interest rate asset classes, further depend on the duration of the underlying non-cleared swap.

In addition, the standardized initial margin requirement allows for the recognition of risk offsets through the use of a net-to-gross ratio in cases where a portfolio of non-cleared swaps is executed under an EMNA. The net-to-gross ratio compares the net current replacement cost of the non-cleared portfolio (in the numerator) with the gross current replacement cost of the non-cleared portfolio (in the denominator). The net current replacement cost is the cost of replacing the entire portfolio of swaps that are covered under the EMNA. The gross current replacement cost is the cost of replacing those swaps that have a strictly positive replacement cost under the EMNA. As an example, consider a portfolio that consists of two non-cleared swaps under an EMNA in which the mark-to-market value of the first swap is $10 (*i.e.,* the covered swap entity is owed $10 from its counterparty) and the mark-to-market value of the second swap is −$5 (*i.e.,* the covered swap entity owes $5 to its counterparty). Then the net current replacement cost is $5 ($10−$5), the gross current replacement cost is $10, and the net-to-gross ratio would be 5/10 or 0.5.[181]

The net-to-gross ratio and gross standardized initial margin amounts (provided in Appendix A) are used in conjunction with the notional amount of the transactions in the underlying swap portfolio to arrive at the total initial margin requirement as follows:

Standardized Initial Margin=0.4 × Gross Initial Margin + 0.6 × NGR × Gross Initial Margin where:

Gross Initial Margin= the sum of the notional value multiplied by the appropriate initial margin requirement percentage from Appendix A of each non-cleared swap under the EMNA; and NGR= net-to-gross ratio

As a specific example, consider the two-swap portfolio discussed above. Suppose further that the swap with the mark-to-market value of $10 is a sold 5-year credit default swap with a notional value of $100 and the swap with the mark-to-market value of −$5 is an equity swap with a notional value of $100. The standardized initial margin requirement would then be:

$[0.4 \times (100 \times 0.05 + 100 \times 0.15) + 0.6 \times 0.5 \times (100 \times 0.05 + 100 \times 0.15)] = 8 + 6 = 14$.

The Agencies further note that the calculation of the net-to-gross ratio for margin purposes must be applied only to swaps subject to the same EMNA and that the calculation is performed *across* transactions in disparate asset classes within a single EMNA such as credit and equity in the above example (*i.e.,* all non-cleared swaps subject to the same EMNA and subject to the final rule's requirements can net against each other in the calculation of the net-to-gross ratio, as opposed to the modeling approach that allows netting only within each asset class). This approach is consistent with the standardized counterparty credit risk capital requirements. Also, the equations are designed such that benefits provided by the net-to-gross ratio calculation are limited by the standardized initial margin term that is independent of the net-to-gross ratio, *i.e.,* the first term of the standardized initial margin equation which is 0.4 × Gross Initial Margin. Finally, if a counterparty maintains multiple non-cleared swap portfolios under one or multiple EMNAs, the standardized initial margin amounts would be calculated separately for each portfolio with each calculation using the gross initial margin and net-to-gross ratio that is relevant to each portfolio. The total standardized initial margin would be the sum of the standardized initial margin amounts for each portfolio. One commenter suggested that the Agencies adopt an altogether different approach to computing standardized initial margins in a manner consistent with the standardized approach for measuring counterparty credit risk exposures that was finalized and published by the BCBS in March 2014. This approach is intended to be used in bank regulatory capital requirements for the purposes of computing capital requirements for counterparty credit risk resulting from OTC derivative exposures.

The Agencies have decided not to adopt this approach in the final rule for several reasons. First, the standardized approach for counterparty credit risk has been developed for counterparty capital requirement purposes and, while clearly related to the issue of initial margin for non-cleared swaps, it is not entirely clear that this framework can be transferred to a simple and transparent standardized initial margin framework without modification. Second, the standardized counterparty credit risk approach that has been published by the BCBS is not intended to become effective until January 2017 which follows the initial compliance date of the final rule. Accordingly, the Agencies expect that some form of the standardized approach will be proposed by U.S. banking regulators prior to January 2017. Following the notice and comment period, a final rule for capitalizing counterparty credit risk exposures will be finalized in the United States. Once these rules are in place and effective it may be appropriate to consider adjusting the approach in this rule to standardized initial margins. Prior to the new capital rules being effective in the United States for the purpose for which they were intended, the Agencies do not believe it would be appropriate to incorporate the standardized approach to counterparty credit risk that has been published by the BCBS into the final margin requirements for non-cleared swaps.

One commenter suggested modifying the proposed approach to standardized initial margin amounts to reflect greater granularity. Among other things, this commenter suggested increasing the number of asset categories recognized by the standardized initial margin table. In the final rule, the Agencies have adopted the proposed approach to standardized initial margins. The Agencies acknowledge the desire to reflect greater granularity in the standardized approach but also note that the approach in the final rule distinguishes among four separate asset classes and various maturities. The Agencies also note that no commenter

ongoing maintenance and oversight that will not require Agency notification.

[181] Note that in this example, whether or not the counterparties have agreed to exchange variation margin has no effect on the net-to-gross ratio calculation, *i.e.,* the calculation is performed without considering any variation margin payments. This is intended to ensure that the net-to-gross ratio calculation reflects the extent to which the non-cleared swaps generally offset each other and not whether the counterparties have agreed to exchange variation margin. As an example, if a swap dealer engaged in a single sold credit derivative with a counterparty, then the net-to-gross calculation would be 1.0 whether or not the dealer received variation margin from its counterparty.

provided a specific and fully articulated suggestion on how to modify the standardized approach to achieve greater flexibility without becoming overly burdensome. The Agencies also note that the standardized initial margins are a *minimum* margin requirement. Accordingly, covered swap entities and their counterparties are free to develop standardized margin schedules that reflect greater granularity than the final rule's standardized approach so long as the resulting amounts would in all circumstances be at least as large as those required by the final rule's standardized approach to initial margin. Accordingly, the final rule affords covered swap entities and their counterparties the opportunity to develop simple and transparent margin schedules that reflect the granular and specific nature of the swap activity being margined.

b. Calculation of the Net-to-Gross Ratio for Initial Margin Purposes

The final rule's standardized approach to initial margin depends on the calculation of a net-to-gross ratio. In the context of performing margin calculations, it must be recognized that at the time non-cleared swaps are entered into it is often the case that both the net and gross current replacement cost is zero. This precludes the calculation of the net-to-gross ratio. In cases where a new swap is being added to an existing portfolio that is being executed under an existing EMNA, the net-to-gross ratio may be calculated with respect to the existing portfolio of swaps. In cases where an entirely new swap portfolio is being established, the initial value of the net-to-gross ratio should be set to 1.0. After the first day's mark-to-market valuation has been recorded for the portfolio, the net-to-gross ratio may be re-calculated and the initial margin amount may be adjusted based on the revised net-to-gross ratio.

c. Frequency of Margin Calculation

The final rule requires that the standardized initial margin collection amount be calculated on a *daily* basis. In cases where the initial margin collection amount increases, this new amount must be used as the basis for determining the amount of initial margin that must be *collected* from a financial end user with material swaps exposure or a swap entity. In addition, when a covered swap entity faces a financial end user with material swaps exposure, the covered swap entity must also calculate the initial margin collection amount from the perspective of its counterparty on a *daily* basis. In the event that this amount increases, the covered swap entity must use this new amount as the basis for determining the amount of initial margin that it must *post* to its counterparty. In the event that this amount decreases, this new amount would also serve as the basis for the minimum required amount of initial margin. Accordingly, any previously collected or posted initial margin over and above the new requirement could, subject to bilateral agreement, be returned.

d. Daily Calculation

As in the case of internal-model-generated initial margins, the margin calculation under the standardized approach must also be performed on a daily basis. Since the standardized initial margin calculation depends on a standardized look-up table (presented in appendix A), there is somewhat less scope for the initial margin collection amounts to vary on a daily basis. At the same time, however, there are some factors that may result in daily changes in the initial margin collection amount resulting from standardized margin calculations. First, any changes to the notional size of the swap portfolio that arise from any addition or deletion of swaps from the portfolio would result in a change in the standardized margin amount. As an example, if the notional amount of the swap portfolio increases as a result of adding a new swap to the portfolio then the standardized initial margin collection amount would increase. Second, changes in the net-to-gross ratio that result from changes in the mark-to-market valuation of the underlying swaps would result in a change in the standardized initial margin collection amount. Third, changes to characteristics of the swap that determine the gross initial margin (presented in appendix A) would result in a change in the standardized initial margin collection amount. As an example, the gross initial margin applied to interest rate swaps depends on the duration of the swap. An interest rate swap with a duration between zero and two years has a gross initial margin of one percent while an interest rate swap with duration of greater than two years and less than five years has a gross initial margin of two percent. Accordingly, if an interest rate swap's duration declines from above two years to below two years, the gross initial margin applied to it would decline from two to one percent. Accordingly, the standardized initial margin collection amount will need to be computed on a *daily* basis to reflect all of the factors described above.

3. Combined Use of Internal Model Based and Standardized Initial Margins

The Agencies expect that some covered swap entities may choose to adopt a mix of internal models and standardized approaches to calculating initial margin requirements. For example, it may be the case that a covered swap entity engages in some swap transactions on an infrequent basis to meet client demands but the level of activity does not warrant all of the costs associated with building, maintaining and overseeing a quantitative initial margin model. Further, some covered swap entity clients may value the transparency and simplicity of the standardized approach. In such cases, the Agencies expect that it would be acceptable to use the standardized approach to margin such swaps.

Under certain circumstances it may be appropriate to employ both a model based and standardized approach to calculating initial margins. At the same time, the Agencies are aware that differences between the standardized approach and internal model based margins across different types of swaps could be used to ''cherry pick'' the method that results in the lowest margin requirement. Rather, the choice to use one method over the other should be based on fundamental considerations apart from which method produces the most favorable margin results. Similarly, the Agencies do not anticipate there should be a need for covered swap entities to switch between the standardized or model-based margin method for a particular counterparty, absent a significant change in the nature of the entity's swap activities. The Agencies expect covered swap entities to provide a rationale for changing methodologies to their supervisory Agency if requested. The Agencies will monitor for evasion of the swap margin requirements through selective application of the model and standardized approach as a means of lowering the margin requirements.

I. Section __.9: Cross-Border Application of Margin Requirements

In global markets, counterparties organized in different jurisdictions often transact in non-cleared swaps. Section 9 of the final rule addresses the cross-border applicability of the proposed margin rules to covered swap entities.

1. Excluded Swaps

Section __.9 of the final rule excludes from coverage of the rule's margin requirements any foreign non-cleared swap of a foreign covered swap

entity.[182] A ''foreign covered swap entity'' is any covered swap entity that is *not* (i) an entity organized under U.S. or State law, including a U.S. branch, agency, or subsidiary of a foreign bank; (ii) a branch or office of an entity organized under U.S. or State law; or (iii) an entity that is a subsidiary of an entity organized under U.S. or State law. Accordingly, under the final rule, only a covered swap entity that is organized under foreign law and is not a subsidiary of a U.S. company (such as a foreign bank) would be eligible for treatment as a foreign covered swap entity; neither a foreign branch of a U.S. bank nor a foreign subsidiary of a U.S. company would be considered a foreign covered swap entity under the final rule. The swap activities of the foreign branch or subsidiary have the potential to expose the U.S. bank or parent to significant legal, contractual, or reputational risks. Transactions of a foreign branch or subsidiary of a U.S. company could also have direct and significant connection with activities in, and effect on, commerce of the United States and therefore affect systemic risk in the United States. Similarly, neither a U.S. branch of a foreign bank nor a U.S. subsidiary of a foreign company would be considered a foreign covered swap entity under the final rule, since they operate directly in the United States.

The final rule's definition of ''foreign non-cleared swap or foreign non-cleared security-based swap'' covers any non-cleared swap of a foreign covered swap entity to which neither the counterparty nor any guarantor (on either side) is (i) an entity organized under U.S. or State law, including a U.S. branch, agency, or subsidiary of a foreign bank or a natural person who is a resident of the United States; (ii) a branch or office of an entity organized under U.S. or State law; or (iii) a swap entity that is a subsidiary of an entity organized under U.S. or State law. As a result, foreign non-cleared swaps could include swaps with a foreign bank or with a foreign subsidiary of a U.S. bank or bank holding company, so long as neither the subsidiary nor the U.S. parent is a covered swap entity. A foreign swap would not include a swap with a foreign branch of a U.S. bank or a U.S. branch or subsidiary of a foreign bank.

The final rule's approach to excluded swaps largely follows the proposed approach with a few minor modifications. The foreign non-cleared swap definition has been modified to make clear that a natural person resident of the United States cannot be the guarantor of a swap that would qualify for the foreign exclusion. In addition, this definition has been modified to make clear that neither the counterparty nor the guarantor can be a swap entity (as opposed to a covered swap entity, as proposed) that is a subsidiary of an entity that is organized under the laws of the United States or any State.

One commenter urged that U.S. branches and agencies of foreign banks transacting with foreign counterparties with no guarantee from a U.S. entity should be able to treat their non-cleared swaps as excluded foreign swap transactions that are not subject to this rule because the branch is part of the same legal entity as its foreign parent.[183] The Agencies have not modified the final rule to treat transactions of a U.S. branch or agency of a foreign bank with a foreign counterparty that is not guaranteed by a U.S. entity as a foreign non-cleared swap of a foreign covered swap entity. Such branches and agencies clearly operate within the United States and could pose risk to the U.S. financial system. Moreover, and as described further below, such U.S. branches and agencies of foreign banks would be eligible for substituted compliance under the final rule and be able to comply with a foreign margin rule if the Agencies make a comparability determination with respect to the applicable foreign margin rule.

Another commenter urged that the final rule should not apply to a covered swap entity that is a subsidiary of a U.S. parent where the subsidiary is not guaranteed by the U.S. entity. The Agencies have not modified the rule in this manner, as subsidiaries of a U.S. covered swap entity could pose risk to the U.S. covered swap entity and the U.S. financial system. As described more fully below, however, these subsidiaries may be able to take advantage of substituted compliance determinations under the final rule.

In the proposed rule, the definitions of foreign covered swap entity and foreign non-cleared swap included a test that looked to the existence of ''control'' by an entity organized under the laws of the United States. One commenter expressed concern about the proposal's lack of clarity with respect to the meaning of ''control'' in these circumstances. The final rule has been modified in these two provisions to replace ''controlled by'' with the term ''subsidiary'' which is defined by reference to financial consolidation in section 2 of the final rule.[184] The Agencies believe that these modifications address this commenter's concerns with respect to the proposal's use of the definition of ''control.''

Certain commenters also expressed concern that the proposed rule did not make clear when a counterparty was a U.S. person for purposes of determining whether a swap qualified as a foreign non-cleared swap, which would be excluded under the proposed rule. One commenter, for example, suggested that the final rule adopt a ''U.S. person'' definition to make clear how foreign covered swap entities can determine whether a counterparty that is a financial end user is either a U.S. or foreign entity.[185] Similarly, another commenter urged the Agencies to incorporate a ''principal place of business'' test into the definition of foreign non-cleared swap or foreign non-cleared security-based swap.[186] The Agencies have not adopted the changes recommended by these commenters but have retained the bright-line proposed test that looks to the jurisdiction of organization. As a consequence, the Agencies would consider the place of incorporation of a particular entity to be the location of the entity for purposes of this rule.

2. Guarantees

The requirement that no U.S. entity may guarantee either party's obligation under the swap in order for the swap to

[182] Section 2(i) of the Commodity Exchange Act, as amended by section 722 of the Dodd-Frank Act, provides that the provisions of the Commodity Exchange Act, as amended by section 722 of the Commodity Exchange Act relating to swaps ''shall not apply to activities outside the United States unless those activities . . . have a direct and significant connection with activities in, or effect on, commerce of the United States.''

[183] This commenter argued that, at a minimum, application of the final rule should depend solely on whether the swap is booked to the U.S. branch or agency and that the location of personnel or agents should have no bearing on whether the swap gives rise to risks to the United States financial system. Another commenter stated that it is not clear whether margin rules would apply if a swap transaction with a foreign counterparty is booked by a foreign swap entity but arranged, negotiated, or executed by persons operating from a U.S. branch of such swap entity. The Agencies would generally consider the entity to which the swap is booked as the counterparty for purposes of this section.

[184] *See* § __.2 of the final rule.

[185] One commenter cited CFTC Proposal, 79 FR 59898 at 59916 (October 3, 2014), arguing that an investment company based in the Cayman Island with U.S. investors that enters into a non-cleared swap with a foreign covered swap entity cannot be sure whether it would be subject to U.S. laws.

[186] This commenter argued that the proposal classifies funds organized outside of the United States but with a U.S. principal place of business through a U.S.-based fund manager as a foreign entity and recommended following the approach of the CFTC and SEC in their cross-border guidance. Two commenters stated that the Agencies should adopt the CFTC entity-level approach.

be excluded from the rule is intended to prevent instances where a U.S. entity, through a guarantee, effectively assumes ultimate responsibility for the performance of a counterparty's obligations under the swap. In particular, the Agencies are concerned that, without such a requirement, swaps could be structured in a manner that would evade application of the margin requirements to U.S. swaps. Swaps guaranteed by a U.S. entity would also have a direct and significant connection with activities in, and an effect on, commerce of the United States and thus affect systemic risk in the United States.

Section __.9(g) of the final rule defines ''guarantee'' to mean an arrangement pursuant to which one party to a non-cleared swap has rights of recourse against a third-party guarantor, with respect to its counterparty's obligations under the non-cleared swap. For these purposes, a party to a non-cleared swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the swap. In addition, any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other third-party guarantor with respect to the counterparty's obligations under the non-cleared swap, such arrangement will be deemed a guarantee of the counterparty's obligations under the swap by the other guarantor. The definition of guarantee has implications for the swaps that are excluded from the rule as well as for the swaps that are eligible for a compliance determination under § __.9(d) and the ability to meet the requirements of § __.9(f) in jurisdictions where segregation is unavailable.

In the proposal, the Agencies requested comment on whether the rule should clarify and define the concept of ''guarantee'' to better ensure that those swaps that pose risks to U.S. insured depository institutions would be included within the scope of the rule. Some commenters urged the Agencies to define the term ''guarantee.'' While one commenter supported use of a broad definition of guarantee that includes cross-default provisions, keepwell arrangements or liquidity puts, another commenter argued that a guarantee should be defined to constitute an express, legally enforceable arrangement providing foreign counterparties with recourse to the U.S. guarantor. Another commenter argued that cross-default provisions would not generally give a swap counterparty any direct right of access against the specified entity and should not be treated as a guarantee.

In order to provide additional clarity on the meaning of guarantee for purposes of § __. 9, the final rule requires one party to have rights of recourse against a third-party guarantor; however, in order to address potential concerns about evasion, the Agencies will deem a guarantee to exist, if the third-party guarantor has a guarantee from one or more additional third-party guarantors, with respect to the obligations under the non-cleared swap. The Agencies believe that a definition of ''guarantee'' that is narrowly targeted to the particular swap obligation provides clarity through a bright-line test that can be applied consistently and is appropriately limited in scope. For example, if a foreign registered German Bank covered swap entity (''Party W'') enters into a swap with a non-covered swap entity, foreign subsidiary of a U.S. covered swap entity (''Party X''), and Party X has a guarantee from a third-party guarantor that is a foreign affiliate of Party X (''Party Y''), who then, in turn has a guarantee from its U.S. covered swap entity parent entity (''Parent Z''), the Agencies would deem a guarantee to exist between Party X and Parent Z, on Party X's swap obligations.

3. Substituted Compliance

In addition to the exclusion for certain swaps described above, the final rule would permit certain covered swap entities to comply with a foreign regulatory framework for non-cleared swaps if the Agencies jointly determine that such foreign regulatory framework is comparable to the requirements of the Agencies' rule. The development of the 2013 international framework makes it more likely that regulators in multiple jurisdictions will adopt margin rules for non-cleared swaps that are comparable. In light of the 2013 international framework, the final rule would allow certain non-U.S. covered swap entities to comply with the margin requirements of the final rule by complying with a foreign jurisdiction's margin requirements, subject to the Agencies' determination that the foreign rule is comparable to this final rule and appropriate for the safe and sound operation of the covered swap entity, taking into account the risks associated with the non-cleared swaps. These determinations would be made on a jurisdiction-by-jurisdiction basis. Furthermore, the Agencies' determination may be conditional or unconditional. The Agencies could, for example, determine that certain provisions of the foreign regulatory framework are comparable to the requirements of the final rule but that other aspects are not comparable for purposes of substituted compliance.

Under the final rule, certain types of covered swap entities operating in foreign jurisdictions would be able to meet the requirement of the final rule by complying with the foreign requirement in the event that a comparability determination is made by the Agencies, regardless of the location of the counterparty, provided that the covered swap entity's obligations under the swap are not guaranteed by a U.S. entity (other than a U.S. branch, agency, or subsidiary of a foreign bank) or by a natural person who is a U.S. resident. If a covered swap entity's obligations under a swap are guaranteed by a U.S. entity or natural person who is a U.S. resident, the swap would not be eligible for substituted compliance. Foreign covered swap entities (defined as discussed above) and foreign subsidiaries of U.S. depository institutions or Edge or agreement corporations would be eligible to take advantage of a comparability determination.

In addition, U.S. branches and agencies of foreign banks would be permitted to comply with the foreign requirement for which a determination was made, provided their obligations under the swap are not guaranteed by a U.S. entity or by a natural person who is a resident of the United States. While such branches and agencies clearly operate within the United States, this treatment reflects the principle that branches and agencies are part of the parent organization. Under this approach, foreign branches and agencies of U.S. banks would not be eligible for substituted compliance and would be required to comply with the U.S. requirement for the same reason. The Agencies are aware of concerns regarding potential competitive disadvantages that could arise as U.S. covered swap entities compete with U.S. branches and agencies of foreign banks in the market for non-cleared swaps. The Agencies' believe that this concern would be addressed through the comparability determination process. A foreign jurisdiction with a substantially different margin requirement that resulted in a demonstrable competitive advantage over U.S. covered swap entities is unlikely to have processes that are comparable to the U.S. compliance requirements. Moreover, a foreign margin requirement that provides significant competitive advantages to

foreign entities through a lower margin requirement would result in a general increase in systemic risk and weaker incentives for central clearing, relative to the U.S. margin requirements. Accordingly, it is unlikely that such foreign requirements would be determined comparable by the Agencies, in which case the U.S. branch or agency of a foreign bank would be required to comply with the U.S. requirement.

Certain commenters urged the Agencies to permit substituted compliance for comparable rules to the greatest possible degree in order to mitigate cross-border conflicts and inconsistencies in the application of margin requirements. A number of comments expressed concern about the application of multiple different sets of rules on cross-border swap transactions, which they argued could deter cross-border swap transactions. A few commenters argued that counterparties should be able to agree which of their jurisdictions' margin requirements will apply to a swap, as long as both jurisdictions' requirements are consistent with international standards. The Agencies believe that the availability of substituted compliance determinations in the final rule serve to mitigate these concerns while at the same time ensuring that applicable margin rules in a foreign jurisdiction would be comparable to this final rule.

Some commenters argued that foreign branches of U.S. swap entities as well as foreign covered swap entities that are guaranteed by a U.S. entity [187] should be able to take advantage of substituted compliance determinations. Some of these commenters argued that foreign branches of U.S. swap entities and foreign covered swap entities that are guaranteed by a U.S. entity would be subject to foreign margin requirements and that making substituted compliance available to them is necessary to avoid conflicts with foreign laws. The Agencies have declined to modify the final rule in this respect as transactions of a foreign branch of a U.S. entity could have a direct and significant connection with activities in, and effect on, commerce of the United States. While such branches and agencies clearly operate within a foreign jurisdiction, this treatment reflects the principle that branches and agencies are part of the parent, as noted above. The requirement that no U.S. affiliate may guarantee the counterparty's obligation was intended to prevent instances where such an affiliate, through a guarantee, effectively assumes ultimate responsibility for the performance of the counterparty's obligations under the swap. In particular, the Agencies are concerned that, without such a requirement, swaps with a U.S. counterparty could be structured, through the use of an overseas affiliate, in a manner that would evade application of the proposed margin requirements to U.S. swaps. Swaps guaranteed by a U.S. entity would also have a direct and significant connection with activities in, and an effect on, commerce of the United States and thus affect systemic risk in the United States.

The Agencies have, however, modified the final rule to make clear that there is no restriction on the U.S. branch, or agency of a foreign bank providing a guarantee to a covered swap entity eligible for compliance with a foreign margin regime. The Agencies believe that since a U.S. branch or agency of a foreign bank can be the covered swap entity eligible for substituted compliance, there should be no restriction on guarantees by these entities.

4. Substituted Compliance for Posting to Foreign Counterparties

Under the final rule, if a foreign counterparty is subject to a foreign regulatory framework that has been determined to be comparable by the Agencies, a covered swap entity's posting requirement would be satisfied by posting (in amount, form, and at such time) as required by the foreign counterparty's margin collection requirement, provided that the foreign counterparty does not have a guarantee from an entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is resident of the United States or a branch or office of an entity organized under the laws of the United States or any State. In these cases, the collection requirement of the foreign counterparty would suffice to ensure two-way exchange of margin. For example, if a U.S. bank that is a covered swap entity enters into a swap with a foreign hedge fund that does not have a U.S. guarantee and that is subject to a foreign regulatory framework for which the Agencies have made a comparability determination, the U.S. bank must collect the amount of margin as required under the U.S. rule, but need post only the amount of margin that the foreign hedge fund is required to collect under the foreign regulatory framework.

One commenter argued that allowing a U.S. entity to rely on substituted compliance only in connection with its obligation to post initial margin would make a U.S. covered swap entity uncompetitive in foreign markets. Certain commenters suggested that if one counterparty to a swap is subject to a comparable foreign regulation, the entire transaction should be eligible for substituted compliance.[188] The final rule has not been modified in this respect. One commenter urged that covered swap entities should not be required to post margin in cross-border transactions.[189] The Agencies also have not modified the rule to provide that covered swap entities are not required to post margin in transactions with foreign counterparties as this would be inconsistent with the overall approach of the final rule that generally requires two-way margin. As described above, the Agencies also believe that requiring a covered swap entity to post margin to other financial entities could forestall a build-up of potentially destabilizing exposures in the financial system. The final rule's approach therefore is designed to ensure that covered swap entities transacting with other swap entities and with financial end users in non-cleared swaps will be collecting and posting appropriate minimum margin amounts with respect to those transactions.

The final rule is modified from the proposal to contain the additional limitation that the counterparty cannot have a guarantee from a U.S. entity. The purpose of this change was to align with the CFTC cross-border proposal. The Agencies also believe that, in order for a counterparty to be able to collect pursuant to a foreign margin framework, the counterparty should not be guaranteed by a U.S. entity. This modification is also in alignment with the CFTC's cross-border proposal.

[187] One commenter argued that if the Agencies decide to apply the final rule to foreign swap transactions based on the presence of a U.S. guarantee, they should only do so if that guarantee constitutes an express legally enforceable arrangement providing foreign swap counterparties with recourse to the U.S. guarantor. As noted above, the final rule defines the term ''guarantee'' for purposes of this section.

[188] One commenter explained that it could disadvantage non-U.S. hedge funds if one set of regulations does not govern any particular transaction and recommended adoption of the CFTC's ''entity-level approach'' where a hedge fund that enters into a swap with a non-U.S. swap dealer that is not guaranteed by a U.S. person, substituted compliance would be possible if the parties elect to follow the rules of a foreign regime). Another commenter provided an example where a foreign covered swap entity operating in a jurisdiction where there has been no comparability determination transacts with a counterparty in a jurisdiction where there has been a comparability determination.

[189] This commenter recommended following the approach set out in the EU and Japanese Margin Proposals.

5. Compliance Determinations

The final rule provides that the Agencies will jointly make a determination regarding the comparability of a foreign regulatory framework that will focus on the outcomes produced by the foreign framework as compared to the U.S. framework. Moreover, as margin requirements are complex and have a number of related aspects (*e.g.,* margin posting requirements, margin collection requirements, model requirements, eligible collateral, and segregation requirements), the Agencies would take a holistic view of the foreign regulatory framework that appropriately considers the outcomes produced by the entire framework. More specifically, the Agencies generally will not require that every aspect of a foreign regulatory framework be comparable to every aspect of the U.S. framework, but will require that the outcomes achieved by both frameworks are comparable. The Agencies propose to consider factors such as the scope, objectives, and specific provisions of the foreign regulatory framework and the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the relevant foreign regulatory authorities.

The Agencies would accept requests for a comparability determination for a foreign regulatory framework from a covered swap entity that is eligible for substituted compliance under the final rule. Once the Agencies make a favorable comparability determination for a foreign regulatory framework, any covered swap entity that could comply with the foreign framework will be allowed to do so (*i.e.,* they will not have to make a specific request). The Agencies expect to consult with the relevant foreign regulatory authorities before making a determination.

Certain commenters expressed support for the Agencies' proposal to take a holistic view of the foreign regulatory framework that considers outcomes produced by the entire framework. A few commenters urged the Agencies to evaluate foreign regulations based on the 2013 international framework when making substituted compliance determinations. One commenter urged the Agencies to provide specific standards and conditions that will be used in determinations. The Agencies expect that substituted compliance determinations will be on a case-by-case basis, would consider a number of aspects related to margin requirements, and could be partial.

One commenter argued that trade associations and foreign regulators should be allowed to make requests for a substituted compliance determination with respect to a foreign regulatory framework. The Agencies continue to believe it is appropriate to accept such requests only from covered swap entities that are subject to the requirements under the final rule and have not modified the final rule to accept requests from trade groups or foreign regulators. Moreover, and as explained above, the Agencies plan to consult with the relevant foreign regulatory authorities prior to making a determination with respect to substituted compliance.

6. Jurisdictions Where Segregation Is Unavailable

Section __.9(f) is a new provision in the final rule that is meant to address concerns raised by commenters on the proposal. A number of commenters argued that the Agencies should incorporate a de minimis exception for swap activities conducted in jurisdictions for which substituted compliance is not available, including in jurisdictions that do not have a legal framework to support netting and segregation.[190]

Section __.9(f) provides that the requirements to post and segregate collateral do not apply to a non-cleared swap entered into by a foreign branch of a U.S. depository institution or a foreign subsidiary of a U.S. depository institution, Edge corporation, or agreement corporation if certain requirements are met, including:

- Inherent limitations in the legal or operational infrastructure in the foreign jurisdiction make it impracticable for the covered swap entity and the counterparty to post any form of eligible initial margin collateral recognized pursuant to § __.6(b) in compliance with the segregation requirements of § __.7;
- The covered swap entity is subject to foreign regulatory restrictions that require the covered swap entity to transact [in] the non-cleared swap or non-cleared security-based swap with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the non-cleared swap or non-cleared security-based swap outside the jurisdiction;
- The counterparty to the non-cleared swap or non-cleared security-based swap is not, and the counterparty's obligations under the non-cleared swap or non-cleared security-based swap are not guaranteed by: (i) An entity organized under the laws of the United States or any State or a natural person who is a resident of the United States; or (ii) A branch or office of an entity organized under the laws of the United States or any State;
- The covered swap entity collects initial margin for the non-cleared swap or non-cleared security-based swap in accordance with § __.3(a) in the form of cash pursuant to § __.6(b)(1), and posts and collects variation margin in accordance with § __.4(a) in the form of cash pursuant to § __.6(b)(1); and
- The [Agency] provides the covered swap entity with prior written approval for the covered swap entity's reliance on this subsection for the foreign jurisdiction.

An Agency would only provide a covered swap entity with prior written approval to engage in swap transactions pursuant to this § __. 9(f) where the swap entity met all of the conditions described above. In particular, a covered swap entity would need to demonstrate that foreign regulatory restrictions would not allow the swap to occur in another jurisdiction that would accommodate the posting and segregation of collateral.

7. Transition Period

Certain commenters suggested a transition period between when a comparability determination is published and when the margin rules go into effect so that substituted compliance determinations are made prior to implementation of the final rule.[191] Section __.1(e) of the final rule describes the phase-in period for the final rule established under the international framework. To the extent that a covered swap entity becomes subject to the requirements of this final rule prior to the Agencies making a substituted compliance determination, the covered swap entity would be subject to the U.S. margin rule until such time as a comparability determination is made by the Agencies.

J. Section __.10: Documentation of Margin Matters

Under the final rule, a covered swap entity must execute trading documentation with each counterparty that is a swap entity or a financial end

[190] One commenter noted that the CFTC conditioned the exception on the volume of such transactions not exceed five percent of the total aggregate volume of swaps entered into by the U.S. swap entity.

[191] One commenter urged the Agencies to make comparability determinations for other major jurisdictions with, or shortly following, the final rule without the need for an application process to enable market participants to take comparability requirements into account during the implementation process.

user regarding credit support arrangements. The documentation must provide the covered swap entity the contractual rights and obligations to collect and post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the rule. The documentation must also specify the methods, procedures, rules, and inputs for determining the value of each non-cleared swap for purposes of calculating variation margin and the procedures by which any disputes concerning the valuation of non-cleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved. Finally, the documentation must also describe the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps entered into between the covered swap entity and the counterparty.

In the proposed rule, the Agencies requested comment on whether the final rule should deem compliance with the applicable CFTC or SEC documentation requirement as compliance with this rule. A few commenters recommended against deferring to the CFTC documentation requirements, arguing that those requirements are deficient for purposes of resolving disputes related to initial margin, while other commenters recommended that the documentation requirements be removed or simplified because the issue is already addressed in CFTC regulations.

The Agencies have decided to include the proposed documentation standards in the final rule with certain revisions in light of comments. The Dodd-Frank Act amended the Commodity Exchange Act and the Securities Exchange Act to require the Commissions to adopt documentation standards for the swap entities they regulate.[192] To date, the SEC has not adopted documentation standards for security-based swap dealers and major security-based swap participants related to margin.[193]

While the CFTC has established requirements regarding documentation for swap dealers and major swap participants that are similar to those being adopted by the Agencies, important differences remain.[194] For example, the Agencies' final rule requires that covered swap entities address in their documentation dispute resolution procedures for disputes regarding the value of swaps as well as the value of assets collected or posted as margin. The CFTC documentation rule, however, only requires procedures for resolving disputes regarding the value of swaps, not the value of collateral, and such procedures for resolving swap valuation disputes need not be addressed if the documentation addresses alternative methods for determining the value of a swap in the event of the unavailability or other failure of input required to value the swap.[195] Given the important role that documentation will play in implementing the margin requirements set out in this final rule and the importance of those requirements for the safety and soundness of covered swap entities, the Agencies believe it is essential for them to adopt documentation requirements pursuant to their own authorities.

Certain commenters recommended against requiring parties to lock in either at the inception of their trading relationship or upon the relevant compliance date for margin requirements on non-cleared swaps dispositive valuation methods as opposed to agreed steps and processes for arriving at valuations. Other commenters wrote that the documentation section is overly prescriptive in requiring that the documentation specify inputs used in determining initial and variation margin because the inputs may vary from swap to swap and will change over the lifetime of the swap. Instead, the commenter recommended that the focus should be on requiring parties to share the actual inputs being used to determine initial margin and variation margin at any particular point in time upon request. To address these concerns, in the final rule, a covered swap entity's documentation would need to describe its methods, procedures, rules, and inputs for determining the value of non-cleared swaps, rather than specify such elements for initial margin.

K. Section __.11: Special Rules for Affiliate Swaps

The final rule contains a special section for swaps between a covered swap entity and its affiliates. This section provides that the requirements of the rule generally apply to a non-cleared swap or non-cleared security-based swap with an affiliate unless the swap is excluded from coverage under § __.1(d) or a special rule applies. This section also makes clear that to the extent of any inconsistency between this section and any other provision of the final rule, this special section will apply.

As an example, collection of initial margin is not addressed in this special section. Since there is no special provision for collection of margin for affiliate swaps, the requirements of § __.3(a) apply and a covered swap entity is required to collect initial margin from its affiliate pursuant to § __.3(a) under the final rule. When a covered swap entity transacts with another swap entity that is an affiliate, the covered swap entity must collect at least the amount of initial margin required under the final rule.[196] Likewise, the swap entity counterparty also will be required, under margin rules that are applicable to that swap entity, to collect a minimum amount of initial margin from the covered swap entity. Accordingly, covered swap entities will both collect and post a minimum amount of initial margin when transacting with another swap entity. Where a covered swap entity transacts with another swap entity that is an affiliate, this will result in a collect-and-post regime for initial margin among affiliated swap entities.

Section __.11(b)(1) provides that the requirement for a covered swap entity to post initial margin under § __.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate. As § __.3(b) generally requires posting to financial end user counterparties with material swaps exposures, covered swap entities would not need to post initial margin to affiliate counterparties that are financial end users with material swaps exposure. However, the final rule requires that a covered swap entity calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § __.3(b) and provide documentation of such amount to each affiliate on a daily basis.

In addition, under the final rule, each affiliate may be granted an initial margin threshold of $20 million for purposes of calculating the amount of initial margin to be collected from an affiliate counterparty in accordance with § __.3(a) or for calculating the amount of initial margin that would have been posted to an affiliate counterparty in order to provide documentation of this amount to the affiliate. The final rule also provides that, for purposes of this calculation, an entity shall not count a non-cleared

[192] Commodity Exchange Act section 4s(i), 7 U.S.C. 6s(i); Securities Exchange Act section 15F(i), 15 U.S.C. 78o–10(i).

[193] To date, the SEC has adopted standards with respect to confirmations for security-based swaps. 77 FR 55904 (September 11, 2012).

[194] 17 CFR 504(b)(4).

[195] 17 CFR 504(b)(4)(ii).

[196] CFTC and SEC rules will determine the collection requirement for a swap entity that is not a covered swap entity.

swap or non-cleared security-based swap that is exempt pursuant to § __.1(d), as added by the interim final rule.

To the extent that a covered swap entity collects from an affiliate initial margin required by § __.3(a) in the form of collateral other than cash, the covered swap entity may serve as the custodian for the non-cash collateral or have an affiliate serve as the custodian. Such non-cash initial margin collateral collected by a covered swap entity would be subject to all the other requirements of the rule. However, initial margin collateral collected from an affiliate in cash would be subject to all of the requirements of the rule, including the requirement in § __.7 for a third-party custodian that is not an affiliate of the covered swap entity. Altering the requirement in § __.7(b) that non-cash initial margin collateral be held at a custodian that is neither the covered swap entity or the affiliate, or an affiliate of either party, for non-cleared swaps between a covered swap entity and its affiliate is appropriate because the Agencies expect there will be increased transparency for inter-affiliate transactions, use of common valuation modeling, which will lower the likelihood of valuation discrepancies, and greater ease in transferring non-cash collateral between affiliates than would otherwise be the case for swaps with an unaffiliated counterparty.

The final rule also provides that an inter-affiliate swap that would have been required to be cleared but for a clearing exemption will be subject to the initial margin collection requirement. The covered swap entity may, however, choose to calculate the initial margin amount using a 5-day margin period of risk instead of a 10-day margin period of risk under § __.8(d)(1). The final rule permits a covered swap entity using the standardized approach to reduce the initial margin amount on these transactions by 30 percent, in line with the general provision that risk and initial margin increase with the square root of the holding period horizon and the square root of five divided by 10 is roughly 0.7. However, the final rule does not permit a covered swap entity to compute its initial margin requirement on a portfolio basis with swaps that are margined on a 5-day basis with those swaps that are margined on a 10-day basis. Rather, the covered swap entity must calculate initial margin separately for those swaps margined on a 5-day basis and those swaps margined on a 10-day basis.[197] The total initial margin that the final rule provides must be collected on the portfolio is equal to the aggregate initial margin required to be collected on the netting sets with a 5-day holding period and that which is required to be collected on the netting sets with a 10-day holding period.

For additional clarity, this section of the rule also provides that a covered swap entity shall collect and post variation margin with respect to a non-cleared swap or non-cleared security-based swap with any counterparty that is an affiliate as provided in § __.4. As in the case of initial margin, the final rule provides that variation margin is not required on any swap that is exempt pursuant to § __.1(d), as added by the interim final rule.

The proposal would have covered swaps between banks that are covered swap entities and their affiliates that are financial end users, including affiliates that are subsidiaries of a bank, such as operating subsidiaries, Edge Act subsidiaries, agreement corporation subsidiaries, financial subsidiaries, and lower-tier subsidiaries of such subsidiaries. In the preamble to the proposal, the Agencies noted that other applicable laws require transactions between banks and their affiliates to be on an arm's length basis. In particular, section 23B of the Federal Reserve Act provides that many transactions between a bank and its affiliates (as defined under that rule)[198] must be on terms and under circumstances, including credit standards, that are substantially the same or at least as favorable to the bank as those prevailing at the time for comparable transactions with or involving nonaffiliated companies.[199]

Commenters including members of Congress were generally critical of this aspect of the proposal. Specifically, a significant number of commenters argued that requiring margin generally, and initial margin in particular, on all inter-affiliate swaps was unnecessary for systemic stability. These commenters asserted that inter-affiliate swaps are often conducted for internal risk management reasons, and such swaps do not increase the overall risk profile or leverage of the group. Instead, commenters argued, requiring margin on inter-affiliate swaps could discourage effective risk-management, increase group-wide third-party credit risk, and reduce liquidity. Commenters also argued for consistency with other international swap margin proposals that generally would not require margin on inter-affiliate swaps. Commenters also argued that requiring margin for inter-affiliate swaps would undermine the exemption from clearing requirements for such swaps. Finally, commenters criticized the proposal's coverage of affiliate swaps as duplicative of the restrictions and requirements under sections 23A and 23B of the Federal Reserve Act.

While some commenters urged that any required margin for inter-affiliate swaps should be limited to variation margin, which is already generally exchanged among affiliate counterparties, certain commenters suggested alternatives to a full two-way collect-and-post regime for initial margin for affiliate swaps. For example, a number of commenters proposed that instead of each covered swap entity posting and collecting segregated initial margin to and from its affiliate, the covered swap entity would only collect from its affiliate (subject to a wholly owned subsidiary exemption and a de minimis exemption) and the covered swap entity would be permitted to segregate the initial margin within its group, so as to prevent undue third-party custodial risk. These commenters further argued that certain highly regulated affiliates like U.S. bank holding companies should benefit from an exception to initial margin requirements. These commenters further urged that if the Agencies decided a one-way initial margin requirement is not adequate, the Agencies should permit the common parent of an affiliate pair to post a single amount of segregated initial margin in which each affiliate would have a security interest. The Agencies believe that the modifications in the final rule address many of the concerns raised by commenters with respect to the treatment of inter-affiliate swaps. The final rule requires a covered swap entity to collect initial margin from swap entity and financial end user affiliates as suggested by some commenters. As noted above, this will result in a collect-and-post regime where two covered swap entities that are affiliates transact with each other. However, a covered swap entity would not be required to post initial margin to affiliates that are financial end users. A covered swap entity would, however, be required to calculate the amount of initial margin

[197] Among swaps margined on a 5-day basis the covered swap entity must calculate the initial margin requirements in accordance with all of the requirements of § __.8. Likewise when computing the initial margin requirements for swaps margined on a 10-day basis the covered swap entity must comply with all of the requirements of § __.8.

[198] The Agencies note that the Federal Reserve Act and the Board's Regulation W define "affiliate" differently than the term is defined in this final rule. *See* 12 U.S.C. 371c(b); 12 CFR 223.2.

[199] 12 U.S.C. 371c–1(a).

that would be required to be posted to an affiliate under § __.3(b) for affiliates that are financial end users with material swaps exposure and provide documentation of such amount to each such affiliate on a daily basis. Documenting the amount of initial margin that would be posted to affiliates will help promote strong risk management practices as covered swap entities will have an additional real time measure of the amount of risk that is being incurred on swaps with their affiliate counterparties.

In addition, two-way variation margin, which many commenters indicated was already market practice, would be required on inter-affiliate swaps where a covered swap entity transacts with a swap entity or financial end user affiliate. The Agencies believe that these modifications, combined with the revised definitions of affiliate and subsidiary, should address many of the concerns raised by commenters on the proposed rule.

The final rule also modifies the initial margin threshold requirement of the proposal for affiliate swaps. Commenters requested clarification on how the proposed rule's $65 million initial margin threshold would be applied for inter-affiliate transactions with a covered swap entity. The final rule provides that a covered swap entity may apply a $20 million initial margin threshold to each of its affiliates. For example, if a covered swap entity engages in three inter-affiliate swaps with an initial margin amount of $100 million each with three separate affiliates, the total amount of initial margin that the covered swap entity would be required to collect would be (($100m − $20m) + ($100m − $20m) + ($100m − $20m)) = $240m.

In addition, as suggested by commenters, a covered swap entity may elect to use an affiliated custodian bank to hold non-cash collateral received as initial margin, provided that the restrictions on rehypothecating, repledging, or reusing such collateral in § __.7(c) of the final rule will also apply to such non-cash collateral. However, the affiliated custodian bank will not be permitted to hold initial margin cash collateral, which must be held at a third-party custodian and promptly reinvested in non-cash collateral pursuant to § __.6.

Some commenters urged the Agencies to clarify that a holding company may provide margin required to be collected by a covered swap entity from an affiliate. Section __.3(a) of the final rule requires a covered swap entity to collect initial margin from a counterparty that is a financial end user with material swap exposure or that is a swap entity. This requirement applies to both affiliate and non-affiliate counterparties. The rule does not prohibit the margin that a covered swap entity must collect on swaps with its affiliated counterparty from being supplied by the parent holding company. For example, a covered swap entity may act as custodian for non-cash collateral of its parent holding company. To the extent the non-cash collateral was not encumbered to secure some other obligation of the parent holding company (either to the covered swap entity, another affiliate, or unrelated party), the holding company may arrange with its affiliate to use this excess non-cash collateral to satisfy the covered swap entity's requirement to collect initial margin under this rule.[200] Under the final rule, the covered swap entity must have full authority to apply this non-cash collateral to the affiliate's obligations in the event of default, free of any claim by the parent holding company that would interfere with the covered swap entity's rights in the non-cash collateral. Moreover, no aspect of the arrangement may compromise or condition the restrictions on treatment of initial margin collateral in the final rule, including the segregation and rehypothecation requirements of §§ __.7 and __.11, or the covered swap entity's interests in the collateral.

Sections 731 and 764 of the Dodd-Frank Act require that the margin requirements offset the greater risk to swap entities from the use of swaps that are not cleared and help ensure the safety and soundness of the covered swap entity and are appropriate for the risk associated with the non-cleared swap entity. The Agencies believe that the modifications in the final rule are responsive to the commenters' concerns about the proposal's requirement that covered swap entities collect and post initial margin from and to affiliates and are also consistent with the statute. The requirement for covered swap entities to collect initial margin from, but not to post initial margin to, affiliates should help to protect the safety and soundness of covered swap entities in the event of an affiliated counterparty default. At the same time, the final rule does not permit such inter-affiliate swaps, which may be significant in number and notional amount, to remain unmargined and thus to pose a risk to systemic stability. Further, applying a lower threshold amount to each affiliate should permit smaller, end-user types of affiliates to benefit from a lower, but non-zero, amount of credit that can be extended to them, while ensuring that the covered swap entity collects initial margin from its larger affiliates with higher numbers and notional amounts of swaps. Similarly, permitting inter-affiliate swaps that are not cleared pursuant to an exemption from clearing to use a 5-day margin period of risk recognizes that such swaps are typically standardized and, thus, appropriate for a treatment that recognizes their lesser risk. The Agencies believe that the final rule's provisions for inter-affiliate swaps balance the concerns raised by commenters about the impact of full two-way margin on inter-affiliate swaps while at the same time, consistent with the statute, taking into account the risk of these swaps and protecting the safety and soundness of covered swap entities.

Finally, the Agencies note that banks may be subject to additional regulatory restrictions on inter-affiliate swap transactions, such as those that may be required by sections 23A and 23B of the Federal Reserve Act. Compliance with the margin requirements in this final rule does not ensure compliance with other related regulatory requirements that may also limit or otherwise regulate inter-affiliate swap transactions and banks would be expected to comply with all required regulatory requirements related to inter-affiliate swap transactions.

L. Section __.12: Capital

The Agencies are adopting this section of the rule as proposed. The proposal would have required a covered swap entity to comply with any risk-based and leverage capital requirements already applicable to that covered swap entity as part of its prudential regulatory regime. In the last few years, the banking agencies have strengthened regulatory capital requirements for banking organizations through adoption of the revised capital framework as well as through other rulemakings.[201] The

[200] The holding company may provide cash collateral to the covered swap entity provided that the cash collateral is subject to the requirements of the final rule. Under the final rule, cash collateral that a covered swap entity acquires to meet the requirement to collect initial margin from an affiliate under § __.3(a), including cash provided by a holding company, must be held at a custodian that is neither the covered swap entity nor an affiliate, subject to the requirements of § __.7(c).

[201] *See* 78 FR 62018 (October 11, 2013) and 79 FR 20754 (April 14, 2014). The revised capital framework also reorganized the banking agencies' capital adequacy guidelines into a harmonized, codified set of rules, located at 12 CFR part 3 (national banks and Federal savings associations); 12 CFR part 217 (state member banks, bank holding companies, and savings and loan holding companies); 12 CFR part 324 (state nonmember banks and state savings associations). The requirements of 12 CFR parts 3, 217 and 324

Continued

revised capital framework introduced a new common equity tier 1 capital ratio and a supplementary leverage ratio, raised the minimum tier 1 ratio and, for certain banking organizations, raised the leverage ratio, implemented strict eligibility criteria for regulatory capital instruments, and introduced a standardized methodology for calculating risk-weighted assets. Further, the revised capital framework adopted by the banking agencies and the proposal were intended to operate as complementary regimes that minimize or eliminate duplication of requirements. Accordingly, the final rule, unchanged from the proposal, requires a covered swap entity to comply with risk-based and leverage capital requirements already applicable to the covered swap entity as follows:

- In the case of covered swap entities that are banking organizations,[202] the elements of the revised capital framework that are applicable to the covered entity and have been adopted by the appropriate Federal banking agency under 12 U.S.C. 3907 and 3909 (International Lending Supervision Act), 12 U.S.C. 1462(s) (Home Owners' Loan Act), and section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o);
- In the case of a foreign bank, any state branch or state agency of a foreign bank, the capital standards that are applicable to such covered entity under the Board's Regulation Y (12 CFR 225.2(r)(3)) or the Board's Regulation YY (12 CFR part 252);
- In the case of an Edge corporation or an Agreement corporation, the capital standards applicable to an Edge corporation engaged in banking pursuant to the Board's Regulation K (12 CFR 211.12(c));
- In the case of any ''regulated entity'' under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (*i.e.,* Fannie Mae and its affiliates, Freddie Mac and its affiliates, and the Federal Home Loan Banks), the risk-based capital level or such other amount applicable to the covered swap entity as required by the Director of FHFA pursuant to 12 U.S.C. 4611;
- In the case of Farmer Mac, the capital adequacy regulations set forth in 12 CFR part 652; and
- In the case of any FCS institution (other than Farmer Mac), the capital regulations set forth in 12 CFR part 615.[203] The FCA proposed revisions to the capital rules for all FCS institutions, except Farmer Mac, that are broadly consistent with Basel III.

The Agencies did not receive comment on these capital-related provisions. The Agencies believe that compliance with the regulatory capital rules described above is sufficient to offset the greater risk, relative to the risk of centrally cleared swaps, to the swap entity and the financial system arising from the use of non-cleared swaps, and would help ensure the safety and soundness of the covered swap entity. In particular, the regulatory capital rules incorporated by reference into the final rule have already addressed, in a risk-sensitive and comprehensive manner, the safety and soundness risks posed by a covered swap entity's swaps positions.[204] In addition, the Agencies believe that these regulatory capital rules sufficiently take into account and address the risks associated with the swaps positions of a covered swap entity. As a result, the Agencies have not adopted any particular separate capital requirements.

IV. Quantitative Impact of Margin Requirements

A. Overview

The final rule will apply the initial margin and variation margin requirements to non-cleared swaps that are entered into by a covered swap entity over a substantial phase-in period that begins in September 2016. The final rule will not require an immediate or retroactive application of initial margin or variation margin for any swap entered into prior to the relevant compliance date of the final rule.

Because the requirements will not be applied retroactively, no new initial margin or variation margin requirements will be imposed on non-cleared swaps entered into prior to the relevant compliance date until those transactions are rolled over or renewed. The only requirements that will apply to a pre-compliance date transaction are the initial margin and variation margin requirements to which the parties to the transaction had previously agreed by contract.

This section addresses the potential cost of initial margin requirements, a topic that received considerable attention from commenters. The agencies also note that the exchange of initial margin is in aggregate not solely a cost, since for every dollar of initial margin provided by a posting entity, the collecting entity receives an additional dollar of protection from potential loss. In addition, the posting and collection of margin should reduce build-ups of large unsecured derivatives positions that can adversely affect financial stability. As articulated throughout this preamble, the Agencies believe the final rule will achieve these financial stability benefits in a way that is responsive to the concerns of commenters and consistent with the statutory mandate.

The new requirements will have an impact on the costs of engaging in new non-cleared swaps after the applicable compliance date. In particular, the final rule sets out requirements for initial and variation margin that represent a significant change from current industry practice in many circumstances. Since the 2011 proposal was released, a number of analyses have been conducted that attempt to estimate the total amount of initial margin that would be required by the new margin rules. Given the complexity of this final rule and its inter-relationship to other rulemakings, these analyses are subject to considerable uncertainty. In

became effective on January 1, 2014, for banking organizations subject to the advanced approaches capital rules, and as of January 1, 2015 for all other banking organizations.

[202] Banking organizations include national banks, state member banks, state non-member banks, Federal savings associations, state savings associations, top-tier bank holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), as well as top-tier savings and loan holding companies domiciled in the United States, other than (i) savings and loan holding companies subject to the Board's Small Bank Holding Company Policy Statement and (ii) certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

[203] *See* § __.12 of final rule.

[204] For example, with respect to interest rate, foreign exchange rate, credit, equity and precious metal derivative contracts that are not cleared, banking organizations subject to the revised capital framework are subject to a capital requirement based on the type of contract and remaining maturity, and that takes into account counterparty credit risk as well as the credit-risk-mitigating factors of collateral. Banking organizations subject to the advanced approaches rules may use internal models for calculating capital requirements for non-cleared derivatives. *See* 12 CFR part 3, subparts D and E (OCC); 12 CFR part 217, subparts D and E (Board); 12 CFR part 324, subparts D and E (FDIC), each as applicable. The FCA's capital requirements for FCS institutions other than Farmer Mac expressly address derivatives transactions. *See* 12 CFR 615.5201 and 615.5212. The FCA's capital requirements for Farmer Mac indirectly address derivatives transactions in the operational risk component of the statutorily mandated risk-based capital stress test model. *See* 12 CFR part 652, subpart B, appendix A. The FCA, through the Office of Secondary Market Oversight, closely monitors and supervises all aspects of Farmer Mac's derivatives activities, and the FCA believes existing requirements and supervision are sufficient to ensure safe and sound operations in this area. However, the FCA is considering enhancements to the model and in the future may revise the model to more specifically address derivatives transactions. FHFA's predecessor agencies used a methodology similar to that endorsed by the BCBS prior to the development of the Basel III framework to develop the risk-based capital rules applicable to those entities now regulated by FHFA.

particular, these analyses make a number of assumptions regarding: (i) The level of market activity in the future, (ii) the amount of central clearing in the future, and (iii) the level of financial market volatility and risk that will determine initial margin requirements. These studies also make a number of additional assumptions which have a measurable influence on the analysis. Notwithstanding these uncertainties, the Agencies' believe that the analysis and data that appear in these studies are useful to gauge the approximate amount of initial margin that will be required by the new requirements for non-cleared swaps. At the same time, the Agencies also understand that the precise impact of the requirements will depend on a number of factors, such as the size of the market for uncleared swaps, that are difficult to forecast and will evolve over time as market participants respond to the new requirements. As such, it is not possible to specify in advance the precise impact of the final rule's requirements.

Below is a discussion of a selection of studies that have been conducted in the recent past that relate to a margin framework similar to the final rule. Specifically, each of these studies uses the 2013 international framework in estimating the total amount of initial margin collateral that will be required. While this final rule is largely consistent with the 2013 international framework, the two are not identical. Therefore, the results of these studies are limited by these differences.

B. Initial Margin Requirements

The final rule will require an exchange of initial margin by many market participants, which represents a significant change in market practice. The total amount of initial margin that will be required at a point in time is an important input into an estimate of the costs of the new requirements. The table below presents estimates of the total amount of initial margin that will be required by U.S. swap entities and their counterparties once the requirements are fully implemented, that is, at the end of the phase-in period and after existing swaps are rolled into new swaps.

ESTIMATED INITIAL MARGIN REQUIREMENTS

Source	Initial margin estimate ($Billions)
ISDA—Model Based	280
BCBS–IOSCO—Model Based	315
ISDA—Standardized	3,570

The initial margin estimates provided in the table above are taken from two different studies that have examined the impact of the 2013 international framework on overall initial margin requirements. The studies were conducted by the BCBS and IOSCO [205] and ISDA.[206] Each of these studies reports an estimate of the *global* impact of margin requirements. In particular, these estimates include the impact of margin requirements on foreign financial institutions and their counterparties, in addition to U.S. financial institutions and their counterparties. In order to better align the studies' estimates with the impact of the final U.S. rules, the estimates in the table above have been reduced by 65 percent to reflect the fact that U.S. financial institutions and their counterparties account for roughly 35 percent of the global derivatives market.[207] The estimate reported in the table above from the BCBS–IOSCO study reflects the estimate among those provided in the study that is most consistent with the final rules.[208] Two estimates from the ISDA study are presented in the table above reflecting a high and low estimate. Both the ISDA low estimate and the BCBS–IOSCO estimate assume that all initial margin requirements are calculated according to an internal model with parameters consistent with those required by the final rules. The ISDA high estimate assumes that all initial margin requirements are calculated according to a standardized margin approach. Further, the standardized approach assumed in the ISDA study does not allow for the recognition of any offsets which are allowed by the application of the net-to-gross ratio under the final rule.[209] Ultimately, swap dealers will choose whether to calculate initial margin amounts according to the final rule's standardized approach or an internal model. While it is not possible to forecast with certainty which method will be most widely adopted, there are several reasons to expect a models-based margin methodology to predominate. Specifically, most covered swap entities represent large, internationally active and sophisticated derivative dealers that already use internal risk management models to assess initial margin amounts when they require initial margin from existing swap counterparties. In addition, the derivative dealer industry has already begun to develop a quantitative initial margin model, the ISDA–SIMM model, that it expects will be used to comply with the requirements of the final rule. Accordingly, the Agencies expect the costs of the final rule to be more consistent with the costs associated with the model-based rather than standardized initial margin amounts.[210]

As discussed above, these estimates represent the total amount of initial margin that will be required at a point in time once the requirements have been fully phased in and all existing non-cleared swaps have been rolled over into new non-cleared swaps. Accordingly, the full amount of initial margin amount estimates provided in the table above will not be realized until, at the earliest, 2019.

The amounts reported in the table above reflect estimated amounts of initial margin that will be required under the final rule but do not reflect the cost of providing these amounts by covered swap entities and their counterparties. The cost of providing initial margin collateral depends on the difference between the cost of raising

[205] *See* Basel Committee on Banking Supervision and the International Organization of Securities Commissions (2013), *Margin Requirements for Non-Centrally Cleared Derivatives: Second Consultative Document,* report (Basel, Switzerland: Bank for International Settlements, February).

[206] Documents on initial margin requirements are available on the International Swaps and Derivatives Association Web site.

[207] *See* ISDA Research Notes: Concentration of OTC Derivatives Among Major Dealers, Issue 4, 2010. In addition, the data that was collected by the BCBS–IOSCO to estimate the required initial margin amounts was collected at the holding company level and included swap exposures and resulting initial margin amounts for distinct legal entities that are not prudentially regulated but would be regulated by the CFTC and SEC. Since the data cannot be disaggregated at the legal entity level no attempt to isolate the initial margin amounts required only by prudentially regulated entities has been made. Accordingly, the amounts reported in the table reflect initial margin amounts from exposures of entities that would be regulated as covered swap entities as well as other entities not regulated as covered swap entities.

[208] The BCBS–IOSCO impact study discusses the impact of several different margin regimes, *e.g.,* regimes with and without an initial margin threshold.

[209] The ISDA study was conducted based on the BCBS–IOSCO February 2013 consultative document which did not include any recognition of offsets in the standardized initial margin regime. Recognition of offsets was included in the final 2013 international framework.

[210] A description of the ISDA SIMM model and related documentation can be found at: *https://www2.isda.org/functional-areas/wgmr-implementation/.*

additional funds and the rate of return on the assets that are ultimately pledged as initial margin. In some cases, it may be that some entities providing initial margin, such as pension funds and asset managers, will provide assets as initial margin that they already own and would have owned even if no requirements were in place. In such cases, the economic cost of providing initial margin collateral is expected to be low. In other cases, entities engaging in non-cleared swaps will have to raise additional funds to secure assets that can be pledged as initial margin. The greater the cost of their marginal funding relative to the rate of return on the initial margin collateral, the greater the cost of providing collateral assets. It is difficult, however, to estimate these costs with any precision due to differences in marginal funding costs across different types of entities as well as differences in marginal funding costs over time and differences in the rate of return on different collateral assets that may be used to satisfy the initial margin requirements. Despite these uncertainties, one approach to approximating the funding cost associated with securing initial margin collateral assets would be to compare the yield or rate of return on a typical collateral asset that can be used to satisfy initial margin collateral and the cost of funding the asset through debt financing. Finally, it should be noted that this approach to estimating the cost of the initial margin requirements fully incorporates the requirement that initial margin collateral not be rehypothecated. If rehypothecation were allowed initial margin collected by a swap dealer from one counterparty could be used to offset any margin the swap dealer would be required to post on an offsetting swap transaction thereby reducing the overall stock of initial margin required. All of the presented cost estimates assume that every dollar of initial margin must be financed from an outside source and invested in an initial margin eligible asset thereby reflecting the requirement that no initial margin is rehypothecated, repledged or reused.

Because banks are a significant market participant in the non-cleared swap market, the debt cost of banks may serve as a useful representative indicator of the cost of funding collateral, though the debt costs banks face may differ substantially from the debt cost faced by other market participants. In terms of collateral assets, the final rule provides for a wide array of collateral assets to be used to satisfy initial margin collateral. One specific asset that is an eligible form of collateral is U.S. Treasury securities. Since U.S. Treasury securities are relatively low yielding assets when compared to other forms of eligible collateral such as equities and corporate bonds, using the yield on U.S. Treasury securities to gauge the incremental cost of obtaining initial margin collateral will tend to result in a conservative estimate of the overall incremental cost of funding initial margin collateral.

The table below presents the twenty-fifth percentile, median and seventy-fifth percentile of five-year CDS spreads for a collection of large banks from January 2004 through August of 2015.[211] Because a CDS spread reflects the cost of insuring against the default of a debt issuer, it can also be interpreted as the incremental cost of a debt issuer to borrow funds over and above the risk-free rate of interest which is typically identified with the yield available on U.S. Treasury securities. Accordingly, the table below provides an estimate of the range of incremental funding costs that a large bank would face to finance the purchase of five-year U.S. Treasury collateral.

LARGE BANK INCREMENTAL COST OF FINANCING U.S. TREASURY COLLATERAL (%)

25th Percentile	Median	75th Percentile
0.24	0.78	1.30

The table shows that the incremental cost of funding U.S. Treasury collateral ranges from 24 basis points to 130 basis points for the large banks included in the analysis from 2004 through 2015.

This incremental funding cost can be combined with the estimates of the total amount of initial margin collateral in the previous table to arrive at an estimate of the annual cost of funding initial margin collateral. Specifically, the estimate amount of initial margin is multiplied by the incremental funding cost depicted in the table above to determine the annual funding cost.

Any estimate constructed in this fashion is subject to a number of limitations that have been described earlier. In particular, the estimates of the total amount of initial margin collateral required by the rule is subject to a number of uncertainties including but not limited to the total amount of non-cleared swap activity that will continue to exist in the future. In addition, the incremental funding costs of financing initial margin collateral depends on the specific characteristics of both the entity sourcing the collateral and the collateral asset being sourced. Importantly, in at least some cases swap market participants will pledge assets as initial margin that they already hold and would not need to raise funds to source any additional collateral. In such cases, the incremental cost of the collateral requirements are expected to be low.

The table below presents a matrix of the annual cost estimates associated with the initial margin requirements. The three rows of the matrix correspond to the BCBS–IOSCO, ISDA-Model Based and ISDA Standardized initial margin amounts that were presented and discussed above. The three columns of the matrix refer to the 25th percentile, median and 75th percentile incremental funding cost estimates that were described earlier. Each cell of the matrix presents an annual cost estimate that is computed by multiplying the initial margin amount identified in each row by the incremental funding cost identified in each column. The amounts presented in the table below are reported in millions.

ESTIMATED ANNUAL COSTS OF INITIAL MARGIN REQUIREMENTS ($MILLIONS)

Incremental funding cost/initial margin estimate	25th Percentile	Median	75th Percentile
ISDA—Model Based	672	2,184	3,640
BCBS–IOSCO—Model Based	756	2,457	4,095

[211] The data represent five-year CDS quotes on the following banks: Bank of America, Bank of New York-Mellon, Citigroup, Goldman Sachs, J.P. Morgan, Morgan Stanley, State Street, Wells Fargo, Barclays, Credit Suisse, Deutsche Bank, and UBS.

ESTIMATED ANNUAL COSTS OF INITIAL MARGIN REQUIREMENTS ($MILLIONS)—Continued

Incremental funding cost/initial margin estimate	25th Percentile	Median	75th Percentile
ISDA—Standardized	8,568	27,846	46,410

The estimated annual costs of the initial margin requirements range from $672 million to roughly $46 billion depending on the specific initial margin estimate and incremental funding cost that is used to compute the estimate.

C. Inter-Affiliate Initial Margin Requirements

The final rule requires that covered swap entities collect initial margin from their affiliate counterparties but does not require that covered swap entities post initial margin to their affiliate counterparties (other than affiliate counterparties that are also covered swap entities required to collect). The quantitative estimates of the amount of initial margin required by the final rule that were presented above did not account for transactions between affiliates. Accordingly, while the estimates of the cost of the initial margin requirements provided above span a wide range, these estimates do not explicitly account for the cost associated with the requirement that covered swap entities collect initial margin from their affiliates. It is difficult to precisely estimate the additional amount of collateral that would be required as a result of the inter-affiliate margin requirements. One commenter, however, provided an analysis of the inter-affiliate swap transactions for several financial firms which is useful to gauge the additional collateral that may be required as a result of the inter-affiliate margin requirements.

The commenter contended that an analysis conducted by several large financial institutions indicated that both collecting and posting initial margin collateral among all affiliates would effectively double the amount, *i.e.,* result in a one-hundred percent increase, of initial margin that these institutions would be required to collect and post relative to the amount of collateral that these institutions would be required to post to non-affiliates.[212] The provisions of the final rule, however, do not require full two-way margin from all affiliate counterparties. In particular, under the final rule, there is a requirement for covered swap entities to collect initial margin from affiliates but there is no requirement to post initial margin to an affiliate (that is not also a covered swap entity). Assuming that the amounts collected and posted are of a similar magnitude, the one-hundred percent increase cited by the commenter would only translate into approximately a fifty percent increase relative to the total amount of collateral collected and posted between non-affiliates.[213] In addition, the final rule only requires that covered swap entities collect initial margin from their affiliates. Swap transactions between affiliates in which neither counterparty is a covered swap entities are not subject to the requirements of the final rule.

Finally, the final rule also allows covered swap entities to calculate the required initial margin amounts assuming a 5-day margin period of risk for any swap transactions that would have to be cleared but are not cleared due to the clearing exemption for inter-affiliate transactions. Under the standardized approach to initial margin in the final rule, the initial margin requirements on such transactions are reduced by 30 percent. Accordingly, the total amount of initial margin required to be collected on inter-affiliate transactions would be reduced even further depending on the fraction of transactions margined on a 5-day rather than 10-day basis.

After adjusting for specific features of the final rule, the analysis provided by the commenter suggests an additional increase in initial margin requirements and the cost of financing initial margin of less than fifty percent relative to the amount that will be collected and posted among non-affiliates. The Agencies recognize that available data and methods do not permit a precise estimate of the total amount of initial margin that will be required as a result of the inter-affiliate margin requirements. The Agencies believe that the estimates discussed above are useful in providing guidance on the general magnitude of the requirements but that the specific amounts required could be substantially greater or lesser than the amounts described above for a variety of reasons. First, the analysis described above depends on a number of assumptions and changes to these assumptions could result in significant changes in the resulting estimates. Second, and importantly, the estimates described above depend on the existing configuration of swap transactions between affiliates. It is likely that the behavior of swap market participants, including affiliate counterparties, will respond to incentives created by these swap margin requirements. Such changes could have a dramatic effect on the pattern of affiliate swap transactions which would itself have a significant impact on the amounts of initial margin that are ultimately collected on inter-affiliate transactions.

D. Variation Margin Requirements

The final rule will also require that variation margin be exchanged between covered swap entities and certain of their counterparties. The Agencies believe that the impact of such requirements are low in the aggregate because: (i) Regular exchange of variation margin is already a well-established market practice among a large number of market participants, and (ii) exchange of variation margin simply redistributes resources from one entity to another in a manner that imposes no aggregate liquidity costs. A reduction in liquid assets available to the entity posting variation margin is offset by an increase in the liquid assets available to the entity receiving the variation margin. The Agencies have modified the final rule from the proposal to allow swap counterparties that are not swap entities to post non-cash collateral to satisfy variation margin requirements. Accordingly, swap users such as insurance companies and asset managers that want to stay fully invested will be able to utilize existing assets and collateral to meet the variation margin requirements without having to liquidate assets and raise cash. As a result, these swap users will not suffer a reduction in the rate of return on their investment portfolios that would be experienced if a significant cash buffer had to be raised to satisfy the final rule's variation margin requirements.

V. Effective Date

Subject to certain exceptions, 12 U.S.C. 4802(b) provides that new regulations and amendments to

[212] *See* ISDA Letter (Jan. 16, 2015).

[213] The Agencies understand that the exact size of the reduction will vary from covered swap entity to covered swap entity depending on the nature of the specific swaps in question, as well as whether or not the corporate group has more than one covered swap entity—in which case swaps between such affiliates would require both the collection and posting of initial margin.

regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on an insured depository institution shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless (1) the agency determines, for good cause published with the regulation, that the regulation should become effective before such time; (2) the regulation is issued by the Board of Governors of the Federal Reserve System in connection with the implementation of monetary policy; or (3) the regulation is required to take effect on a date other than the date determined under this paragraph pursuant to any other Act of Congress.[214] In accordance with this provision, the final rule will be effective on April 1, 2016 as required under 12 U.S.C. 4802(b).

VI. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0251, the FDIC is 3064–0180, and the Board is 7100–0364. In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Reporting Requirements Associated with Regulation KK (Margin and Capital Requirements for Covered Swaps Entities) (Reg KK; OMB No. 7100–0364). The information collection requirements contained in this joint notice of final rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB.

The final rule contains requirements subject to the PRA. The reporting requirements are found in §§ _.8(c), _.8(d), _.8(f)(3), and _.9(e). The recordkeeping requirements are found in §§ _.2 definition of ''eligible master netting agreement,'' item 4, _.5(c)(2)(i), _.7(c), _.8(e), _.8(f), _.8(g), _.8(h), _.10, and _.11(b)(1). These information collection requirements would implement sections 731 and 764 of the Dodd-Frank Act, as mentioned in the Abstract below. The Agencies received a number of comments on the custody agreement in § _.7(c). No PRA burden was taken in the proposed rule; however, based on the comments received, the Agencies will take recordkeeping burden for this section. Also, the Agencies received a number of comments on the posting of initial margin by an affiliate of a covered swap entity with respect to swaps between the covered swap entity and the affiliate. Based on the comments received, the Agencies created a new § _.11, and the agencies will take recordkeeping burden for § _.11(b)(1).

The Agencies have a continuing interest in the public's opinions of collections of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer for the agencies (1) by mail to U.S. Office of Management and Budget, 725 17th Street NW., 10235, Washington, DC 20503; (2) by facsimile to 202–395–6974; or (3) by email to: *oira_submission@omb.eop.gov*, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Margin and Capital Requirements for Covered Swap Entities.

Frequency of Response: Annual, daily, and event-generated.

Affected Public: The affected public of the OCC, FDIC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective final rule. Businesses or other for-profit.

Respondents:

OCC: Any national bank or subsidiary thereof, Federal savings association or subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Board: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FHFA: With respect to any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)), the final rule does not contain any collection of information that requires the approval of the OMB under the PRA.

FCA: The FCA has determined that the final rule does not involve a collection of information pursuant to the Paperwork Reduction Act for Farm Credit System institutions because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3).

Abstract: Sections 731 and 764 of the Dodd-Frank Act would require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

Reporting Requirements

Section _.8 establishes standards for initial margin models. These standards include (1) a requirement that the covered swap entity receive prior approval from the relevant Agency based on demonstration that the initial margin model meets specific

[214] With respect to swaps, section 754 of the Dodd-Frank Act provides that unless otherwise provided in this title, the provisions of this subtitle shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of this subtitle. Section 774 of the Dodd-Frank Act contains a similar provision for security-based swaps. The Agencies believe that these two provisions are not inconsistent with an effective date of April 1, 2016.

requirements (§ _.8(c)(1) and (2)); (2) a requirement that a covered swap entity notify the relevant Agency in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ _.8(c)(3)); (3) a variety of quantitative requirements, including requirements that the covered swap entity validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the relevant Agency that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the relevant Agency that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§ _.8(d)(5), (10), (11), (12), and (13)). Also, if the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify the Agency of the problems, describe to the Agency any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated (§ _.8(f)(3)).

Section _.9(e) allows a covered swap entity to request that the prudential regulators make a substituted compliance determination and must provide the reasons therefore and other required supporting documentation. A request for a substituted compliance determination must include a description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and rehypothecation requirements; and approval process and standards for models); the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under this section only if directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Recordkeeping Requirements

Section _.2 defines terms used in the proposed rule, including the definition of ''eligible master netting agreement,'' which provides that a covered swap entity that relies on the agreement for purpose of calculating the required margin must (1) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of this section. The term ''eligible master netting agreement'' is used elsewhere in the proposed rule to specify instances in which a covered swap entity may (1) calculate variation margin on an aggregate basis across multiple non-cleared swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps.

Section _.5(c)(2)(i) specifies that a covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty if the covered swap entity has made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the Agency that it has made appropriate efforts to collect or post the required margin.

Section _.7(c) requires the custodian to act pursuant to a custody agreement that (1) prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset, such asset is held in compliance with this § _.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin and (2) is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding. A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § _.3(a) or posted by a covered swap entity pursuant to § __.3(b), the agreement requires the posting party to substitute only funds or other property that would qualify as eligible collateral under § _.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of § _.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under § _.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of § _.3.

Section _.8 establishes standards for initial margin models. These standards include (1) a requirement that a covered swap entity review its initial margin model annually (§ _.8(e)); (2) a requirement that the covered swap entity validate its initial margin model initially and on an ongoing basis, describe to the relevant Agency any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the covered swap entity's board of directors or a committee thereof (§ _.8(f)(2), (3), and (4)); (3) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ _.8(g)); and (4) that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (§ _.8(h)).

Section _.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that (1) provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required; and (2) specifies the methods, procedures,

rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation.

Section _.11(b)(1) provides that the requirement for a covered swap entity to post initial margin under § _.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § _.3(b) and provide documentation of such amount to each affiliate on a daily basis.

Estimated Burden per Response:

Reporting Burden

§ _.8(c) and (d): 240 hours.
§ _.8(f)(3): 50 hours.
§ _.9(e): 10 hours.

Recordkeeping Burden

§§ _.2, _.8(g), and _.10: 5 hours.
§ _.5(c)(2)(i): 4 hours.
§ _.7(c): 100 hours.
§ _.8(e) and _.8(f): 40 hours.
§ _.8(h): 20 hours.
§ _.11(b)(1): 1 hour.

OCC

Number of respondents: 20.
Total estimated annual burden: 14,780 hours.

FDIC [215]

Number of respondents: 1.
Total estimated annual burden: 739 hours.

Board

Number of respondents: 50.
Proposed revisions only estimated annual burden: 36,866 hours (Subpart A).
Total estimated annual burden: 36,964 hours.

B. Regulatory Flexibility Act Analysis

Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the final rule on small entities, or to certify that the final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, the Small Business Administration (SBA) defines small entities as those with $550 million or less in assets for commercial banks and savings institutions, and $38.5 million or less in assets for trust companies.

As of December 31, 2014, the OCC supervised 1,101 small entities.[216]

As described in the **SUPPLEMENTARY INFORMATION** section of the preamble, a covered swap entity will be required to exchange initial margin with a financial entity counterparty only if the counterparty has a material swaps exposure. No OCC-supervised small entities qualify as swap entities or financial end users with a material swaps exposure. Thus, under the final rule, no small entities will have to post initial margin. The final rule also provides for a minimum transfer amount for the collection and posting of margin by covered swap entities. Under the final rule, a covered swap entity need not collect or post initial or variation margin from or to any individual counterparty unless the required cumulative amount of initial and variation margin is greater than $500,000.

The final rule generally exempts swap transactions for all OCC-supervised institutions with assets of $10 billion or less. Thus, the OCC estimates that the final rule will not have a significant impact on a substantial number of OCC-supervised small entities.

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (the "RFA"), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[217] The Agencies solicited public comment on this rule in a notice of proposed rulemaking [218] and have since considered the potential impact of this final rule on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes that the final rule will not have a significant economic impact on a substantial number of small entities.

1. *Statement of the need for, and objectives of, the final rule.* As described above, the final rule implements sections 731 and 764 of the Dodd-Frank Act, which require the Agencies to adopt rules jointly to establish (i) capital requirements, and (ii) initial and variation margin requirements for covered swap entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to the swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared.[219] The reasons and justification for the final rule are described above in the **SUPPLEMENTARY INFORMATION**.

2. *Summary of the significant issues raised by public comment on the Board's initial analysis, the Board's assessment of such issues, and a statement of any changes made as a result of such comments.* The Agencies did not receive comment specifically on the initial regulatory flexibility analysis, but did receive various comments on the impact of the proposed rule on small entities, including applicability of the rule to swaps with commercial end users as well as the level of material swaps exposure that triggers initial margin requirements for financial end user counterparties. As discussed further in section 3 below, the final rule addresses both these issues by implementing the swap exemptions and exclusions set forth in TRIPRA, which will exclude many swaps of commercial end users from the rule, and by increasing the level of the aggregate notional amount of transactions that give rise to material swaps exposure from $3 billion to $8 billion, resulting in fewer financial end users being subject to the initial margin provisions in this final rule. A full discussion of these and other comments received with respect to this rule and the rule's effect on small entities is contained in the Supplementary Information above.

3. *Small entities affected by the final rule and compliance requirements.* This final rule may have an effect predominantly on two types of small entities: (i) covered swap entities that are subject to the rule's capital and margin requirements; and (ii) counterparties that engage in swap transactions with covered swap entities.

[215] The FDIC had initially estimated that three of its institutions might register as a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant but no state non-member bank nor any state savings association has so registered, so FDIC is reducing its estimate to one as a placeholder for its information collection.

[216] The number of small entities supervised by the OCC is determined using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify a bank we supervise as a small entity. The OCC used December 31, 2014 to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

[217] *See* 5 U.S.C. 603(a).

[218] *See* 79 FR 57348 (September 24, 2014).

[219] *See* 7 U.S.C. 6s(e)(3)(A); 15 U.S.C. 78o–10(e)(3)(A).

i. Covered Swap Entities.

Under Small Business Administration (the ''SBA'') regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (''financial institutions''), which generally are considered ''small'' if they have assets of $550 million or less.[220] Covered swap entities would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any covered swap entity is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or major swap participant. As noted above, the CFTC has provided a list of provisionally registered swap dealers that includes 104 institutions and provisionally registered major swap participants that includes 2 institutions.[221] The SEC has not provided a similar list since it only recently adopted rules to provide for the registration of security-based swap dealers and major security-based swap participants.[222] None of the currently registered covered swap entities are small entities.

ii. Counterparties That Engage in Swap Transactions With Covered Swap Entities

The Board notes that the RFA does not require it to consider the impact of the final rule, including its indirect economic effects, on small entities that are not subject to the requirements of the final rule.[223] Nonetheless, the Board has conducted the following analysis of potential swap counterparties.[224]

a. Commercial End Users

Many swaps of non-financial end user counterparties will be exempt from the requirements of this rule pursuant to the companion interim final rule required under TRIPRA.[225] To the extent that the swaps of these counterparties are not exempt, non-financial or ''commercial'' end users are not subject to specific requirements under the rule, and a covered swap entity's collection of margin from these types of counterparties is subject to the judgment of the covered swap entity. That is, under the rule, a covered swap entity is not required to collect initial or variation margin with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is a nonfinancial end user but shall collect initial and variation margin at such times and in such forms and such amounts (if any) that the covered swap entity determines appropriately address the credit risk posed by the counterparty and the risks of such non-cleared swaps and non-cleared security-based swaps. In this respect, the Board intends for the requirements to be consistent with current market practice for such end users, with the understanding that in many cases little or no margin is, or will be, exchanged with these counterparties. The documentation requirements of the rule likewise would not apply to these nonfinancial end users. Although the segregation requirement of the rule could apply in cases where the covered swap entity posts margin to a nonfinancial end user, the rule does not require the covered swap entity to post margin in those situations and the Board does not believe covered swap entities will normally post margin to nonfinancial end user counterparties. The Board believes that the treatment of nonfinancial end users under the rule should not cause additional burden on nonfinancial end users including those that are small entities.

b. Financial End Users

The rule would require covered swap entities to post margin to and collect margin from non-cleared swap and non-cleared security-based swap counterparties that are swap entities or financial end users. As noted above, no swap entities are expected to be small entities; the number of financial end user counterparties is also unknown. However, the Board believes that modifications to the proposed rule would eliminate burden on financial end user counterparties that are small entities.

The application of initial margin requirements to swaps with financial end user counterparties is limited, depending on the counterparty's level of swap activity. With respect to financial end user counterparties that engage in swaps with swap entities that are subject to the rule's margin requirements, the rule minimizes the burden on small entities by requiring that such counterparties have a material swaps exposure in order to be subject to initial margin requirements. Material swaps exposure for an entity is defined to mean that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps with all counterparties for June, July and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. This threshold amount was proposed to be $3 billion and was increased to $8 billion in the final rule. Since the application of the initial margin requirements apply only where a counterparty is a financial end user with material swaps exposure, the increased threshold amount will result in fewer small financial end users being subject to the initial margin requirements provisions of this rule. In addition, the rule provides an initial margin threshold resulting in an aggregate credit exposure of $50 million from all non-cleared swaps and non-cleared security-based swaps between a covered swap entity and its affiliates and a counterparty and its affiliates. A covered swap entity would not need to collect initial margin from a counterparty to the extent the amount is below the initial margin threshold. The Board expects the initial margin threshold should further reduce the impact of the rule on financial counterparties that are small entities. In particular, according to 2015 Call Report data, banks with $550 million or less in

[220] *See* 13 CFR 121.201 (effective December 2, 2014); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[221] The CFTC has published a list of provisionally registered swap dealers (as of September 22, 2015) and provisionally registered major swap participants (as of March 1, 2013) that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer* and *http://www.cftc.gov/LawRegulation/DoddFrankAct/registermajorswappart.*

[222] *See* 80 FR 48963 (August 14, 2015); 17 CFR parts 240 and 249.

[223] *See e.g., In Mid-Tex Electric Cooperative* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (D.C. Cir. 2001).

[224] In addition to small financial institutions which have assets of $550 million or less, swap counterparties could also include other small entities defined in regulations issued by the Small Business Administration, including firms within the ''Securities, Commodity Contracts, and Other Financial Investments and Related Activities'' sector with assets of $38.5 million or less and ''Funds, Trusts and Other Financial Vehicles'' with assets of $32.5 million or less. *See* 13 CFR 121.201.

[225] Section 302 of Title III of TRIPRA amends sections 731 and 764 of the Dodd-Frank Act to provide that the Agencies' rules on margin requirements under those sections shall not apply to a swap in which a counterparty: (1) qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act, (2) qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act for cooperative entities as defined in such exemption, or (3) satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act, or a security-based swap in which a counterparty (1) qualifies for an exception under section 3C(g)(1) of the Securities Exchange Act or (2) satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act.

total assets had an average notional derivative exposure of approximately $2 million and a large number of these entities reported no notional derivative exposure. The Board does not expect that there will be a significant number of small entities that will have material swaps exposure or meet the initial margin threshold amount.

As noted above, all financial end users would be subject to the variation margin requirements and documentation requirements of the rule. However, the Board believes that such treatment is consistent with current market practice and should not represent a significant burden on small financial end users. Consequently, the rule would not appear to have a significant economic impact on a substantial number of swap counterparties that are small entities.

4. *Significant alternatives to the final rule.* As discussed above, the Agencies have mitigated the impact of the margin requirements on small entity non-financial counterparties from which covered swap entities may be required to collect initial margin and/or variation margin by leaving the collection of margin from these types of counterparties to the judgment of the covered swap entity consistent with current market practice. By requiring a material swaps exposure for a financial end user counterparty to be subject to initial margin requirements and through the implementation of an initial margin threshold amount, the Agencies reduced the effect of the rule on counterparties to covered swap entities, including small entities.

In light of the foregoing, the Board does not believe, for covered swap entities subject to the Board's jurisdiction and their counterparties, that this final rule would have a significant economic impact on a substantial number of small entities.

FDIC: The RFA requires an agency, in connection with a notice of final rulemaking, to prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Using SBA's size standards, as of June 30, 2015, the FDIC supervised 3,357 small entities. The FDIC does not expect any small entity that it supervises is likely to be a covered swap entity because such entities are unlikely to engage in the level of swap activity that would require them to register as a swap entity. Because TRIPRA excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirement of the final rule, the FDIC expects that when a covered swap entity transactions non-cleared swaps with a small entity supervised by the FDIC, and such swaps are used to hedge the small entity's commercial risk, those swaps with not be subject to the final rule. The FDIC does not expect any small entity that it supervises will engage in non-cleared swaps for purposes other than hedging. Therefore, the FDIC does not believe that the final rule results in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the final rule does not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

FHFA: FHFA believes that the final rule will not have a significant economic impact on a substantial number of small entities, since none of FHFA's regulated entities come within the meaning of small entities as defined in the Regulatory Flexibility Act (*see* 5 U.S.C. 601(6)), and the rule will not substantially affect any business that its regulated entities might conduct with such small entities.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act, the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Nor does the Federal Agricultural Mortgage Corporation meet the definition of a ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate 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 in any one year (adjusted annually for inflation).

The OCC has determined this proposed rule is likely to result in the expenditure by the private sector of $100 million or more in any one year (adjusted annually for inflation). The OCC has prepared an impact analysis and identified and considered alternative approaches. When the final rule is published in the **Federal Register**, the full text of the OCC's analysis will available at: *http://www.regulations.gov*, Docket ID OCC–2011–0008.

Text of the Common Rules (All Agencies)

The text of the common rules appears below:

[ ]—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

Sec.

____.1 Authority, purpose, scope, exemptions and compliance dates.
____.2 Definitions.
____.3 Initial margin.
____.4 Variation margin.
____.5 Netting arrangements, minimum transfer amount and satisfaction of collecting and posting requirements.
____.6 Eligible collateral.
____.7 Segregation of collateral.
____.8 Initial margin models and standardized amounts.
____.9 Cross-border application of margin requirements.
____.10 Documentation of margin matters.
____.11 Special rules for affiliates.
____.12 Capital. [Reserved]

Appendix A to [Part]—Standardized Minimum Initial Margin Requirements for Non-Cleared Swaps and Non-Cleared Security-Based Swaps

Appendix B to [Part]—Margin Values for Cash and Eligible Noncash Margin Collateral

§ ____.1 Authority, purpose, scope, exemptions and compliance dates.

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) [Reserved]

(e) *Compliance dates.* Covered swap entities shall comply with the minimum margin requirements of this [part] on or before the following dates for non-cleared swaps and non-cleared security-based swaps entered into on or after the following dates:

(1) September 1, 2016 with respect to the requirements in § ____.3 for initial margin and § ____.4 for variation margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-

cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2016 that exceeds $3 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(1)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(2) March 1, 2017 with respect to the requirements in § ____.4 for variation margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(3) September 1, 2017 with respect to the requirements in § ____.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2017 that exceeds $2.25 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(3)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(4) September 1, 2018 with respect to the requirements in § ____.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2018 that exceeds $1.5 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(4)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(5) September 1, 2019 with respect to the requirements in § ____.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2019 that exceeds $0.75 trillion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(5)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(6) September 1, 2020 with respect to the requirements in § __.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(f) Once a covered swap entity must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps with respect to a particular counterparty based on the compliance dates in paragraph (e) of this section, the covered swap entity shall remain subject to the requirements of this [part] with respect to that counterparty.

(g)(1) If a covered swap entity's counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to stricter margin requirements under this [part] (such as if the counterparty's status changes from a financial end user without material swaps exposure to a financial end user with material swaps exposure), then the covered swap entity shall comply with the stricter margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status.

(2) If a covered swap entity's counterparty changes its status such that a non-cleared swap or non-cleared security-based swap with that counterparty becomes subject to less strict margin requirements under this [part] (such as if the counterparty's status changes from a financial end user with material swaps exposure to a financial end user without material swaps exposure), then the covered swap entity may comply with the less strict margin requirements for any non-cleared swap or non-cleared security-based swap entered into with that counterparty after the counterparty changes its status as well as for any outstanding non-cleared swap or non-cleared security-based swap entered into after the applicable compliance date in paragraph (e) of this section and before the counterparty changed its status.

§ __.2 Definitions.

Affiliate. A company is an affiliate of another company if:

(1) Either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;

(2) Both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards;

(3) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) or (2) of this definition would have occurred if such principles or standards had applied; or

(4) [The Agency] has determined that a company is an affiliate of another company, based on [Agency's] conclusion that either company provides significant support to, or is materially subject to the risks or losses of, the other company.

Bank holding company has the meaning specified in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

Broker has the meaning specified in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)).

Business day means any day other than a Saturday, Sunday, or legal holiday.

Clearing agency has the meaning specified in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)).

Company means a corporation, partnership, limited liability company, business trust, special purpose entity, association, or similar organization.

Counterparty means, with respect to any non-cleared swap or non-cleared security-based swap to which a person is a party, each other party to such non-cleared swap or non-cleared security-based swap.

Cross-currency swap means a swap in which one party exchanges with another party principal and interest rate payments in one currency for principal and interest rate payments in another currency, and the exchange of principal occurs on the date the swap is entered into, with a reversal of the exchange of principal at a later date that is agreed upon when the swap is entered into.

Currency of settlement means a currency in which a party has agreed to discharge payment obligations related to a non-cleared swap, a non-cleared security-based swap, a group of non-cleared swaps, or a group of non-cleared security-based swaps subject to a master agreement at the regularly occurring dates on which such payments are due in the ordinary course.

Day of execution means the calendar day at the time the parties enter into a non-cleared swap or non-cleared security-based swap, provided:

(1) If each party is in a different calendar day at the time the parties enter into the non-cleared swap or non-cleared security-based swap, the day of execution is deemed the latter of the two dates; and

(2) If a non-cleared swap or non-cleared security-based swap is:

(i) Entered into after 4:00 p.m. in the location of a party; or

(ii) Entered into on a day that is not a business day in the location of a party, then the non-cleared swap or non-cleared security-based swap is deemed to have been entered into on the immediately succeeding day that is a business day for both parties, and both parties shall determine the day of execution with reference to that business day.

Dealer has the meaning specified in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)).

Depository institution has the meaning specified in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

Derivatives clearing organization has the meaning specified in section 1a(15) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(15)).

Eligible collateral means collateral described in § __.6.

Eligible 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 following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the covered swap entity 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 receivership, conservatorship, 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:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty; or

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition;

(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 of the defaulter is a net creditor under the agreement); and

(4) A covered swap entity that relies on the agreement for purposes of calculating the margin required by this part must:

(i) Conduct sufficient legal review to conclude with a well-founded basis (and maintain sufficient written documentation of that legal review) that:

(A) The agreement meets the requirements of paragraph (2) of this definition; and

(B) In the event of a legal challenge (including one resulting from default or from receivership, conservatorship, 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 the relevant jurisdictions; and

(ii) Establish and maintain written procedures to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of this definition.

Financial end user means:

(1) Any counterparty that is not a swap entity and that is:

(i) A bank holding company or an affiliate thereof; a savings and loan holding company; a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153; or a nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323);

(ii) A depository institution; a foreign bank; a Federal credit union or State credit union as defined in section 2 of the Federal Credit Union Act (12 U.S.C. 1752(1) & (6)); an institution that functions solely in a trust or fiduciary capacity as described in section 2(c)(2)(D) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(D)); an industrial loan company, an industrial bank, or other similar institution described in section 2(c)(2)(H) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)(H));

(iii) An entity that is state-licensed or registered as:

(A) A credit or lending entity, including a finance company; money lender; installment lender; consumer lender or lending company; mortgage lender, broker, or bank; motor vehicle title pledge lender; payday or deferred deposit lender; premium finance company; commercial finance or lending company; or commercial mortgage company; except entities registered or licensed solely on account of financing the entity's direct sales of goods or services to customers;

(B) A money services business, including a check casher; money transmitter; currency dealer or exchange; or money order or traveler's check issuer;

(iv) A regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)) or any entity for which the Federal Housing Finance Agency or

its successor is the primary federal regulator;

(v) Any institution chartered in accordance with the Farm Credit Act of 1971, as amended, 12 U.S.C. 2001 *et seq.,* that is regulated by the Farm Credit Administration;

(vi) A securities holding company; a broker or dealer; an investment adviser as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)); an investment company registered with the U.S. Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or a company that has elected to be regulated as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–53(a));

(vii) A private fund as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80–b–2(a)); an entity that would be an investment company under section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(5)(C); or an entity that is deemed not to be an investment company under section 3 of the Investment Company Act of 1940 pursuant to Investment Company Act Rule 3a–7 (17 CFR 270.3a–7) of the U.S. Securities and Exchange Commission;

(viii) A commodity pool, a commodity pool operator, or a commodity trading advisor as defined, respectively, in section 1a(10), 1a(11), and 1a(12) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(10), 1a(11), and 1a(12)); a floor broker, a floor trader, or introducing broker as defined, respectively, in 1a(22), 1a(23) and 1a(31) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(22), 1a(23), and 1a(31)); or a futures commission merchant as defined in 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28));

(ix) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974 (29 U.S.C. 1002);

(x) An entity that is organized as an insurance company, primarily engaged in writing insurance or reinsuring risks underwritten by insurance companies, or is subject to supervision as such by a State insurance regulator or foreign insurance regulator;

(xi) An entity, person or arrangement that is, or holds itself out as being, an entity, person, or arrangement that raises money from investors, accepts money from clients, or uses its own money primarily for the purpose of investing or trading or facilitating the investing or trading in loans, securities, swaps, funds or other assets for resale or other disposition or otherwise trading in loans, securities, swaps, funds or other assets; or

(xii) An entity that would be a financial end user described in paragraph (1) of this definition or a swap entity, if it were organized under the laws of the United States or any State thereof.

(2) The term ''financial end user'' does not include any counterparty that is:

(i) A sovereign entity;

(ii) A multilateral development bank;

(iii) The Bank for International Settlements;

(iv) An entity that is exempt from the definition of financial entity pursuant to section 2(h)(7)(C)(iii) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(C)(iii)) and implementing regulations; or

(v) An affiliate that qualifies for the exemption from clearing pursuant to section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) or section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations.

Foreign bank means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside the United States.

Foreign exchange forward has the meaning specified in section 1a(24) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(24)).

Foreign exchange swap has the meaning specified in section 1a(25) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(25)).

Initial margin means the collateral as calculated in accordance with § __.8 that is posted or collected in connection with a non-cleared swap or non-cleared security-based swap.

Initial margin collection amount means:

(1) In the case of a covered swap entity that does not use an initial margin model, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under appendix A of this [part]; and

(2) In the case of a covered swap entity that uses an initial margin model pursuant to § __.8, the amount of initial margin with respect to a non-cleared swap or non-cleared security-based swap that is required under the initial margin model.

Initial margin model means an internal risk management model that:

(1) Has been developed and designed to identify an appropriate, risk-based amount of initial margin that the covered swap entity must collect with respect to one or more non-cleared swaps or non-cleared security-based swaps to which the covered swap entity is a party; and

(2) Has been approved by [Agency] pursuant to § __.8.

Initial margin threshold amount means an aggregate credit exposure of $50 million resulting from all non-cleared swaps and non-cleared security-based swaps between a covered swap entity and its affiliates, and a counterparty and its affiliates. For purposes of this calculation, an entity shall not count a swap or security-based swap that is exempt pursuant to § __ .1(d).

Major currency means:

(1) United States Dollar (USD);

(2) Canadian Dollar (CAD);

(3) Euro (EUR);

(4) United Kingdom Pound (GBP);

(5) Japanese Yen (JPY);

(6) Swiss Franc (CHF);

(7) New Zealand Dollar (NZD);

(8) Australian Dollar (AUD);

(9) Swedish Kronor (SEK);

(10) Danish Kroner (DKK);

(11) Norwegian Krone (NOK); or

(12) Any other currency as determined by [Agency].

Margin means initial margin and variation margin.

Market intermediary means a securities holding company; a broker or dealer; a futures commission merchant as defined in 1a(28) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(28)); a swap dealer as defined in section 1a(49) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(49)); or a security-based swap dealer as defined in section 3(a)(71) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(71)).

Material swaps exposure for an entity means that an entity and its affiliates have an average daily aggregate notional amount of non-cleared swaps, non-cleared security-based swaps, foreign exchange forwards, and foreign exchange swaps with all counterparties for June, July, and August of the previous calendar year that exceeds $8 billion, where such amount is calculated only for business days. An entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time. For purposes of this calculation, an entity shall not count a swap or security-based swap that is exempt pursuant to § ____.1(d).

Multilateral development bank means the International Bank for

Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other entity that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member or which [Agency] determines poses comparable credit risk.

Non-cleared swap means a swap that is not cleared by a derivatives clearing organization registered with the Commodity Futures Trading Commission pursuant to section 5b(a) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(a)) or by a clearing organization that the Commodity Futures Trading Commission has exempted from registration by rule or order pursuant to section 5b(h) of the Commodity Exchange Act of 1936 (7 U.S.C. 7a–1(h)).

Non-cleared security-based swap means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered with the U.S. Securities and Exchange Commission pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) or by a clearing agency that the U.S. Securities and Exchange Commission has exempted from registration by rule or order pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1).

Prudential regulator has the meaning specified in section 1a(39) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(39)).

Savings and loan holding company has the meaning specified in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n)).

Securities holding company has the meaning specified in section 618 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 1850a).

Security-based swap has the meaning specified in section 3(a)(68) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(68)).

Sovereign entity means a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government.

State means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

Subsidiary. A company is a subsidiary of another company if:

(1) The company is consolidated by the other company on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards;

(2) For a company that is not subject to such principles or standards, if consolidation as described in paragraph (1) of this definition would have occurred if such principles or standards had applied; or

(3) [The Agency] has determined that the company is a subsidiary of another company, based on [Agency's] conclusion that either company provides significant support to, or is materially subject to the risks of loss of, the other company.

Swap has the meaning specified in section 1a(47) of the Commodity Exchange Act of 1936 (7 U.S.C. 1a(47)).

Swap entity means a person that is registered with the Commodity Futures Trading Commission as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (7 U.S.C. 1 *et seq.*), or a person that is registered with the U.S. Securities and Exchange Commission as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

U.S. Government-sponsored enterprise means an entity established or chartered by the U.S. government to serve public purposes specified by federal statute but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. government.

Variation margin means collateral provided by one party to its counterparty to meet the performance of its obligations under one or more non-cleared swaps or non-cleared security-based swaps between the parties as a result of a change in value of such obligations since the last time such collateral was provided.

Variation margin amount means the cumulative mark-to-market change in value to a covered swap entity of a non-cleared swap or non-cleared security-based swap, as measured from the date it is entered into (or, in the case of a non-cleared swap or non-cleared security-based swap that has a positive or negative value to a covered swap entity on the date it is entered into, such positive or negative value plus any cumulative mark-to-market change in value to the covered swap entity of a non-cleared swap or non-cleared security-based swap after such date), less the value of all variation margin previously collected, plus the value of all variation margin previously posted with respect to such non-cleared swap or non-cleared security-based swap.

§ __.3 Initial margin.

(a) *Collection of margin.* A covered swap entity shall collect initial margin with respect to any non-cleared swap or non-cleared security-based swap from a counterparty that is a financial end user with material swaps exposure or that is a swap entity in an amount that is no less than the greater of:

(1) Zero; or

(2) The initial margin collection amount for such non-cleared swap or non-cleared security-based swap *less* the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), as applicable.

(b) *Posting of margin.* A covered swap entity shall post initial margin with respect to any non-cleared swap or non-cleared security-based swap to a counterparty that is a financial end user with material swaps exposure. Such initial margin shall be in an amount at least as large as the covered swap entity would be required to collect under paragraph (a) of this section if it were in the place of the counterparty.

(c) *Timing.* A covered swap entity shall comply with the initial margin requirements described in paragraphs (a) and (b) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security-based swap terminates or expires.

(d) *Other counterparties.* A covered swap entity is not required to collect or post initial margin with respect to any non-cleared swap or non-cleared security-based swap described in § __1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user with a material swaps exposure nor a swap entity, the covered swap entity shall collect initial margin at such times and in such forms and

such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

§ __.4 Variation margin.

(a) *General.* After the date on which a covered swap entity enters into a non-cleared swap or non-cleared security-based swap with a swap entity or financial end user, the covered swap entity shall collect variation margin equal to the variation margin amount from the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is positive and post variation margin equal to the variation margin amount to the counterparty to such non-cleared swap or non-cleared security-based swap when the amount is negative.

(b) *Timing.* A covered swap entity shall comply with the variation margin requirements described in paragraph (a) of this section on each business day, for a period beginning on or before the business day following the day of execution and ending on the date the non-cleared swap or non-cleared security based swap terminates or expires.

(c) *Other counterparties.* A covered swap entity is not required to collect or post variation margin with respect to any non-cleared swap or non-cleared security-based swap described in § __1(d). For any other non-cleared swap or non-cleared security-based swap between a covered swap entity and a counterparty that is neither a financial end user nor a swap entity, the covered swap entity shall collect variation margin at such times and in such forms and such amounts (if any), that the covered swap entity determines appropriately addresses the credit risk posed by the counterparty and the risks of such non-cleared swap or non-cleared security-based swap.

§ __.5 Netting arrangements, minimum transfer amount, and satisfaction of collecting and posting requirements.

(a) *Netting arrangements.* (1) For purposes of calculating and complying with the initial margin requirements of § .3 using an initial margin model as described in § __.8, or with the variation margin requirements of § __.4, a covered swap entity may net non-cleared swaps or non-cleared security-based swaps in accordance with this subsection.

(2) To the extent that one or more non-cleared swaps or non-cleared security-based swaps are executed pursuant to an eligible master netting agreement between a covered swap entity and its counterparty that is a swap entity or financial end user, a covered swap entity may calculate and comply with the applicable requirements of this [part] on an aggregate net basis with respect to all non-cleared swaps and non-cleared security-based swaps governed by such agreement, subject to paragraph (a)(3) of this section.

(3)(i) Except as permitted in paragraph (a)(3)(ii) of this section, if an eligible master netting agreement covers non-cleared swaps and non-cleared security-based swaps entered into on or after the applicable compliance date set forth in § __.1(e) or (g), all the non-cleared swaps and non-cleared security-based swaps covered by that agreement are subject to the requirements of this [part] and included in the aggregate netting portfolio for the purposes of calculating and complying with the margin requirements of this [part].

(ii) An eligible master netting agreement may identify one or more separate netting portfolios that independently meet the requirements in paragraph (1) of the definition of ''Eligible master netting agreement'' in § __.2 and to which collection and posting of margin applies on an aggregate net basis separate from and exclusive of any other non-cleared swaps or non-cleared security-based swaps covered by the eligible master netting agreement. Any such netting portfolio that contains any non-cleared swap or non-cleared security-based swap entered into on or after the applicable compliance date set forth in § __.1(e) or (g) is subject to the requirements of this [part]. Any such netting portfolio that contains only non-cleared swaps or non-cleared security-based swaps entered into before the applicable compliance date is not subject to the requirements of this [part].

(4) If a covered swap entity cannot conclude after sufficient legal review with a well-founded basis that the netting agreement described in this section meets the definition of eligible master netting agreement set forth in § __.2, the covered swap entity must treat the non-cleared swaps and non-cleared security based swaps covered by the agreement on a gross basis for the purposes of calculating and complying with the requirements of this [part] to collect margin, but the covered swap entity may net those non-cleared swaps and non-cleared security-based swaps in accordance with paragraphs (a)(1) through (3) of this section for the purposes of calculating and complying with the requirements of this [part] to post margin.

(b) *Minimum transfer amount.* Notwithstanding § __.3 or § __.4, a covered swap entity is not required to collect or post margin pursuant to this [part] with respect to a particular counterparty unless and until the combined amount of initial margin and variation margin that is required pursuant to this [part] to be collected or posted and that has not yet been collected or posted with respect to the counterparty is greater than $500,000.

(c) *Satisfaction of collecting and posting requirements.* A covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty under § __.3, § __.4, or § __.6(e) if:

(1) The counterparty has refused or otherwise failed to provide or accept the required margin to or from the covered swap entity; and

(2) The covered swap entity has:

(i) Made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of [Agency] that it has made appropriate efforts to collect or post the required margin; or

(ii) Commenced termination of the non-cleared swap or non-cleared security-based swap with the counterparty promptly following the applicable cure period and notification requirements.

§ __.6 Eligible collateral.

(a) *Non-cleared swaps and non-cleared security-based swaps with a swap entity.* For a non-cleared swap or non-cleared security-based swap with a swap entity, a covered swap entity shall collect initial margin and variation margin required pursuant to this [part] solely in the form of the following types of collateral:

(1) Immediately available cash funds that are denominated in:

(i) U.S. dollars or another major currency; or

(ii) The currency of settlement for the non-cleared swap or non-cleared security-based swap;

(2) With respect to initial margin only:

(i) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(ii) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;

(iii) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § ____.12;

(iv) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(v) A publicly traded debt security that meets the terms of [RESERVED] and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(vi) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(vii) A security solely in the form of:

(A) Publicly traded debt not otherwise described in paragraph (a)(2) of this section that meets the terms of [RESERVED] and is not an asset-backed security;

(B) Publicly traded common equity that is included in:

(*1*) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by [Agency]; or

(*2*) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(viii) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if:

(A) The fund's investments are limited to the following:

(*1*) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(*2*) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § ____.12, and immediately-available cash funds denominated in the same currency; and

(B) Assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve the fund having rights to acquire the same or similar assets from the transferee; or

(ix) Gold.

(b) *Non-cleared swaps and non-cleared security-based swaps with a financial end user.* For a non-cleared swap or non-cleared security-based swap with a financial end user, a covered swap entity shall collect and post initial margin and variation margin required pursuant to this [part] solely in the form of the following types of collateral:

(1) Immediately available cash funds that are denominated in:

(i) U.S. dollars or another major currency; or

(ii) The currency of settlement for the non-cleared swap or non-cleared security-based swap;

(2) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury;

(3) A security that is issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, a U.S. government agency (other than the U.S. Department of Treasury) whose obligations are fully guaranteed by the full faith and credit of the United States government;

(4) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § ____.12;

(5) A publicly traded debt security issued by, or an asset-backed security fully guaranteed as to the payment of principal and interest by, a U.S. Government-sponsored enterprise that is operating with capital support or another form of direct financial assistance received from the U.S. government that enables the repayments of the U.S. Government-sponsored enterprise's eligible securities;

(6) A publicly traded debt security that meets the terms of [RESERVED] and is issued by a U.S. Government-sponsored enterprise not operating with capital support or another form of direct financial assistance from the U.S. government, and is not an asset-backed security;

(7) A security that is issued by, or fully guaranteed as to the payment of principal and interest by, the Bank for International Settlements, the International Monetary Fund, or a multilateral development bank;

(8) A security solely in the form of:

(i) Publicly traded debt not otherwise described in this paragraph (b) that meets the terms of [RESERVED] and is not an asset-backed security;

(ii) Publicly traded common equity that is included in:

(A) The Standard & Poor's Composite 1500 Index or any other similar index of liquid and readily marketable equity securities as determined by [Agency]; or

(B) An index that a covered swap entity's supervisor in a foreign jurisdiction recognizes for purposes of including publicly traded common equity as initial margin under applicable regulatory policy, if held in that foreign jurisdiction;

(9) Securities in the form of redeemable securities in a pooled investment fund representing the security-holder's proportional interest in the fund's net assets and that are issued and redeemed only on the basis of the market value of the fund's net assets prepared each business day after the security-holder makes its investment commitment or redemption request to the fund, if:

(i) The fund's investments are limited to the following:

(A) Securities that are issued by, or unconditionally guaranteed as to the timely payment of principal and interest by, the U.S. Department of the Treasury, and immediately-available cash funds denominated in U.S. dollars; or

(B) Securities denominated in a common currency and issued by, or fully guaranteed as to the payment of principal and interest by, the European Central Bank or a sovereign entity that is assigned no higher than a 20 percent risk weight under the capital rules applicable to the covered swap entity as set forth in § ____.12, and immediately-available cash funds denominated in the same currency; and

(ii) Assets of the fund may not be transferred through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, or other means that involve

the fund having rights to acquire the same or similar assets from the transferee; or

(10) Gold.

(c)(1) The value of any eligible collateral collected or posted to satisfy margin requirements pursuant to this [part] is subject to the sum of the following discounts, as applicable:

(i) An 8 percent discount for variation margin collateral denominated in a currency that is not the currency of settlement for the non-cleared swap or non-cleared security-based swap, except for immediately available cash funds denominated in U.S. dollars or another major currency;

(ii) An 8 percent discount for initial margin collateral denominated in a currency that is not the currency of settlement for the non-cleared swap or non-cleared security-based swap, except for eligible types of collateral denominated in a single termination currency designated as payable to the non-posting counterparty as part of the eligible master netting agreement; and

(iii) For variation and initial margin non-cash collateral, the discounts described in appendix B of this [part].

(2) The value of variation margin or initial margin collateral is computed as the product of the cash or market value of the eligible collateral asset times one minus the applicable discounts pursuant to paragraph (c)(1) of this section expressed in percentage terms. The total value of all variation margin or initial margin collateral is calculated as the sum of those values for each eligible collateral asset.

(d) Notwithstanding paragraphs (a) and (b) of this section, eligible collateral for initial margin and variation margin required by this [part] does not include a security issued by:

(1) The party or an affiliate of the party pledging such collateral;

(2) A bank holding company, a savings and loan holding company, a U.S. intermediate holding company established or designated for purposes of compliance with 12 CFR 252.153, a foreign bank, a depository institution, a market intermediary, a company that would be any of the foregoing if it were organized under the laws of the United States or any State, or an affiliate of any of the foregoing institutions; or

(3) A nonbank financial institution supervised by the Board of Governors of the Federal Reserve System under Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5323).

(e) A covered swap entity shall monitor the market value and eligibility of all collateral collected and posted to satisfy the minimum initial margin and minimum variation margin requirements of this [part]. To the extent that the market value of such collateral has declined, the covered swap entity shall promptly collect or post such additional eligible collateral as is necessary to maintain compliance with the margin requirements of this [part]. To the extent that the collateral is no longer eligible, the covered swap entity shall promptly collect or post sufficient eligible replacement collateral to comply with the margin requirements of this [part].

(f) A covered swap entity may collect or post initial margin and variation margin that is required by § ____.3(d) or § ____.4(c) or that is not required pursuant to this [part] in any form of collateral.

§ ____.7 Segregation of collateral.

(a) A covered swap entity that posts any collateral other than for variation margin with respect to a non-cleared swap or a non-cleared security-based swap shall require that all funds or other property other than variation margin provided by the covered swap entity be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(b) A covered swap entity that collects initial margin required by § ____.3(a) with respect to a non-cleared swap or a non-cleared security-based swap shall require that such initial margin be held by one or more custodians that are not the covered swap entity or counterparty and not affiliates of the covered swap entity or the counterparty.

(c) For purposes of paragraphs (a) and (b) of this section, the custodian must act pursuant to a custody agreement that:

(1) Prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset described in § ____.6(a)(2) or (b), such asset is held in compliance with this § ____.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin; and

(2) Is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding.

(d) Notwithstanding paragraph (c)(1) of this section, a custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to § ____.3(a) or posted by a covered swap entity pursuant to § ____.3(b), the agreement requires the posting party to:

(1) Substitute only funds or other property that would qualify as eligible collateral under § ____.6, and for which the amount net of applicable discounts described in appendix B of this [part] would be sufficient to meet the requirements of § ____.3; and

(2) Direct reinvestment of funds only in assets that would qualify as eligible collateral under § ____.6, and for which the amount net of applicable discounts described in appendix B of this [part] would be sufficient to meet the requirements of § ____.3.

§ ____.8 Initial margin models and standardized amounts.

(a) *Standardized amounts.* Unless a covered swap entity's initial margin model conforms to the requirements of this section, the covered swap entity shall calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to § ____.3 on a daily basis pursuant to appendix A of this [part].

(b) *Use of initial margin models.* A covered swap entity may calculate the amount of initial margin required to be collected or posted for one or more non-cleared swaps or non-cleared security-based swaps with a given counterparty pursuant to § ____.3 on a daily basis using an initial margin model only if the initial margin model meets the requirements of this section.

(c) *Requirements for initial margin model.* (1) A covered swap entity must obtain the prior written approval of [Agency] before using any initial margin model to calculate the initial margin required in this [part].

(2) A covered swap entity must demonstrate that the initial margin model satisfies all of the requirements of this section on an ongoing basis.

(3) A covered swap entity must notify [Agency] in writing 60 days prior to:

(i) Extending the use of an initial margin model that [Agency] has approved under this section to an additional product type;

(ii) Making any change to any initial margin model approved by [Agency]

under this section that would result in a material change in the covered swap entity's assessment of initial margin requirements; or

(iii) Making any material change to modeling assumptions used by the initial margin model.

(4) [The Agency] may rescind its approval of the use of any initial margin model, in whole or in part, or may impose additional conditions or requirements if [Agency] determines, in its sole discretion, that the initial margin model no longer complies with this section.

(d) *Quantitative requirements.* (1) The covered swap entity's initial margin model must calculate an amount of initial margin that is equal to the potential future exposure of the non-cleared swap, non-cleared security-based swap or netting portfolio of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. Potential future exposure is an estimate of the one-tailed 99 percent confidence interval for an increase in the value of the non-cleared swap, non-cleared security-based swap or netting portfolio of non-cleared swaps or non-cleared security-based swaps due to an instantaneous price shock that is equivalent to a movement in all material underlying risk factors, including prices, rates, and spreads, over a holding period equal to the shorter of ten business days or the maturity of the non-cleared swap, non-cleared security-based swap or netting portfolio.

(2) All data used to calibrate the initial margin model must be based on an equally weighted historical observation period of at least one year and not more than five years and must incorporate a period of significant financial stress for each broad asset class that is appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(3) The covered swap entity's initial margin model must use risk factors sufficient to measure all material price risks inherent in the transactions for which initial margin is being calculated. The risk categories must include, but should not be limited to, foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. For material exposures in significant currencies and markets, modeling techniques must capture spread and basis risk and must incorporate a sufficient number of segments of the yield curve to capture differences in volatility and imperfect correlation of rates along the yield curve.

(4) In the case of a non-cleared cross-currency swap, the covered swap entity's initial margin model need not recognize any risks or risk factors associated with the fixed, physically-settled foreign exchange transaction associated with the exchange of principal embedded in the non-cleared cross-currency swap. The initial margin model must recognize all material risks and risk factors associated with all other payments and cash flows that occur during the life of the non-cleared cross-currency swap.

(5) The initial margin model may calculate initial margin for a non-cleared swap or non-cleared security-based swap or a netting portfolio of non-cleared swaps or non-cleared security-based swaps covered by an eligible master netting agreement. It may reflect offsetting exposures, diversification, and other hedging benefits for non-cleared swaps and non-cleared security-based swaps that are governed by the same eligible master netting agreement by incorporating empirical correlations within the following broad risk categories, provided the covered swap entity validates and demonstrates the reasonableness of its process for modeling and measuring hedging benefits: Commodity, credit, equity, and foreign exchange or interest rate. Empirical correlations under an eligible master netting agreement may be recognized by the initial margin model within each broad risk category, but not across broad risk categories.

(6) If the initial margin model does not explicitly reflect offsetting exposures, diversification, and hedging benefits between subsets of non-cleared swaps or non-cleared security-based swaps within a broad risk category, the covered swap entity must calculate an amount of initial margin separately for each subset within which such relationships are explicitly recognized by the initial margin model. The sum of the initial margin amounts calculated for each subset of non-cleared swaps and non-cleared security-based swaps within a broad risk category will be used to determine the aggregate initial margin due from the counterparty for the portfolio of non-cleared swaps and non-cleared security-based swaps within the broad risk category.

(7) The sum of the initial margin amounts calculated for each broad risk category will be used to determine the aggregate initial margin due from the counterparty.

(8) The initial margin model may not permit the calculation of any initial margin collection amount to be offset by, or otherwise take into account, any initial margin that may be owed or otherwise payable by the covered swap entity to the counterparty.

(9) The initial margin model must include all material risks arising from the nonlinear price characteristics of option positions or positions with embedded optionality and the sensitivity of the market value of the positions to changes in the volatility of the underlying rates, prices, or other material risk factors.

(10) The covered swap entity may not omit any risk factor from the calculation of its initial margin that the covered swap entity uses in its initial margin model unless it has first demonstrated to the satisfaction of [Agency] that such omission is appropriate.

(11) The covered swap entity may not incorporate any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps unless it has first demonstrated to the satisfaction of [Agency] that such proxy or approximation is appropriate.

(12) The covered swap entity must have a rigorous and well-defined process for re-estimating, re-evaluating, and updating its internal margin model to ensure continued applicability and relevance.

(13) The covered swap entity must review and, as necessary, revise the data used to calibrate the initial margin model at least annually, and more frequently as market conditions warrant, to ensure that the data incorporate a period of significant financial stress appropriate to the non-cleared swaps and non-cleared security-based swaps to which the initial margin model is applied.

(14) The level of sophistication of the initial margin model must be commensurate with the complexity of the non-cleared swaps and non-cleared security-based swaps to which it is applied. In calculating an initial margin collection amount, the initial margin model may make use of any of the generally accepted approaches for modeling the risk of a single instrument or portfolio of instruments.

(15) [The Agency] may in its sole discretion require a covered swap entity using an initial margin model to collect a greater amount of initial margin than that determined by the covered swap entity's initial margin model if [Agency] determines that the additional collateral is appropriate due to the nature, structure, or characteristics of the covered swap entity's transaction(s), or is commensurate with the risks associated with the transaction(s).

(e) *Periodic review.* A covered swap entity must periodically, but no less frequently than annually, review its

initial margin model in light of developments in financial markets and modeling technologies, and enhance the initial margin model as appropriate to ensure that the initial margin model continues to meet the requirements for approval in this section.

(f) *Control, oversight, and validation mechanisms.* (1) The covered swap entity must maintain a risk control unit that reports directly to senior management and is independent from the business trading units.

(2) The covered swap entity's risk control unit must validate its initial margin model prior to implementation and on an ongoing basis. The covered swap entity's validation process must be independent of the development, implementation, and operation of the initial margin model, or the validation process must be subject to an independent review of its adequacy and effectiveness. The validation process must include:

(i) An evaluation of the conceptual soundness of (including developmental evidence supporting) the initial margin model;

(ii) An ongoing monitoring process that includes verification of processes and benchmarking by comparing the covered swap entity's initial margin model outputs (estimation of initial margin) with relevant alternative internal and external data sources or estimation techniques. The benchmark(s) must address the chosen model's limitations. When applicable, the covered swap entity should consider benchmarks that allow for non-normal distributions such as historical and Monte Carlo simulations. When applicable, validation shall include benchmarking against observable margin standards to ensure that the initial margin required is not less than what a derivatives clearing organization or a clearing agency would require for similar cleared transactions; and

(iii) An outcomes analysis process that includes backtesting the initial margin model. This analysis must recognize and compensate for the challenges inherent in back-testing over periods that do not contain significant financial stress.

(3) If the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify [Agency] of the problems, describe to [Agency] any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated.

(4) The covered swap entity must have an internal audit function independent of business-line management and the risk control unit that at least annually assesses the effectiveness of the controls supporting the covered swap entity's initial margin model measurement systems, including the activities of the business trading units and risk control unit, compliance with policies and procedures, and calculation of the covered swap entity's initial margin requirements under this [part]. At least annually, the internal audit function must report its findings to the covered swap entity's board of directors or a committee thereof.

(g) *Documentation.* The covered swap entity must adequately document all material aspects of its initial margin model, including the management and valuation of the non-cleared swaps and non-cleared security-based swaps to which it applies, the control, oversight, and validation of the initial margin model, any review processes and the results of such processes.

(h) *Escalation procedures.* The covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval.

§ ____.9 Cross-border application of margin requirements.

(a) *Transactions to which this rule does not apply.* The requirements of §§ ____.3 through ____.8 and §§ ____.10 through ____.12 shall not apply to any foreign non-cleared swap or foreign non-cleared security-based swap of a foreign covered swap entity.

(b) For purposes of this section, a *foreign non-cleared swap* or *foreign non-cleared security-based swap* is any non-cleared swap or non-cleared security-based swap with respect to which neither the counterparty to the foreign covered swap entity nor any party that provides a guarantee of either party's obligations under the non-cleared swap or non-cleared security-based swap is:

(1) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) A swap entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(c) For purposes of this section, a *foreign covered swap entity* is any covered swap entity that is not:

(1) An entity organized under the laws of the United States or any State, including a U.S. branch, agency, or subsidiary of a foreign bank;

(2) A branch or office of an entity organized under the laws of the United States or any State; or

(3) An entity that is a subsidiary of an entity that is organized under the laws of the United States or any State.

(d) *Transactions for which substituted compliance determination may apply*—(1) *Determinations and reliance.* For non-cleared swaps and non-cleared security-based swaps entered into by covered swap entities described in paragraph (d)(3) of this section, a covered swap entity may satisfy the provisions of this [part] by complying with the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that the prudential regulators jointly, conditionally or unconditionally, determine by public order satisfy the corresponding requirements of §§ ____.3 through ____.8 and §§ ____.10 through ____.12.

(2) *Standard.* In determining whether to make a determination under paragraph (d)(1) of this section, the prudential regulators will consider whether the requirements of such foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps applicable to such covered swap entities are comparable to the otherwise applicable requirements of this [part] and appropriate for the safe and sound operation of the covered swap entity, taking into account the risks associated with non-cleared swaps and non-cleared security-based swaps.

(3) *Covered swap entities eligible for substituted compliance.* A covered swap entity may rely on a determination under paragraph (d)(1) of this section only if:

(i) The covered swap entity's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (other than a U.S. branch or agency of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State; and

(ii) The covered swap entity is:

(A) A foreign covered swap entity;

(B) A U.S. branch or agency of a foreign bank; or

(C) An entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation.

(4) *Compliance with foreign margin collection requirement.* A covered swap entity satisfies its requirement to post initial margin under § ____.3(b) by posting to its counterparty initial margin in the form and amount, and at such times, that its counterparty is required to collect pursuant to a foreign regulatory framework, provided that the counterparty is subject to the foreign regulatory framework and the prudential regulators have made a determination under paragraph (d)(1) of this section, unless otherwise stated in that determination, and the counterparty's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(i) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(ii) A branch or office of an entity organized under the laws of the United States or any State.

(e) *Requests for determinations.* (1) A covered swap entity described in paragraph (d)(3) of this section may request that the prudential regulators make a determination pursuant to this section. A request for a determination must include a description of:

(i) The scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps;

(ii) The specific provisions of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps that govern:

(A) The scope of transactions covered;

(B) The determination of the amount of initial margin and variation margin required and how that amount is calculated;

(C) The timing of margin requirements;

(D) Any documentation requirements;

(E) The forms of eligible collateral;

(F) Any segregation and rehypothecation requirements; and

(G) The approval process and standards for models used in calculating initial margin and variation margin;

(iii) The supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap or non-cleared security-based swap regulatory framework and how that framework applies to the non-cleared swaps or non-cleared security-based swaps of the covered swap entity; and

(iv) Any other descriptions and documentation that the prudential regulators determine are appropriate.

(2) A covered swap entity described in paragraph (d)(3) of this section may make a request under this section only if the non-cleared swap or non-cleared security-based swap activities of the covered swap entity are directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

(f) *Segregation unavailable.* Sections __.3(b) and __.7 do not apply to a non-cleared swap or non-cleared security-based swap entered into by:

(1) A foreign branch of a covered swap entity that is a depository institution; or

(2) A covered swap entity that is not organized under the laws of the United States or any State and is a subsidiary of a depository institution, Edge corporation, or agreement corporation, if:

(i) Inherent limitations in the legal or operational infrastructure in the foreign jurisdiction make it impracticable for the covered swap entity and the counterparty to post any form of eligible initial margin collateral recognized pursuant to § __.6(b) in compliance with the segregation requirements of § __.7;

(ii) The covered swap entity is subject to foreign regulatory restrictions that require the covered swap entity to transact in the non-cleared swap or non-cleared security-based swap with the counterparty through an establishment within the foreign jurisdiction and do not accommodate the posting of collateral for the non-cleared swap or non-cleared security-based swap outside the jurisdiction;

(iii) The counterparty to the non-cleared swap or non-cleared security-based swap is not, and the counterparty's obligations under the non-cleared swap or non-cleared security-based swap do not have a guarantee from:

(A) An entity organized under the laws of the United States or any State (including a U.S. branch, agency, or subsidiary of a foreign bank) or a natural person who is a resident of the United States; or

(B) A branch or office of an entity organized under the laws of the United States or any State;

(iv) The covered swap entity collects initial margin for the non-cleared swap or non-cleared security-based swap in accordance with § __.3(a) in the form of cash pursuant to § __.6(b)(1), and posts and collects variation margin in accordance with § __.4(a) in the form of cash pursuant to § __.6(b)(1); and

(v) [The Agency] provides the covered swap entity with prior written approval for the covered swap entity's reliance on this paragraph (f) for the foreign jurisdiction.

(g) *Guarantee* means an arrangement pursuant to which one party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a third-party guarantor, with respect to its counterparty's obligations under the non-cleared swap or non-cleared security-based swap. For these purposes, a party to a non-cleared swap or non-cleared security-based swap has rights of recourse against a guarantor if the party has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from the guarantor with respect to its counterparty's obligations under the non-cleared swap or non-cleared security-based swap. In addition, any arrangement pursuant to which the guarantor has a conditional or unconditional legally enforceable right to receive or otherwise collect, in whole or in part, payments from any other third party guarantor with respect to the counterparty's obligations under the non-cleared swap or non-cleared security-based swap, such arrangement will be deemed a guarantee of the counterparty's obligations under the non-cleared swap or non-cleared security-based swap by the other guarantor.

§ __.10 Documentation of margin matters.

A covered swap entity shall execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that:

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this [part]; and

(b) Specifies:

(1) The methods, procedures, rules, and inputs for determining the value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements; and

(2) The procedures by which any disputes concerning the valuation of non-cleared swaps or non-cleared security-based swaps, or the valuation of assets collected or posted as initial margin or variation margin, may be resolved; and

(c) Describes the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps and non-cleared security based swaps entered into between the covered swap entity and the counterparty.

§ __.11 Special rules for affiliates.

(a) *Affiliates.* This [part] applies to a non-cleared swap or non-cleared security-based swap of a covered swap entity with its affiliate, unless the swap or security-based swap is excluded from coverage under § __.1(d) or as otherwise provided in this section. To the extent of any inconsistency between this section and any other provision of this [part], this section will apply.

(b) *Initial margin*—(1) *Posting of initial margin.* The requirement for a covered swap entity to post initial margin under § __.3(b) does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § __.3(b) and provide documentation of such amount to each affiliate on a daily basis.

(2) *Initial margin threshold amount.* For purposes of calculating the amount of initial margin to be collected from an affiliate counterparty in accordance with § __.3(a) or calculating the amount of initial margin that would have been posted to an affiliate counterparty in accordance with paragraph (b)(1) of this section, the initial margin threshold amount is an aggregate credit exposure of $20 million resulting from all non-cleared swaps and non-cleared security-based swaps between the covered swap entity and that affiliate. For purposes of this calculation, an entity shall not count a non-cleared swap or non-cleared security-based swap that is exempt pursuant to § __.1(d).

(c) *Variation margin.* A covered swap entity shall collect and post variation margin with respect to a non-cleared swap or non-cleared security-based swap with any counterparty that is an affiliate as provided in § __.4.

(d) *Custodian for non-cash collateral.* To the extent that a covered swap entity collects initial margin required by § __.3(a) from an affiliate with respect to any non-cleared swap or non-cleared security-based swap in the form of collateral other than cash collateral, the custodian for such collateral may be the covered swap entity or an affiliate of the covered swap entity.

(e) *Model holding period and netting*—(1) *Model holding period.* For any non-cleared swap or non-cleared security-based swap (or netting portfolio) between a covered swap entity and an affiliate that would be subject to the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 or section 3C(a)(1) of the Securities Exchange Act of 1934 but for an exemption under section 2(h)(7)(C)(iii) or (D) or section 4(c)(1) of the Commodity Exchange Act of 1936 or regulations of the Commodity Futures Trading Commission or section 3C(g)(4) of the Securities Exchange Act of 1934 or regulations of the U.S. Securities and Exchange Commission, the covered swap entity's initial margin model calculation as described in § ___.8(d)(1) may use a holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap (or netting portfolio).

(2) *Netting arrangements.* Any netting portfolio that contains any non-cleared swap or non-cleared security-based swap with a model holding period equal to the shorter of five business days or the maturity of the non-cleared swap or non-cleared security-based swap pursuant to paragraph (e)(1) of this section must be identified and separate from any other netting portfolio for purposes of calculating and complying with the initial margin requirements of this [part].

(f) *Standardized amounts.* If a covered swap entity's initial margin model does not conform to the requirements of § ___.8, the covered swap entity shall calculate the amount of initial margin required to be collected for one or more non-cleared swaps or non-cleared security-based swaps with a given affiliate counterparty pursuant to section § ___.3 on a daily basis pursuant to Appendix A with the gross initial margin multiplied by 0.7.

§ __.12 Capital. [Reserved]

Appendix A to [Part]—Standardized Minimum Initial Margin Requirements for Non-cleared Swaps and Non—cleared Security-based Swaps

TABLE A—STANDARDIZED MINIMUM GROSS INITIAL MARGIN REQUIREMENTS FOR NON-CLEARED SWAPS AND NON-CLEARED SECURITY-BASED SWAPS[1]

Asset Class	Gross initial margin (% of notional exposure)
Credit: 0–2 year duration	2
Credit: 2–5 year duration	5
Credit: 5+ year duration	10
Commodity	15
Equity	15
Foreign Exchange/Currency	6
Cross Currency Swaps: 0–2 year duration	1
Cross-Currency Swaps: 2–5 year duration	2
Cross-Currency Swaps: 5+ year duration	4
Interest Rate: 0–2 year duration	1
Interest Rate: 2–5 year duration	2
Interest Rate: 5+ year duration	4
Other	15

[1] The initial margin amount applicable to multiple non-cleared swaps or non-cleared security-based swaps subject to an eligible master netting agreement that is calculated according to Appendix A will be computed as follows:

Initial Margin=0.4xGross Initial Margin +0.6x NGRxGross Initial Margin

where;

Gross Initial Margin = the sum of the product of each non-cleared swap's or non-cleared security-based swap's effective notional amount and the gross initial margin requirement for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement;

and

NGR = the net-to-gross ratio (that is, the ratio of the net current replacement cost to the gross current replacement cost). In calculating NGR, the gross current replacement cost equals the sum of the replacement cost for each non-cleared swap and non-cleared security-based swap subject to the eligible master netting agreement for which the cost is positive. The net current replacement cost equals the total replacement cost for all non-cleared swaps and non-cleared security-based swaps subject to the eligible master netting agreement. In cases where the gross replacement cost is zero, the NGR should be set to 1.0.

Appendix B to [Part]—Margin Values for Eligible Noncash Margin Collateral.

TABLE B—MARGIN VALUES FOR ELIGIBLE NONCASH MARGIN COLLATERAL

Asset class	Discount (%)
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § __.6(a)(2)(iv) or (b)(5) debt: residual maturity less than one-year	0.5
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § __.6(a)(2)(iv) or (b)(5) debt: residual maturity between one and five years	2.0
Eligible government and related (e.g., central bank, multilateral development bank, GSE securities identified in § __.6(a)(2)(iv) or (b)(5) debt: residual maturity greater than five years	4.0
Eligible GSE debt securities not identified in § __.6(a)(2)(iv) or (b)(5): residual maturity less than one-year	1.0
Eligible GSE debt securities not identified in § __.6(a)(2)(iv) or (b)(5): residual maturity between one and five years:	4.0
Eligible GSE debt securities not identified in § __.6(a)(2)(iv) or (b)(5): residual maturity greater than five years:	8.0
Other eligible publicly traded debt: residual maturity less than one-year	1.0
Other eligible publicly traded debt: residual maturity between one and five years	4.0
Other eligible publicly traded debt: residual maturity greater than five years	8.0
Equities included in S&P 500 or related index	15.0
Equities included in S&P 1500 Composite or related index but not S&P 500 or related index	25.0
Gold	15.0

[1] The discount to be applied to an eligible investment fund is the weighted average discount on all assets within the eligible investment fund at the end of the prior month. The weights to be applied in the weighted average should be calculated as a fraction of the fund's total market value that is invested in each asset with a given discount amount. As an example, an eligible investment fund that is comprised solely of $100 of 91 day Treasury bills and $100 of 3 year US Treasury bonds would receive a discount of (100/200)*0.5+(100/200)*2.0=(0.5)*0.5+(0.5)*2.0=1.25 percent.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

12 CFR Part 349

Administrative practice and procedure, Banks, Holding companies, Margin Requirements, Capital, Reporting and recordkeeping requirements, Savings associations, Risk.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

Adoption of the Common Rule Text

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and issuance

For the reasons stated in the Common Preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends chapter I of title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. Part 45 is added as set forth at the end of the Common Preamble.

■ 2. The authority citation for part 45 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 3. Part 45 is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the OCC'';

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The OCC'';

■ c. Removing ''[Agency's]'' wherever it appears and adding in its place ''OCC's'';

■ d. Removing ''[part]'' wherever it appears and adding in its place ''part''; and

■ e. Removing ''[Part]'' wherever it appears and adding in its place ''Part 45''.

■ 4. Section 45.1 is amended by adding paragraphs (a), (b), and (c) to read as follows:

§ 45.1 Authority, purpose, scope, and compliance dates.

(a) *Authority.* This part is issued under the authority of 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

(b) *Purpose.* Section 4s of the Commodity Exchange Act of 1936 (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the OCC to establish capital and margin requirements for any for any national bank or subsidiary thereof, Federal savings association or subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with

respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act of 1936 and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (e) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 5. Section 45.2 is amended by adding a definition of ''Covered swap entity'' in alphabetical order to read as follows:

§ 45.2 Definitions.

* * * * *

Covered swap entity means any national bank or subsidiary thereof, Federal savings association or subsidiary thereof, or Federal branch or agency of a foreign bank that is a swap entity, or any other entity that the OCC determines.

* * * * *

§ 45.6 [Amended]

■ 6. Section 45.6 is amended by removing ''[RESERVED]'' everywhere it appears and adding in its place ''12 CFR part 1''.

■ 7. Section 45.12 is added to read as follows:

§ 45.12 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a national bank or Federal savings association, the minimum capital requirements as generally provided 12 CFR part 3.

(b) In the case of a covered swap entity that is a Federal branch or agency of a foreign bank, the capital adequacy guidelines applicable as generally provided under 12 CFR 28.14.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System amends part 237 to 12 CFR chapter II as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT

■ 8. The authority citation for part 237 is revised to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

■ 9. Revise the heading for part 237 to read as set forth above.

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 10. Subpart A of part 237 is added as set forth at the end of the Common Preamble.

■ 11. The authority citation for subpart A of part 237 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.* and 12 U.S.C. 1461 *et seq.*

■ 12. Part 237, subpart A, is amended by:

■ a. Revising the subpart heading to read as set forth above;

■ b. Removing ''[Agency]'' wherever it appears and adding in its place ''the Board'';

■ c. Removing ''[The Agency]'' wherever it appears and adding in its place ''The Board'';

■ d. Removing ''[Agency's]'' wherever it appears and adding in its place ''Board's'';

■ e. Removing ''[part]'' wherever it appears and adding in its place ''subpart''; and

■ f. Removing ''[Part]'' wherever it appears and adding in its place ''Subpart A''.

■ 13. Section 237.1 is amended by adding paragraphs (a), (b), and (c) to read as follows:

§ 237.1 Authority, purpose, scope and compliance dates.

(a) *Authority.* This subpart (Regulation KK) is issued by the Board of Governors of the Federal Reserve System (Board) under section 4s(e) of the Commodity Exchange Act of 1936, as amended (7 U.S.C. 6s(e)), and section 15F(e) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o–10(e)), as well as under the Federal Reserve Act, as amended (12 U.S.C. 221 *et seq.*); section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818); the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*), and the Home Owners' Loan Act, as amended (1461 *et seq.*).

(b) *Purpose.* Section 4s of the Commodity Exchange Act of 1936 (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the Board to establish capital and margin requirements for any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a (on or after the transfer established under Section 311 of the Dodd-Frank Act) (12 U.S.C. 5411)), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This subpart implements section 4s of the Commodity Exchange Act of 1936 and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This subpart establishes minimum capital and margin requirements for each covered swap entity subject to this subpart with respect to all non-cleared swaps and non-cleared security-based swaps. This subpart applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (e) of this section. Nothing in this subpart is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this subpart.

* * * * *

■ 14. Section 237.2 is amended by adding the definition of ''Covered swap entity'' in alphabetical order to read as follows:

§ 237.2 Definitions.

* * * * *

Covered swap entity means any swap entity that is a:

(1) State member bank (as defined in 12 CFR 208.2(g));

(2) Bank holding company (as defined in 12 U.S.C. 1841);

(3) Savings and loan holding company (as defined in 12 U.S.C. 1467a);

(4) Foreign banking organization (as defined in 12 CFR 211.21(o));

(5) Foreign bank that does not operate an insured branch;

(6) State branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12));

(7) Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)); or

(8) Covered swap entity as determined by the Board. Covered swap entity would not include an affiliate of an entity listed in paragraphs (1) through (7) of this definition for which the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation is the prudential regulator or that is required to be registered with the U.S. Commodity Futures Trading Commission as a swap dealer or major swap participant or with the U.S. Securities and Exchange Commission as a security-based swap dealer or major security-based swap participant.

* * * * *

§ 237.6 [Amended]

■ 15. Section 237.6 is amended by removing ''[RESERVED]'' and adding in its place ''12 CFR 1.2(d)''.

■ 16. Section 237.12 is added to read as follows:

§ 237.12 Capital.

A covered swap entity shall comply with:

(a) In the case of a covered swap entity that is a state member bank (as defined in 12 CFR 208.2(g)), the provisions of the Board's Regulation Q (12 CFR part 217) applicable to the state member bank;

(b) In the case of a covered swap entity that is a bank holding company (as defined in 12 U.S.C. 1842) or a savings and loan holding company (as defined in 12 U.S.C. 1467a), the provisions of the Board's Regulation Q (12 CFR part 217) applicable to the covered swap entity;

(c) In the case of a covered swap entity that is a foreign banking organization (as defined in 12 CFR 211.21(o)), a U.S. intermediate holding company subsidiary of a foreign banking organization (as defined in 12 CFR 252.3(y)) or any state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), the capital standards that are applicable to such covered swap entity under § 225.2(r)(3) of the Board's Regulation Y (12 CFR 225.2(r)(3)) or the Board's Regulation YY (12 CFR part 252); and

(d) In the case of a covered swap entity that is an Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)), the capital standards applicable to an Edge corporation under § 211.12(c) of the Board's Regulation K (12 CFR 211.12(c)) and to an agreement corporation under §§ 211.5(g) and 211.12(c) of the Board's Regulation K (12 CFR 211.5(g) and 211.12(c)).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the Federal Deposit Insurance Corporation amends 12 CFR chapter III as follows:

PART 349—DERIVATIVES

■ 17. The authority citation for part 349 continues to read as follows:

Authority: 12 U.S.C. 1813(q), 1818, 1819, and 3108; 7 U.S.C. 2(c)(2)(E), 27 *et seq.*

■ 18. Revise the heading for part 349 to read as set forth above.

■ 19. Add a heading for subpart B to read as follows:

Subpart B—Retail Foreign Exchange Transactions

§§ 349.1 through 349.16 [Redesignated as §§ 349.13 through 349.28]

■ 20. Redesignate §§ 349.1 through 349.16 as §§ 349.13 through 349.28 under subpart B

■ 21. Redesignate the authority citation for part 349 as the authority citation for subpart B.

§ 349.13 [Amended]

■ 22. Amend newly redesignated § 349.13(d) by removing ''349.3 and 349.5 to 349.16'' and adding in its place ''349.15 and 349.17 through 349.28''.

§ 349.16 [Amended]

■ 23. Amend newly redesignated § 349.16 by:

■ a. Removing ''349.8'' and adding in its place ''349.20''; and

■ b. Removing ''349.6'' and adding in its place ''349.18''.

§ 349.19 [Amended]

■ 24. Amend newly redesignated § 349.19 by:

■ a. Removing ''section 349.6(b)'' and adding in its place ''§ 349.18(b)'';

■ b. Removing ''section 349.9'' and adding in its place ''§ 349.21''; and

■ c. Removing ''section 349.10'' and adding in its place ''§ 349.22''.

§ 349.22 [Amended]

■ 25. Amend newly redesignated § 349.22 by removing ''§ 349.9(c)'' and adding in its place ''§ 349.21(c)''.

■ 26. Add subpart A to part 349 as set forth at the end of the Common Preamble.

■ 27. Add an authority citation to subpart A of part 349 to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C.1813(q), 1818, 1819, and 3108.

■ 28. Part 349, subpart A, is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the FDIC'';

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The FDIC'';

■ c. Removing ''[Agency's]'' wherever it appears and adding in its place ''FDIC's'';

■ d. Removing ''[part]'' wherever it appears and adding in its place ''subpart''; and

■ e. Removing ''[Part]'' wherever it appears and adding in its place ''Subpart A''.

§ 349.1 [Amended]

■ 29. Section 349.1 is amended by adding paragraphs (a), (b), and (c) to read as follows:

§ 349.1 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Federal Deposit Insurance Corporation (FDIC) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the FDIC to establish capital and margin requirements for any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This subpart implements section 4s of the

Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statutes and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This subpart establishes minimum capital and margin requirements for each covered swap entity subject to this subpart with respect to all non-cleared swaps and non-cleared security-based swaps. This subpart applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (e) of this section. Nothing in this subpart is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this subpart.

* * * * *

■ 30. Section 349.2 is amended by adding a definition of ''Covered swap entity'' in alphabetical order to read as follows:

§ 349.2 Definitions.

* * * * *

Covered swap entity means any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is a swap entity, or any other entity that the FDIC determines.

* * * * *

§ 349.6 [Amended]

■ 31. Section 349.6 is amended by removing ''[RESERVED]'' wherever it appears and adding in its place ''12 CFR 1.2(d)''.

■ 32. Section 349.12 is added to read as follows:

§ 349.12 Capital.

A covered swap entity shall comply with the capital requirements that are applicable to the covered swap entity under part 324 of this chapter.

FARM CREDIT ADMINISTRATION

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the Farm Credit Administration amends chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 33. Part 624 is added as set forth at the end of the Common Preamble.

■ 34. The authority citation for part 624 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1.

■ 35. Part 624 is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''the FCA'';

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''The FCA'';

■ c. Removing ''[Agency's]'' wherever it appears and adding in its place ''FCA's'';

■ d. Removing ''[part]'' wherever it appears and adding in its place ''part''; and

■ e. Removing ''[Part] wherever it appears and adding in its place ''Part 624''.

■ 36. Section 624.1 is amended by adding paragraphs (a), (b), and (c) to read as follows:

§ 624.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Farm Credit Administration (FCA) under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), and sections 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

(b) *Purpose.* Section 4s of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require the FCA to establish capital and margin requirements for any System institution, including the Federal Agricultural Mortgage Corporation, chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statutes' requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the relevant compliance date set forth in paragraph (e) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 37. Section 624.2 is amended by adding definitions for ''Covered swap entity'' and ''Investment grade'' in alphabetical order to read as follows:

§ 624.2 Definitions.

* * * * *

Covered swap entity means any institution chartered under the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 *et seq.*) that is a swap entity, or any other entity that the FCA determines.

* * * * *

Investment grade means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

* * * * *

§ 624.6 [Amended]

■ 38. Section 624.6 is amended by removing ''[RESERVED]'' wherever it appears and adding in its place ''investment grade as defined in § 624.2''.

■ 39. Section 624.12 is added to read as follows:

§ 624.12 Capital.

A covered swap entity shall comply with:

(a) In the case of the Federal Agricultural Mortgage Corporation, the capital adequacy regulations set forth in part 652 of this chapter; and

(b) In the case of any Farm Credit System institution other than the Federal Agricultural Mortgage Corporation, the capital regulations set forth in part 615 of this chapter.

FEDERAL HOUSING FINANCE AGENCY

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, and under the authority of 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526, the Federal Housing Finance Agency adds the text of the common rule as set forth at the end of the SUPPLEMENTARY INFORMATION as part 1221 of subchapter B of chapter XII of title 12 of the Code of Federal Regulations, and further amends part 1221 as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter B—Entity Regulations

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 40. The authority citation for part 1221 is added to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

■ 41. Part 1221 is amended by:

■ a. Removing ''[Agency]'' wherever it appears and adding in its place ''FHFA'';

■ b. Removing ''[The Agency]'' wherever it appears and adding in its place ''FHFA'';

■ c. Removing ''[Agency's]'' wherever it appears and adding in its place ''FHFA's'';

■ d. Removing ''[part]'' wherever it appears and adding in its place ''part''; and

■ e. Removing ''[Part]'' wherever it appears and adding in its place ''Part 1221''.

■ 42. Section 1221.1 is amended by adding paragraphs (a), (b), and (c) to read as follows:

§ 1221.1 Authority, purpose, scope and compliance dates.

(a) *Authority.* This part is issued by FHFA under section 4s(e) of the Commodity Exchange Act (7 U.S.C. 6s(e)), section 15F(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10(e)), 12 U.S.C. 4513 and 12 U.S.C. 4526(a)).

(b) *Purpose.* Section 4(s) of the Commodity Exchange Act (7 U.S.C. 6s) and section 15F of the Securities Exchange Act of 1934 (15 U.S.C. 78o–10) require FHFA to establish capital and margin requirements for any regulated entity that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant with respect to all non-cleared swaps and non-cleared security-based swaps. This regulation implements section 4s of the Commodity Exchange Act and section 15F of the Securities Exchange Act of 1934 by defining terms used in the statute and related terms, establishing capital and margin requirements, and explaining the statute's requirements.

(c) *Scope.* This part establishes minimum capital and margin requirements for each covered swap entity subject to this part with respect to all non-cleared swaps and non-cleared security-based swaps. This part applies to any non-cleared swap or non-cleared security-based swap entered into by a covered swap entity on or after the related compliance date set forth in paragraph (e) of this section. Nothing in this part is intended to prevent a covered swap entity from collecting margin in amounts greater than are required under this part.

* * * * *

■ 43. Section 1221.2 is amended by adding definitions for ''Covered swap entity'' and ''Regulated entity'' in alphabetical order to read as follows:

§ 1221.2 Definitions.

* * * * *

Covered swap entity means any regulated entity that is a swap entity or any other entity that FHFA determines.

* * * * *

Regulated entity means any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)).

* * * * *

§ 1221.6 [Amended]

■ 44. Section 1221.6 is amended by:

■ a. Removing in paragraphs (a)(2)(iii), (a)(2)(viii)(A)(2), (b)(4), and (b)(9)(i)(B) the phrase ''the capital rules applicable to the covered swap entity as set forth in § ____.12'' and adding in its place ''12 CFR part 324''; and

■ b. Removing the words ''terms of [RESERVED]'' where they appear in paragraphs (a)(2)(v), (a)(2)(vii)(A), (b)(6) and (b)(8)(i) and adding in their place the phrase ''the definition of ''Investment quality'' in § 1267.1 of this chapter''.

■ 45. Section 1221.12 is added to read as follows:

§ 1221.12 Capital.

A covered swap entity shall comply with the capital levels or such other amounts applicable to it as required by the Director of FHFA pursuant to 12 U.S.C. 4611.

Dated: October 22, 2015.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 4, 2015.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 22nd of October 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 21, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

Dated: October 28, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2015–28671 Filed 11–27–15; 8:45 am]

BILLING CODE 6210–01–P; 4810–33–P; 6714–01–P; 6705–01–P; 8070–01–P

FEDERAL REGISTER

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 45

Federal Reserve System

12 CFR Part 237

Federal Deposit Insurance Corporation

12 CFR Part 349

Farm Credit Administration

12 CFR Part 624

Federal Housing Finance Agency

12 CFR Part 1221

Margin and Capital Requirements for Covered Swap Entities; Interim Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2015–0023]

RIN 1557–AD00

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1415]

RIN 7100–AD74

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AE21

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AC69

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AA45

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (''OCC''); Board of Governors of the Federal Reserve System (''Board''); Federal Deposit Insurance Corporation (''FDIC''); Farm Credit Administration (''FCA''); and the Federal Housing Finance Agency (''FHFA'').

ACTION: Interim final rule and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each an ''Agency'' and, collectively, the ''Agencies'') are adopting and invite comment on an interim final rule that will exempt certain non-cleared swaps and non-cleared security-based swaps with certain counterparties that qualify for an exception or exemption from clearing from the initial and variation margin requirements promulgated under sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act''). This interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (''TRIPRA''), which exempts from the Agencies' swap margin rules non-cleared swaps and non-cleared security-based swaps in which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act. This interim final rule is a companion rule to the final rules adopted by the Agencies to implement section 731 and 764 of the Dodd-Frank Act.

DATES: The interim final rule is effective April 1, 2016. Comments should be received on or before January 31, 2016.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of comments among the Agencies.

Office of the Comptroller of the Currency. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov''*: Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2015–0023'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2015–0023'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- V*iewing Comments Electronically:* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC -2015–0023'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to a security screening in order to inspect and photocopy comments.
- Docket: You may also view or request available background documents and project summaries using the methods described above.

Board of Governors of the Federal Reserve System: You may submit comments, identified by Docket No. R–1415 and RIN 7100–AD74, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted,

unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Federal Deposit Insurance Corporation: You may submit comments, identified by RIN 3064–AE21, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@FDIC.gov.* Include RIN 3064–AE21 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Instructions: All comments received must include the agency name and RIN for this rulemaking and will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

Federal Housing Finance Agency: You may submit your written comments on the interim final rulemaking, identified by regulatory information number: RIN 2590–AA45, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the Agency. Please include ''RIN 2590–AA45'' in the subject line of the message.
- *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW., Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA45, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW., Washington, DC 20219.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA Web site at *http://www.fhfa.gov.* Copies of all comments timely received will be available for public inspection and copying at the address above on government-business days between the hours of 10 a.m. and 3 p.m. To make an appointment to inspect comments please call the Office of General Counsel at (202) 649–3804.

Farm Credit Administration: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Law & Regulation,'' then ''FCA Regulations,'' then ''Public Comments,'' then follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Law & Regulation,'' then ''FCA Regulations,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

OCC: Kurt Wilhelm, Director, Financial Markets Group, (202) 649–6437, or Carl Kaminski, Special Counsel, Legislative and Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Sean D. Campbell, Associate Director, (202) 452–3760, or Elizabeth MacDonald, Manager, Division of Banking Supervision and Regulation, (202) 475–6316; Anna M. Harrington, Counsel, (202) 452–6406, or Victoria M. Szybillo, Counsel, Legal Division, (202) 475–6325, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, Capital Markets Branch, *bbean@fdic.gov,* Jacob Doyle, Capital Markets Policy Analyst, *jdoyle@fdic.gov,* Division of Risk Management Supervision, (202) 898–6888; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* or Catherine Topping, Counsel, *ctopping@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

FCA: J.C. Floyd, Associate Director, Finance & Capital Market Team, Timothy T. Nerdahl, Senior Policy Analyst—Capital Markets, Jeremy R. Edelstein, Senior Policy Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Robert Collender, Principal Policy Analyst, Office of Policy Analysis and Research, (202) 649–3196, *Robert.Collender@fhfa.gov,* or Peggy K. Balsawer, Associate General Counsel, Office of General Counsel, (202) 649–3060, *Peggy.Balsawer@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act was enacted on July 21, 2010.[1] Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which the Act generally characterizes as ''swaps'' and ''security-based swaps.''[2] As part of this new

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] ''Swaps'' are defined in section 721 of the Dodd-Frank Act to include interest rate swaps, commodity-based swaps, equity swaps and credit

Continued

regulatory framework, sections 731 and 764 of the Dodd-Frank Act added, respectively, a new section 4s to the Commodity Exchange Act of 1936 (the ''Commodity Exchange Act''), and a new section 15F to the Securities Exchange Act of 1934 (the ''Securities Exchange Act''), which require registration with the U.S. Commodity Futures Trading Commission (''CFTC'') of swap dealers and major swap participants and with the U.S. Securities and Exchange Commission (the ''SEC'') of security-based swap dealers and major security-based swap participants.[3] These registrants are collectively referred to in this preamble as ''swap entities.''

Sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt joint rules that apply to all swap entities for which any one of the Agencies is the prudential regulator,[4] imposing capital requirements and initial and variation margin requirements on all swaps and security-based swaps not cleared by a registered derivatives clearing organization or clearing agency (''non-cleared swaps'').[5] The Agencies initially proposed a joint rule to implement the capital and margin requirements of sections 731 and 764 on May 11, 2011 [6] and re-proposed the rule on September 24, 2014 [7] in light of the comments received by the Agencies on the original proposal and subsequent recommendations regarding the international framework for margin requirements on non-cleared derivatives finalized by the Basel Committee on Banking Supervisions (''BCBS'') and the Board of the International Organization of Securities Commissions (''IOSCO'') in September 2013.[8] In a separate action, the Agencies have adopted a joint final rule to implement these Dodd-Frank Act requirements (the ''joint final rule'').

The capital and margin requirements under sections 731 and 764 of the Dodd-Frank Act apply to non-cleared swaps and complement other provisions of the Dodd-Frank Act that require the CFTC and SEC to make determinations as to whether certain swaps or security-based swaps, or a group, category, or class of such transactions, should be required to be cleared.[9] If the CFTC or SEC has made such a determination, it is generally unlawful for any person to engage in such a swap or security-based swap unless the transaction is submitted to a derivatives clearing organization or clearing agency, as applicable, for clearing.

The clearing requirements, however, do not apply to an entity that is not a financial entity, is using a swap or security-based swap to hedge or mitigate commercial risk, and notifies the applicable Commission, in a manner set forth by that Commission, how it generally meets its financial obligations.[10] Thus, a particular swap or security-based swap might be subject to the capital and margin requirements of section 731 and 764 either because it is not subject to the mandatory clearing requirement, or because one of the parties to the swap is eligible for, and elects to use, an exception or exemption from the mandatory clearing requirement. Such a swap is a ''non-cleared'' swap for purposes of the capital and margin requirements established under sections 731 and 764 of the Dodd-Frank Act.

Sections 731 and 764 direct the Agencies to impose initial and variation margin requirements on all swaps that are not cleared. Under the proposed rule, the Agencies distinguished among different types of counterparties on the basis of risk,[11] and the Agencies addressed swaps for certain ''other counterparties'' including commercial end users by providing that a covered swap entity's collection of margin from them was subject to the judgment of the covered swap entity. In particular, a covered swap entity was not required to collect initial and variation margin from these ''other counterparties'' as a matter of course; a covered swap entity was allowed to collect initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate in its overall credit risk management of the covered swap entity's exposure to the customer.[12]

On January 12, 2015, President Obama signed into law TRIPRA.[13] Title III of TRIPRA, the ''Business Risk Mitigation and Price Stabilization Act of 2015,'' amends the statutory provisions added by the Dodd-Frank Act relating to margin requirements for non-cleared swaps and non-cleared security-based swaps. Specifically, section 302 of TRIPRA's Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions of specified counterparties that would qualify for an exemption or exception from clearing, as explained more fully below. Non-cleared swaps and non-cleared security-based swaps that are exempt under section 302 of TRIPRA will not be subject to the Agencies' rules implementing margin requirements. In section 303 of TRIPRA, Congress required that the Agencies implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule.[14]

The Agencies are therefore promulgating this interim final rule with request for comment. The proposed rule of September 2014 would have allowed covered swap entities to

default swaps, and ''security-based swaps'' are defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Section 731 of the Dodd-Frank Act requires swap dealers and major swap participants to register with the CFTC, which is vested with primary responsibility for the oversight of the swaps market under Title VII of the Dodd-Frank Act. Section 764 of the Dodd-Frank Act requires security-based swap dealers and major security-based swap participants to register with the SEC, which is vested with primary responsibility for the oversight of the security-based swaps market under Title VII of the Dodd-Frank Act. Section 712(d)(1) of the Dodd-Frank Act requires the CFTC and SEC to issue joint rules further defining the terms swap, security-based swap, swap dealer, major swap participant, security-based swap dealer, and major security-based swap participant. The CFTC and SEC issued final joint rulemakings with respect to these definitions in May 2012 and August 2012, respectively. *See* 77 FR 30596 (May 23, 2012); 77 FR 39626 (July 5, 2012) (correction of footnote in the Supplementary Information accompanying the rule); and 77 FR 48207 (August 13, 2012). 17 CFR part 1; 17 CFR parts 230, 240 and 241.

[4] Section 1a(39) of the Commodity Exchange Act defines the term ''prudential regulator'' for purposes of the capital and margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. 7 U.S.C. 1a(39).

[5] *See* 7 U.S.C. 6s(e)(2)(A); 15 U.S.C. 78o–10(e)(2)(A).

[6] 76 FR 27564 (May 11, 2011).

[7] 79 FR 57348 (September 24, 2014).

[8] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), *available at https://www.bis.org/publ/bcbs261.pdf.*

[9] 7 U.S.C. 2(h); 15 U.S.C. 78c–3. The Commodity Exchange Act and the Securities Exchange Act set out standards that the CFTC and the SEC are required to apply when making determinations about clearing, which generally address whether a swap or security-based swap is sufficiently standardized to be cleared. 7 U.S.C. 2(h)(2)(D); 15 U.S.C. 78c–3(b)(4). To date, the CFTC has determined that certain interest rate swaps and credit default swaps are required to be cleared. 17 CFR 50.4.

[10] *See* 7 U.S.C. 2(h)(7); 15 U.S.C. 78c–3(g). Further, the CFTC has authority to exempt swaps from the clearing requirement. 7 U.S.C. 6(c)(1).

[11] The joint final rule takes a similar approach. In implementing this risk-based approach, the final rule distinguishes among four separate types of swap counterparties: (i) Counterparties that are themselves swap entities; (ii) counterparties that are financial end users with a material swaps exposure; (iii) counterparties that are financial end users without a material swaps exposure, and (iv) other counterparties, including nonfinancial end users, sovereigns, and multilateral development banks.

[12] *See* §§ __.3(d) and __.4(c) of the proposed rule.

[13] Public Law 114–1, 129 Stat. 3 (2015).

[14] Section 303 requires that ''[t]he amendments made by this title to the Commodity Exchange Act shall be implemented . . . through the promulgation of an interim final rule . . .'' The Agencies are interpreting this provision to apply to the amendments made by TRIPRA to the Securities Exchange Act as well.

collect initial or variation margin from certain ''other counterparties,'' at their discretion. Additionally, covered swap entities would have been required to exchange variation margin with all financial end users, and initial margin with financial end users with material swap exposure. The effect of the interim final rule is to grant an exception from the margin requirements of the joint final rule for non-cleared swaps meeting certain criteria that covered swap entities enter into with certain ''other counterparties'' and certain financial end users.[15]

As noted above, swaps may be non-cleared swaps either because (i) there is an exemption or exception from clearing available; or (ii) the CFTC or SEC, as applicable, has not determined that such swap or security-based swap is required to be cleared. The exclusions and exemptions from the joint final margin rule described below will apply to both categories of non-cleared swaps when they involve a counterparty that meets the requirements for an exception or exemption from clearing (*e.g.,* a non-financial end user using swaps to hedge or mitigate commercial risk).

Clearing requirements pursuant to the Commodity Exchange Act began to take effect with respect to certain interest rate and credit default swap indices swaps on March 11, 2013.[16] Covered swap entities have accordingly already established methods and procedures to engage in transactions with counterparties that are eligible for the clearing exceptions or exemptions and for recording and reporting the eligibility of these transactions for the exception or exemptions as required under the statute.[17] The Agencies expect these processes will function equally well as a basis for the parallel statutory exemptions from initial and variation margin requirements for non-cleared swaps implemented pursuant to this interim final rule.

[15] The joint final rule also contains provisions allowing a covered swap entity to continue with the current practice of collecting initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate in its overall credit risk management of the swap entity's exposure to the customer for ''other counterparties.'' The TRIPRA exemptions are transaction-based, as opposed to counterparty-based. For example, if a commercial end user enters into a non-cleared swap with a covered swap entity and the transaction does not qualify for an exception or exemption as described below, then the covered swap entity would treat the swap in accordance with the ''other counterparties'' provisions in §§ __.3 and __.4 of the joint final rule. *See* §§ __.3(d) and __.4(c) of the joint final rule.

[16] 17 CFR 50.25. *See* 77 FR 44441 (July 30, 2012).

[17] *See, e.g.,* 17 CFR 50.50(b).

II. Description of the Interim Final Rule

This interim final rule, which adds a new § __.1(d) to the joint final rule, adopts the statutory exemptions and exceptions as required under TRIPRA. TRIPRA provides that the initial and variation margin requirements do not apply to the non-cleared swaps and non-cleared security-based swaps of three categories of counterparties. In particular, section 302 of TRIPRA amends sections 731 and 764 so that initial and variation margin requirements will not apply to a swap or security-based swap in which a counterparty (to a covered swap entity) is:

(1) A non-financial entity (including small financial institution and a captive finance company) that qualifies for the clearing exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act;

(2) A cooperative entity that qualifies for an exemption from the clearing requirements issued under section 4(c)(1) of the Commodity Exchange Act; or

(3) A treasury affiliate acting as agent that satisfies the criteria for an exception from clearing in section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act.

A. Non-Financial Entities

TRIPRA provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act.[18] Section 2(h)(7)(A) and section 3C(g)(1) except from clearing swaps where one of the counterparties is not a financial entity, is using the swap to hedge or mitigate commercial risk, and notifies the CFTC or SEC how it generally meets its financial obligations associated with entering into non-cleared swaps. A number of different types of counterparties may qualify for an exception from clearing under section 2(h)(7)(A) and section 3C(g)(1), including: non-financial end users, small banks, savings associations, Farm Credit System institutions, and credit unions. In addition, captive finance companies qualify for an exception from clearing under section 2(h)(7)(A).[19]

Non-financial end users: A counterparty that is not a financial entity[20] (sometimes referred to as ''non-financial end users'' or ''commercial end users'') that is using swaps to hedge or mitigate commercial risk generally would qualify for an exception from clearing under section 2(h)(7)(A) or section 3C(g)(1) and thus from the requirements of the joint final rule for non-cleared swaps and non-cleared security-based swaps pursuant to § __.1(d).

[18] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g)(1).

[19] There is no corresponding exclusion under section 3C(g)(1) of the Securities Exchange Act for captive finance companies, likely because these entities generally do not engage in security-based swaps.

Small banks, savings associations, Farm Credit System institutions, and credit unions: The definition of ''financial entity'' in section 2(h)(7)(C)(ii) provides that the CFTC shall consider whether to exempt small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of $10 billion or less. Pursuant to this authority, the CFTC has exempted small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of $10 billion or less from the definition of ''financial entity,'' thereby permitting these institutions to avail themselves of the clearing exception when they are using swaps to hedge or mitigate risk.[21] As a result, these small financial institutions that are using non-cleared swaps to hedge or mitigate commercial risk would also qualify for an exemption from the initial and variation margin requirements of the joint final rule pursuant to § __.1(d).

Similarly, section 3C(g) provides that the SEC shall consider whether to exempt small banks, savings associations, Farm Credit System institutions, and credit unions with total assets of $10 billion or less.[22] If the SEC were to implement an exclusion for such entities from clearing, non-cleared security-based swaps with those entities would be eligible for the exemption in the Agencies' margin rules pursuant to § __.1(d) as required under TRIPRA, provided they met the other

[20] *See* 7 U.S.C. 2(h)(7)(A); 15 U.S.C. 78c–3(g)(1); 17 CFR 50.50. A ''financial entity'' is defined to mean (i) a swap dealer; (ii) a security-based swap dealer; (iii) a major swap participant; (iv) a major security-based swap participant; (v) a commodity pool; (vi) a private fund as defined in section 202(a) of the Investment Advisers Act of 1940; (vii) an employee benefit plan as defined in sections 3(3) and 3(32) of the Employment Retirement Income Security Act of 1974; (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956. *See* 7 U.S.C. 2(h)(7)(C)(i); 15 U.S.C. 78c–3(g)(3).

[21] *See* 7 U.S.C. 2(h)(7)(C)(ii); 17 CFR 50.50; 77 FR 42560 (July 19, 2012); as recodified by 77 FR 74284 (Dec. 13, 2012).

[22] *See* 15 U.S.C. 78c–3(g)(3)(B).

requirements for the clearing exemption.[23]

Captive finance companies: Section 2(h)(7)(C) also provides that the definition of ''financial entity'' does not include an entity whose primary business is providing financing and uses derivatives for the purposes of hedging underlying commercial risks relating to interest rate and foreign exchange exposures, 90 percent or more of which arise from financing that facilitates the purchase or lease of products, 90 percent or more of which are manufactured by the parent company or another subsidiary of the parent company (''captive finance company'').[24] These entities can avail themselves of a clearing exception when they are using swaps to hedge or mitigate commercial risk and thus would be eligible for the exemption in the Agencies' margin rules pursuant to § __.1(d).

B. Treasury Affiliates Acting as Agent

TRIPRA provides that the initial and variation margin requirements shall not apply to a non-cleared swap in which a counterparty satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act or section 3C(g)(4) of the Securities Exchange Act. These sections provide that, where a person qualifies for an exception from the clearing requirements, an affiliate of that person (including an affiliate predominantly engaged in providing financing for the purchase of the merchandise or manufactured goods of the person) may qualify for the exception as well, but only if the affiliate is acting on behalf of the person and as an agent and uses the swap to hedge or mitigate the commercial risk of the person or other affiliate of the person that is not a financial entity (''treasury affiliate acting as agent'').[25] A treasury affiliate acting as agent that meets the requirements for a clearing exemption would also be eligible for an exemption pursuant to § __.1(d) from the Agencies' joint final rule.

[23] On December 21, 2010, the SEC proposed to exempt security-based swaps used by small depository institutions, small Farm Credit System institutions, and small credit unions with total assets of $10 billion or less from clearing. *See* 75 FR 79992 (December 21, 2010).

[24] *See* 7 U.S.C. 2(h)(7)(C)(iii).

[25] *See* 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c–3(g)(4). This exception does not apply to a person that is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, an issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) but for section 3(c)(1) or 3(c)(7) of that Act, a commodity pool, or a bank holding company with over $50 billion in consolidated assets.

C. Certain Cooperative Entities

TRIPRA provides that the initial and variation margin requirements shall not apply to a non-cleared swap in which a counterparty qualifies for an exemption issued under section 4(c)(1) of the Commodity Exchange Act from the clearing requirements of section 2(h)(1)(A) of the Commodity Exchange Act for cooperative entities as defined in such exemption.[26] The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted a regulation that allows cooperatives that are financial entities to elect an exemption from mandatory clearing of swaps that: (1) They enter into in connection with originating loans for their members; or (2) hedge or mitigate commercial risk related to loans to members or swaps with their members which are not financial entities or are exempt from the definition of financial entity.[27] The swaps of these cooperatives that would qualify for an exemption from clearing also would qualify pursuant to § __.1(d) for an exemption from the margin requirements of the joint final rule.

III. Request for Comments

The Agencies request comment on all aspects of the interim final rule.

IV. Administrative Law Matters

A. Administrative Procedures Act

Pursuant to the Administrative Procedure Act (the ''APA''), at 5 U.S.C. 553(b)(B), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' As discussed above, this interim final rule implements Title III of TRIPRA. In section 303 of TRIPRA, Congress required that the Agencies implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule. Given the statutory requirement for an interim final rule, the Agencies find that prior notice and comment in accordance with 5 U.S.C. 553(b) is impracticable. The Agencies are providing, however, an opportunity for comment before the effective date of the interim final rule (April 1, 2016).

[26] *See* 7 U.S.C. 6(c)(1). The CFTC, pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act, adopted 17 CFR 50.51, which allows cooperative financial entities that meet certain qualifications to elect not to clear certain swaps that are otherwise required to be cleared pursuant to section 2(h)(1)(A) of the Commodity Exchange Act.

[27] *See* 7 U.S.C. 6(c)(1);17 CFR 50.51.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC, Board and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board and FDIC invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

C. Paperwork Reduction Act Analysis

Certain provisions of the interim final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for the OCC is 1557–0251, the FDIC is 3064–0180, and the Board is 7100–0364. The information collection requirements contained in this joint notice of interim final rulemaking have been submitted to OMB for review and approval by the OCC and FDIC under section 3507(d) of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the interim final rule under the authority delegated to the Board by OMB.

The interim final rule contains requirements subject to the PRA. The reporting requirements are found in § __ .1(d). The interim final rule implements statutory language that requires certain swaps of certain counterparties to qualify for a statutory exemption or exception from clearing in order to not be subject to the initial and variation margin requirements of the joint final rule.

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting or recordkeeping requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this Supplementary Information. A copy of the comments may also be submitted to the OMB desk officer for the Agencies: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Margin and Capital Requirements for Covered Swap Entities.

Frequency of Response: Annual, daily, and event-generated.

Affected Public: The affected public of the OCC, FDIC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective interim final rule. Businesses or other for-profit.

Respondents:

OCC: Any national bank or a subsidiary thereof, Federal savings association or a subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Board: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Abstract: This interim final rule implements Title III of the Terrorism Risk Insurance Program Reauthorization Act of 2015 ("TRIPRA"), which exempts from the Agencies' swap margin rules non-cleared swaps and non-cleared security-based swaps in which a counterparty qualifies for an exemption or exception from clearing under the Dodd-Frank Act. This interim final rule is a companion rule to the final rules adopted by the Agencies to implement section 731 and 764 of the Dodd-Frank Act.

Reporting Requirements

The interim final rule implements statutory language that requires certain swaps of certain counterparties to qualify for a statutory exemption or exception from clearing in order to not be subject to the initial and variation margin requirements of the joint final rule. The reporting requirements are found in § __.1(d) pursuant to cross-references to other statutory provisions that set forth the conditions for an exemption from clearing. For example, TRIPRA provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap or non-cleared security-based swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act, which includes certain reporting requirements established by the applicable Commission.[28] Certain other counterparties that are exempt from clearing pursuant to other provisions are also required to meet these reporting requirements to notify the respective Commissions.[29] Thus, in certain cases, the statutory exemption from clearing requires a notification to the CFTC or SEC. These counterparties would be required to meet the same notification requirements that are required for an exception or exemption from clearing in order to qualify for an exception or exemption pursuant to § __.1(d) from the initial and variation margin requirements established by the Agencies under sections 731 and 764 of the Dodd-Frank Act. Since this interim final rule serves to implement exemptions and exceptions by reference to existing statutory provisions, § __.1(d) imposes new reporting requirements that are required under the relevant statutory provisions.

Estimated Burden per Response: § __.1(d)—1 hour.

OCC

Number of respondents: 20.

Proposed revisions only estimated annual burden: 20,000 hours.

Total estimated annual burden: 34,780 hours.

FDIC [30]

Number of respondents: 1.

Proposed revisions only estimated annual burden: 1,000 hours.

Total estimated annual burden: 1,739 hours.

Board

Number of respondents: 50.

Proposed revisions only estimated annual burden: 50,000 hours.

Total estimated annual burden: 86,964 hours.

FCA: The FCA has determined that the interim final rule does not involve a collection of information pursuant to the Paperwork Reduction Act for Farm Credit System institutions because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of "collection of information" contained in 44 U.S.C. 3502(3).

FHFA: With respect to any regulated entity as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4502(20)),

[28] See, *e.g.*, 17 CFR 50.50(b).

[29] For example, certain exempt cooperatives must meet these reporting requirements to qualify for an exemption from clearing. *See* 17 CFR 50.51(c). Similarly, exempt treasury affiliates also must be an affiliate of a person that qualifies for an exception from clearing that notifies the applicable Commission how it generally meets its financial obligations associated with entering into non-cleared swaps. *See* 7 U.S.C. 2(h)(7)(D); 15 U.S.C. 78c–3(g)(4).

[30] The FDIC had initially estimated that three of its institutions might register as a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant but no state non-member bank nor any state savings association has so registered, so FDIC is reducing its estimate to one as a placeholder for its information collection.

the interim final rule does not contain any collection of information that requires the approval of the OMB under the PRA.

D. Regulatory Flexibility Act Analysis

Board: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (''RFA'') [31] generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The Board observes that the interim final rule would not have a significant economic impact on a substantial number of small entities. The Board requests comment on its conclusion that the new interim final rule should not have a significant economic impact on a substantial number of small entities.

As explained in detail above, this interim final rule implements section 302 of TRIPRA, which provides that initial and variation margin requirements will not apply to specified non-cleared swaps or non-cleared security-based swaps of certain counterparties (to a covered swap entity). This interim final rule may have an effect on the following types of small entities: (i) Covered swap entities that are subject to the joint final rule's capital and margin requirements; and (ii) certain counterparties (*e.g.,* nonfinancial end users and certain other small financial counterparties) that engage in swap transactions with covered swap entities.[32]

Under Small Business Administration (the ''SBA'') regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (''financial institutions''), which generally are considered ''small'' if they have assets of $550 million or less.[33] Covered swap entities would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any covered swap entity is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or major swap participant.[34] None of the currently registered covered swap entities are small entities. The interim final rule would have an indirect effect on certain counterparties to non-cleared swaps and non-cleared security-based swaps. Many of these counterparties would be considered ''small'' under the SBA's regulations.[35] However, the effect of TRIPRA and the interim final rule will be to exempt many of the non-cleared swaps and non-cleared security-based swaps of these counterparties from the margin requirements of the Agencies' joint final rule.

As described above, this interim final rule implements statutory language that requires certain swaps of certain counterparties to qualify for a statutory exemption or exception from the applicable clearing requirements in order to not be subject to the initial and variation margin requirements of the joint final rule. The reporting requirements are found in § __.1(d) of this interim final rule pursuant to cross-references to other statutory provisions that set forth the conditions for an exemption or exception from clearing. In certain cases, the statutory exemption from clearing and related regulations may require a counterparty to report information, such as how it meets its swaps obligations, to the CFTC or SEC. These counterparties would be required to meet the same notification requirements that are required for an exception or exemption from the relevant CFTC and SEC regulations. Other than this potential overlap of reporting obligations of this interim final rule and the relevant CFTC and SEC regulations, the Board is aware of any other Federal rules that duplicate, overlap, or conflict with this interim final rule. In light of the exemptions provided for the non-cleared swaps and non-cleared security-based swaps of many small entities, the Board does not believe that the interim final rule would have a significant economic impact on a substantial number of small entity counterparties.

Since this interim final rule is required by section 303 of TRIPRA, the Board does not believe that there are any significant alternatives to the rule which would accomplish the stated objectives of the applicable statute. However, the Agencies welcome comment on any significant alternatives that would minimize the impact of the rule on small entities.

In light of the foregoing, the Board does not believe that this interim final rule would have a significant economic impact on a substantial number of small entities.

FDIC: The RFA requires an agency, in connection with a notice of final rulemaking, to prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Using SBA's size standards, as of June 30, 2015, the FDIC supervised 3,357 small entities. The FDIC does not expect any small entity that it supervises is likely to be a covered swap entity because such entities are unlikely to engage in the level of swap activity that would require them to register as a swap entity. Because TRIPRA excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirement of the final rule, the FDIC expects that when a covered swap entity transactions non-cleared swaps with a small entity supervised by the FDIC, and such swaps are used to hedge the small entity's commercial risk, those swaps with not be subject to the final rule. The FDIC does not expect any small entity that it supervises will engage in non-cleared swaps for purposes other than hedging. Therefore, the FDIC does not believe that the interim final rule results in a significant economic impact on a substantial number of small entities under its supervisory jurisdiction.

The FDIC certifies that the interim final rule does not have a significant economic impact on a substantial

[31] *See* 5 U.S.C. 601 *et seq.*

[32] The Board notes that the RFA does not require the Board to consider the impact of the interim final rule, including its indirect economic effects, on small entities that are not subject to the requirements of the interim final rule. *See e.g., In Mid-Tex Electric Cooperative* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985); *United Distribution Cos.* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (D.C. Cir. 2001).

[33] *See* 13 CFR 121.201 (effective December 2, 2014); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[34] The CFTC has published a list of provisionally registered swap dealers (as of September 22, 2015) and provisionally registered major swap participants (as of March 1, 2013) that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer* and *http://www.cftc.gov/LawRegulation/DoddFrankAct/registermajorswappart.* The SEC has not provided a similar list since it only recently adopted rules to provide for the registration of security-based swap dealers and major security-based swap participants. *See* 80 FR 48963 (August 14, 2015); 17 CFR parts 240 and 249.

[35] *See* 13 CFR 121.201. In additional to small financial institutions with assets of $550 or less, swap counterparties could also include other small entities defined in regulations issued by the SBA, including firms within the ''Securities, Commodity Contracts, and Other Financial Investments and Related Activities'' sector with assets of $38.5 million or less and ''Funds, Trusts and Other Financial Vehicles'' with assets of $32.5 million or less.

number of small FDIC-supervised institutions.

OCC: The Regulatory Flexibility Act (RFA) [36] generally requires an agency that is issuing a proposed rule to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities. The RFA does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[37] For the reasons described above in the Supplementary Information, the OCC has determined that it is unnecessary to publish a notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act, the FCA hereby certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Nor does the Federal Agricultural Mortgage Corporation meet the definition of a ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: FHFA certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities, since none of FHFA's regulated entities come within the meaning of small entities as defined in the Regulatory Flexibility Act (*see* 5 U.S.C. 601(6)), and the interim final rule will not substantially affect any business that its regulated entities might conduct with such small entities.

Common Text of the Interim Final Rule (All Agencies)

The common text of the interim final rule appears below:

§ __.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(d) *Exemptions*—(1) *Swaps.* The requirements of this part (except for § __.12) shall not apply to a non-cleared swap if the counterparty:

(i) Qualifies for an exception from clearing under section 2(h)(7)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(A)) and implementing regulations;

(ii) Qualifies for an exemption from clearing under a rule, regulation, or order that the Commodity Futures Trading Commission issued pursuant to its authority under section 4(c)(1) of the Commodity Exchange Act of 1936 (7 U.S.C. 6(c)(1)) concerning cooperative entities that would otherwise be subject to the requirements of section 2(h)(1)(A) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(1)(A)); or

(iii) Satisfies the criteria in section 2(h)(7)(D) of the Commodity Exchange Act of 1936 (7 U.S.C. 2(h)(7)(D)) and implementing regulations.

(2) *Security-based swaps.* The requirements of this part (except for § __.12) shall not apply to a non-cleared security-based swap if the counterparty:

(i) Qualifies for an exception from clearing under section 3C(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(1)) and implementing regulations; or

(ii) Satisfies the criteria in section 3C(g)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c–3(g)(4)) and implementing regulations.

* * * * *

[END OF COMMON TEXT]

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks and banking, Capital, Foreign banking, Holding companies, Margin requirements, Reporting and recordkeeping requirements, Risk.

12 CFR Part 349

Administrative practice and procedure, Banks, Holding companies, Capital, Margin Requirements, Reporting and recordkeeping requirements, Savings associations Risk.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency amends chapter I of title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o-10(e).

§ 45.1 [Amended]

■ 2. Section 45.1 is amended by adding paragraph (d) as set forth at the end of the Common Preamble.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH-OUT

Subpart A—Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 3. The authority citation for subpart A of part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o-10(e), 12 U.S.C. 221 *et seq.,* 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* 12 U.S.C. 1461 *et seq.*

§ 237.1 [Amended]

■ 4. Section 237.1 is amended by:

■ a. Adding paragraph (d) as set forth at the end of the Common Preamble; and

■ b. Removing ''part'' wherever it appears in paragraph (d) and adding in its place ''subpart.''

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the

[36] *See* 5 U.S.C. 601 *et seq.*

[37] *See* 5 U.S.C. 603 and 604.

Federal Deposit Insurance Corporation amends 12 CFR chapter III as follows:

PART 349—DERIVATIVES

Subpart A—Margin and Capital Requirements for Covered Swap Entities

■ 5. The authority citation for subpart A of part 349 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C.1813(q), 1818, 1819, and 3108.

§ 349.1 [Amended]

■ 6. Section 349.1 is amended by:
■ a. Adding paragraph (d) as set forth at the end of the Common Preamble.
■ b. Removing ''part'' wherever it appears in paragraph (d) and adding in its place ''subpart''.

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, the Farm Credit Administration is amending part 624 to chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 7. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and secs. 4.3, 5.9, 5.17, and 8.32 of the Farm Credit Act (12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, and 12 U.S.C. 2279bb–1).

§ 624.1 [Amended]

■ 8. Section 624.1 is amended by adding paragraph (d) as set forth at the end of the Common Preamble.

FEDERAL HOUSING FINANCE AGENCY

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION, and under the authority of 7 U.S.C. 6s(e), 15 U.S.C. 78o-10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526, the Federal Housing Finance Agency is amending part 1221 of subchapter B of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER B—ENTITY REGULATIONS

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 9. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513 and 12 U.S.C. 4526(a).

§ 1221.1 [Amended]

■ 10. Section 1221.1 is amended by adding paragraph (d) as set forth at the end of the Common Preamble.

Dated: October 22, 2015.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 4, 2015.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 22nd of October 2015.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: October 21, 2015.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

Dated: October 28, 2015.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2015–28670 Filed 11–27–15; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6705–01–P; 8070–01–P

FEDERAL REGISTER

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Part IV

Federal Reserve System

12 CFR Parts 217 and 252
Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 252

[Regulations Q and YY; Docket No. R–1523]

RIN 7100–AE37

Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is inviting comment on a proposed rule to promote financial stability by improving the resolvability and resiliency of large, interconnected U.S. bank holding companies and the U.S. operations of large, interconnected foreign banking organizations pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and related deduction requirements for all banking organizations subject to the Board's capital rules. Under the proposed rule, a U.S. top-tier bank holding company identified by the Board as a global systemically important banking organization (covered BHC) would be required to maintain outstanding a minimum amount of loss-absorbing instruments, including a minimum amount of unsecured long-term debt, and related buffer. Similarly, the proposed rule would require the top-tier U.S. intermediate holding company of a global systemically important foreign banking organization with $50 billion or more in U.S. non-branch assets (covered IHC) to maintain outstanding a minimum amount of intra-group loss-absorbing instruments, including a minimum amount of unsecured long-term debt, and related buffer. The proposed rule would also impose restrictions on the other liabilities that a covered BHC or covered IHC may have outstanding. Finally, the proposed rule would require state member banks, bank holding companies, and savings and loan holding companies that are subject to the Board's capital rules to apply a regulatory capital deduction treatment to their investments in unsecured debt issued by covered BHCs.

DATES: Comments should be received by February 1, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1523 and RIN 7100 AE–37, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Constance M. Horsley, Assistant Director, (202) 452–5239, Thomas Boemio, Senior Project Manager, (202) 452–2982, Juan C. Climent, Manager, (202) 872–7526, Felton Booker, Senior Supervisory Financial Analyst, (202) 912–4651, Sean Healey, Senior Financial Analyst, (202) 912–4611, or Mark Savignac, Senior Financial Analyst, (202) 475–7606, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin McDonough, Special Counsel, (202) 452–2036, Jay Schwarz, Senior Counsel, (202) 452–2970, Will Giles, Counsel, (202) 452–3351, Mark Buresh, Senior Attorney, (202) 452–5270, or Greg Frischmann, Senior Attorney, (202) 452–2803, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

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I. Introduction

A. Addressing Too-Big-to-Fail

An important objective of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] is to mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial companies, including by ending market perceptions that certain financial companies are ''too big to fail'' and would therefore receive extraordinary government support to prevent their failure. Such perceptions reduce the

[1] The Dodd-Frank Act was enacted on July 21, 2010 (Pub. L. 111– 203).

incentives of the shareholders, creditors, and counterparties of such a company to discipline excessive risk-taking by the company. Such perceptions also tend to fuel further growth by the largest financial companies, making them even more systemically important and leading to more financial sector concentration than would exist in the absence of market expectations of government support. Finally, such perceptions can produce competitive distortions by allowing the largest, most interconnected financial companies to fund themselves more cheaply than their smaller competitors can. These distortions are unfair to smaller companies and detrimental to competition.

The Dodd-Frank Act establishes a framework to address the financial stability risks associated with major financial companies. The Act seeks to enhance financial stability through two approaches. First, the Act seeks to reduce major financial companies' probability of failure by requiring the Board to subject them to enhanced capital, liquidity, and other prudential requirements and to heightened supervision.[2] Second, the Act seeks to reduce the risk that such a company's failure, were it to occur, would pose to the financial stability of the United States through resolution-planning requirements and a new statutory resolution framework for major financial companies.[3] These approaches have also been followed in international regulatory reform efforts since the 2007–2009 financial crisis, which have been coordinated through the Basel Committee on Banking Supervision (BCBS)[4] and the Financial Stability Board (FSB),[5] at the direction of the Heads of State of the Group of Twenty (G20 Leaders).[6]

The Board has made considerable progress in implementing the first approach by reducing the probability that a major financial company will fail. Along with the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), the Board has implemented stronger capital standards[7] and a new liquidity standard called the liquidity coverage ratio.[8] The Board also has adopted leverage and risk-based capital surcharges for U.S. global systemically important banking organizations (GSIBs),[9] established a robust stress testing framework for large banking organizations,[10] and created a Large Institution Supervision Coordinating Committee to strengthen the supervision of the most systemically important financial institutions operating in the United States.[11]

To further enhance firm-specific resiliency during periods of severe stress, the Board has also issued guidance on recovery planning to the most systemically important U.S. banking organizations.[12] In addition, the Board has implemented a broad set of other enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more.[13] Internationally, the BCBS has adopted a substantial set of post-crisis reforms, developed with significant participation from the Board and other U.S. bank regulatory agencies, which align well with the bank regulatory reforms implemented in the United States.

U.S. regulators have also made substantial progress with respect to the second approach by implementing the Dodd-Frank Act's framework for resolution-planning for major financial companies. The Dodd-Frank Act provides significant new authorities to the FDIC and the Board to address the failure of large, interconnected financial companies.[14] First, Section 165(d) of the Dodd-Frank Act requires bank holding companies with total consolidated assets of at least $50 billion and nonbank financial companies designated for supervision by the Board to prepare resolution plans, also known as "living wills," that describe how they could be resolved in an orderly manner under the U.S. Bankruptcy Code if they were to fail.[15] The Board and the FDIC have established resolution-planning requirements to implement section 165(d).[16]

Second, Title II of the Dodd-Frank Act (Title II) establishes an alternative resolution framework for the largest financial companies, the Orderly Liquidation Authority. In general, if a major U.S. bank holding company or non-bank financial company were to fail, it would be resolved under the U.S. Bankruptcy Code.[17] Congress recognized, however, that such a company might fail under extraordinary circumstances that would prevent it from being resolved in bankruptcy without serious adverse effects on the financial stability of the United States.[18] Title II therefore provides the Secretary of the Treasury, upon recommendation from other government agencies, with the authority to place a major financial company into an FDIC receivership, rather than bankruptcy.[19] The set of resolution powers created by Title II form a critical post-crisis toolkit for mitigating the negative effects that could follow from the failure of a systemically important financial institution.

Since 2012, the largest bank holding companies and foreign banking organizations with U.S. operations have submitted annual resolution plans to the

[2] *See* 12 U.S.C. 5365(a)(1)(A).

[3] *See* 12 U.S.C. 5381–5394.

[4] The BCBS is a committee of banking supervisory authorities established by the central bank governors of the Group of Ten countries in 1975. The committee's membership consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The BCBS usually meets at the Bank for International Settlements (BIS) in Basel, Switzerland, where its permanent Secretariat is located.

[5] The FSB was established in 2009 to coordinate at the international level the work of national financial authorities and international standard-setting bodies and to develop and promote the implementation of effective regulatory, supervisory, and other financial sector policies in the interest of financial stability. The FSB brings together national authorities responsible for financial stability in 24 countries and jurisdictions, as well as international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. *See generally* Financial Stability Board, available at *http://www.financialstabilityboard.org.*

[6] The Group of Twenty was established in 1999 to bring together industrialized and developing economies to discuss key issues in the global economy. Members include finance ministers and central bank governors from Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, Russia, Saudi Arabia, South Africa, Republic of Korea, Turkey, the United Kingdom, and the United States and the European Union.

[7] The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). The FDIC adopted the interim final rule as a final rule with no substantive changes on April 14, 2014. 79 FR 20754.

[8] 79 FR 61440 (October 10, 2014).

[9] *See* 80 FR 49082 (Aug. 14, 2015) (GSIB risk-based capital surcharge); 79 FR 24528 (May 1, 2014) (enhanced supplementary leverage ratio). The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[10] 12 CFR 252.32 and 252.35.

[11] *See* Large Institution Supervision Coordinating Committee, available at *http://www.federalreserve.gov/bankinforeg/large-institution-supervision.htm.*

[12] *See* Supervision and Regulation Letter 14–8, "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies" (September 25, 2014).

[13] 79 FR 17240 (March 27, 2014).

[14] 12 U.S.C. 5365, 5384, and 5385.

[15] 12 U.S.C. 5365(d).

[16] 76 FR 67323 (November 1, 2011).

[17] *See, e.g.,* 12 U.S.C. 5382(c), 5383(a)(2)(F) and (b)(4). Insurance companies, depository institutions, and broker dealers are resolved under different resolution mechanisms.

[18] *See* 12 U.S.C. 5384.

[19] *See* 12 U.S.C. 5383(b).

Board and the FDIC as required by section 165(d). The Board and the FDIC review the resolution plans, provide feedback on their shortcomings, and set expectations for subsequent iterations of the plans that are intended to improve the organizations' resolvability. Each annual plan review cycle has yielded valuable information that is being used to assess and mitigate potential obstacles to orderly resolution under the U.S. Bankruptcy Code and to plan for the contingency of a resolution under Title II. The Board and the FDIC also consult regularly on regulatory actions intended to improve GSIB resolvability, including this proposed rule.

B. Approaches to Resolution

Resolution of large financial firms will involve either a single-point-of-entry (SPOE) resolution strategy or a multiple-point-of-entry (MPOE) resolution strategy.[20] Most of the U.S. GSIBs are developing plans that facilitate an SPOE approach, including in their 2015 resolution plans.

In an SPOE resolution of a banking organization, only the top-tier bank holding company would enter a resolution proceeding. The losses that caused the banking organization to fail would be passed up from the subsidiaries that incurred the losses and would then be imposed on the equity holders and unsecured creditors of the holding company, which would have the effect of recapitalizing the subsidiaries of the banking organization. An SPOE resolution could avoid losses to the third-party creditors of the subsidiaries and could thereby allow the subsidiaries to continue normal operations, without entering resolution or taking actions (such as asset firesales) that could pose a risk to the financial stability of the United States. The expectation that the holding company's equity holders and unsecured creditors would absorb the banking organization's losses in the event of its failure would also help to maintain the confidence of the operating subsidiaries' creditors and counterparties, reducing their incentive to engage in potentially destabilizing funding runs. An SPOE resolution would avoid the need for separate proceedings for separate legal entities run by separate authorities across multiple jurisdictions and the associated destabilizing complexity.[21]

Certain structural features of the U.S. GSIBs facilitate SPOE resolution. In the United States, the top-tier parent company of a large banking organization generally does not itself engage in material operations. Rather, it generally acts primarily as a holding company, by, for example, measuring and managing the consolidated risks of the organization, undertaking capital and liquidity planning, coordinating the operations of its subsidiaries, and raising equity capital and long-term debt to fund those operations. Its assets therefore consist largely of cash, liquid securities, and equity and debt investments in its subsidiaries. As a result of this organizational structure, in the context of SPOE resolution the liabilities of the parent holding company are generally ''structurally subordinated'' to the liabilities of the operating subsidiaries.[22] Strengthening the loss-absorbing capacity of the parent holding company therefore improves the resiliency of the banking organization as a whole.

The alternative to an SPOE resolution is a multiple-point-of-entry (MPOE) resolution. An MPOE resolution would entail separate resolutions of different legal entities within the financial firm and could potentially be executed by multiple resolution authorities across multiple jurisdictions. The SPOE approach to resolution appears to offer substantial advantages, because it facilitates the continued operations of subsidiaries of a GSIB, reducing the material risk that the failure of the organization could have on U.S. financial stability. U.S. regulators nevertheless are cognizant of the need to prepare for other plausible contingencies, including the MPOE resolution of a GSIB. While this proposal is primarily focused on implementing the SPOE resolution strategy, it would also substantially improve the prospects for a successful MPOE resolution of a GSIB by requiring U.S. GSIBs and the IHCs of foreign GSIBs to maintain substantially more loss-absorbing capacity.

C. Overview of the Proposal

The Board is inviting comment on this notice of proposed rulemaking to improve the resolvability and resiliency of U.S. banking organizations. The proposal would require the parent holding companies of U.S. GSIBs to maintain outstanding minimum levels of total loss-absorbing capacity and long-term unsecured debt, and a related buffer. The proposal would also require the top-tier U.S. intermediate holding companies of foreign GSIBs to maintain outstanding minimum levels of total loss-absorbing capacity and long-term unsecured debt instruments issued to their foreign parent company, and related buffer. The proposal would subject the operations of the parent holding companies of U.S. GSIBs and the top-tier U.S. intermediate holding companies of foreign GSIBs to ''clean holding company'' limitations to further improve their resolvability and the resiliency of their operating subsidiaries. Finally, the proposal would require banking organizations subject to the Board's capital requirements to make certain deductions from capital.

This proposal would further the goals of improving the resiliency and resolvability of GSIBs. Separately, the Board and the FDIC are continuing to work to mitigate the resolvability risks related to potential disorderly unwinds of financial contracts. Other actions for consideration include ensuring the adequacy of ''internal bail-in'' mechanisms through which operating subsidiaries can pass losses up to their parent holding company and the holding company can recapitalize the subsidiaries.

1. External Total Loss-Absorbing Capacity and Long-Term Debt Requirements for Covered U.S. Bank Holding Companies

Under this proposal, a ''covered BHC'' would be required to maintain outstanding minimum levels of eligible external total loss-absorbing capacity (external TLAC requirement) and eligible external long-term debt (external LTD requirement). The term ''external'' refers to the fact that the requirement would apply to loss-absorbing instruments issued by the covered BHC to third-party investors, and the instrument would be used to pass losses from the banking organization to those investors in case of failure. This is in contrast to ''internal'' loss-absorbing capacity, which could be used to transfer losses among legal entities within a banking organization (for instance, from the operating subsidiaries to the parent holding company).

The term ''covered BHC'' would be defined to include any U.S. top-tier bank holding company identified as a GSIB under the Board's rule establishing risk-based capital surcharges for GSIBs (''GSIB surcharge rule'').[23] Under the external TLAC requirement, a covered

[20] *See* FDIC, ''Resolution of Systemically Important Financial Institutions: The Single Point of Entry Strategy'' (6741–01–P) (December 10, 2013), available at *http://www.fdic.gov/news/board/2013/2013-12-10_notice_dis-b_fr.pdf*.

[21] *See* 78 FR 76614 (December 18, 2013).

[22] Generally, in an insolvency proceeding, direct third-party claims on a parent holding company's subsidiaries would be superior to the parent holding company's equity claims on the subsidiaries.

[23] 12 CFR 217.402; 80 FR 49106 (August 14, 2015).

BHC would be required to maintain outstanding eligible external total loss-absorbing capacity (''eligible external TLAC'') in an amount not less than the greater of 18 percent of the covered BHC's total risk-weighted assets and 9.5 percent of the covered BHC's total leverage exposure.[24] An external TLAC buffer that is similar to the capital conservation buffer in the Board's Regulation Q would apply in addition to the risk-weighted assets component of the external TLAC requirement.

Under the external LTD requirement, a covered BHC would be required to maintain outstanding eligible external long-term debt instruments (''eligible external LTD'') in an amount not less than the greater of 6 percent plus the surcharge applicable under the GSIB surcharge rule (expressed as a percentage) of total risk-weighted assets and 4.5 percent of total leverage exposure.[25]

A covered BHC's eligible external TLAC would be defined to be the sum of (a) the tier 1 regulatory capital of the covered BHC issued directly by the covered BHC and (b) the covered BHC's eligible external LTD, as defined below.

A covered BHC's eligible external LTD would generally be defined to be debt that is issued directly by the covered BHC, is unsecured, is ''plain vanilla,'' [26] and is governed by U.S. law. Eligible external LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and eligible external LTD with a remaining maturity of less than one year would not count toward the external LTD requirement.

2. Internal Total Loss-Absorbing Capacity and Long-Term Debt Requirements for Covered U.S. Intermediate Holding Companies

Under this proposal, a ''covered IHC'' would be required to maintain outstanding minimum levels of eligible internal total loss-absorbing capacity (''internal TLAC requirement'') and eligible internal long-term debt (''internal LTD requirement''). The term ''internal'' refers to the fact that these instruments would be required to be issued internally within the foreign banking organization, from the covered IHC to a foreign parent entity. The term ''covered IHC'' would be defined to include any U.S. intermediate holding company that (a) is required to be formed under the Board's enhanced prudential standards rule [27] and (b) is controlled by a foreign banking organization that would be designated as a GSIB under the Board's capital rules if it were subject to the Board's GSIB surcharge on a consolidated basis (''foreign GSIB'').

Under the internal TLAC requirement, the amount of eligible internal total loss-absorbing capacity (''eligible internal TLAC'') that a covered IHC would be required to maintain outstanding would depend on whether the covered IHC (or any of its subsidiaries) is expected to go into resolution in a failure scenario, rather than being maintained as a going concern while a foreign parent entity is instead resolved. In general, this means that the stringency of the internal TLAC and LTD requirements for a given covered IHC would be a function of whether the foreign GSIB parent of the covered IHC has an SPOE or an MPOE resolution strategy.

Covered IHCs that are not expected to enter resolution themselves would be required to maintain eligible internal TLAC in an amount not less than the greater of: (a) 16 percent of the covered IHC's total risk-weighted assets; [28] (b) for covered IHCs that are subject to the supplementary leverage ratio,[29] 6 percent of the covered IHC's total leverage exposure; and (c) 8 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.[30]

Covered IHCs that are expected to enter resolution themselves would be required to maintain outstanding eligible internal TLAC in an amount not less than the greater of: (a) 18 percent of the covered IHC's total risk-weighted assets; [31] (b) 6.75 percent of the covered IHC's total leverage exposure (if applicable); and (c) 9 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.

For all covered IHCs, an internal TLAC buffer that is similar to the capital conservation buffer in the Board's Regulation Q would apply in addition to the risk-weighted assets component of the internal TLAC requirement.

Under the internal LTD requirement, a covered IHC would be required to maintain outstanding eligible internal long-term debt instruments (''eligible internal LTD'') in an amount not less than the greater of: (a) 7 percent of total risk-weighted assets; (b) 3 percent of the total leverage exposure (if applicable); and (c) 4 percent of average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.

A covered IHC's eligible internal TLAC would generally be defined to be the sum of (a) the tier 1 regulatory capital issued from the covered IHC to a foreign parent entity that controls the covered IHC and (b) the covered IHC's eligible internal LTD, as defined below.

A covered IHC's eligible internal LTD would generally be subject to the same requirements as would apply to eligible external LTD: It would be required to be debt that is issued directly from the covered IHC, is unsecured, is plain vanilla, and is governed by U.S. law. Eligible internal LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the internal LTD requirement, and eligible internal LTD with a remaining maturity of less than one year would not count toward the internal LTD requirement.

However, several features distinguish eligible internal LTD from eligible external LTD: It would be required to be issued to a parent foreign entity that controls the covered IHC, to be contractually subordinated to all third-party liabilities of the covered IHC, and to include a contractual trigger pursuant

[24] The risk-weighted assets component of the external TLAC requirement would be phased in as follows: It would be equal to 16 percent of the covered BHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered BHC's risk-weighted assets beginning on January 1, 2022.

[25] Total leverage exposure is defined in 12 CFR 217.10(c)(4)(ii).

[26] The term ''plain vanilla'' is defined in detail in section II.E.3 and excludes structured notes and most instruments that contain derivative-linked features.

[27] The Board's enhanced prudential standards rule generally requires any foreign banking organization with total consolidated non-branch U.S. assets of $50 billion or more to form a single U.S. intermediate holding company over its U.S. subsidiaries. 12 CFR 252.153; 79 FR 17329 (May 27, 2014).

[28] The risk-weighted assets component of the internal TLAC requirement would be phased in as follows: It would be equal to 14 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

[29] Under the IHC rule, U.S. intermediate holding companies with total consolidated assets of $250 billion or more or on-balance sheet foreign exposure equal to $10 billion or more are required to meet a minimum supplementary leverage ratio of 3 percent. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014).

[30] The final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014). These leverage capital requirements include the generally-applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio.

[31] The risk-weighted assets component of the internal TLAC requirement for covered IHCs of MPOE firms would be phased in as follows: It would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into tier 1 common equity on a going-concern basis (that is, without the covered IHC's entry into a resolution proceeding) if: (a) The Board determines that the covered IHC is ''in default or in danger of default''; and (b) any of the following circumstances apply (i) the top-tier foreign banking organization or any subsidiary outside the United States is placed into resolution proceedings, (ii) the home country supervisory authority consents to the cancellation, exchange, or conversion, or does not object to the cancellation, exchange, or conversion following 48 hours' notice, or (iii) the Board has made a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC.

3. Clean Holding Company Requirements

The Board is proposing to prohibit or limit covered BHCs from directly entering into certain financial arrangements that could impede an entity's orderly resolution. In an SPOE resolution of a U.S. GSIB, the covered BHC will go into a resolution proceeding while its subsidiaries continue their normal operations. These prohibitions and limitations would support the orderly resolution of a covered BHC, whether in an SPOE resolution or in an MPOE resolution involving the resolution of the covered BHC. The proposed requirements would also enhance the resiliency of the U.S. GSIB by reducing the covered BHC's complexity and reliance on short-term funding.

Under the Board's clean holding company proposal, a covered BHC would be prohibited from issuing short-term debt instruments to third parties (including deposits); entering into ''qualified financial contracts'' (QFCs) with third parties; having liabilities that are subject to ''upstream guarantees'' from the covered BHC's subsidiaries or that are subject to contractual offset rights for its subsidiaries' creditors; or issuing guarantees of its subsidiaries' liabilities, if the issuance of the guarantee would result in the covered BHC's insolvency or entry into resolution operating as a default event on the part of the subsidiary. Additionally, the proposal would cap the value of a covered BHC's liabilities (other than those related to eligible external TLAC and eligible external LTD) that can be pari passu with or junior to its eligible external LTD at 5 percent of the value of its eligible external TLAC. Finally, the proposal would require covered BHCs to make certain public disclosures of the fact that their unsecured debt would be expected to absorb losses ahead of other liabilities, including the liabilities of the covered BHC's subsidiaries, in a failure scenario.

An SPOE resolution of a foreign GSIB in its home jurisdiction would allow the GSIB's covered IHC to continue operating without itself entering into a resolution proceeding. However, to prepare for a scenario in which a covered IHC would enter U.S. resolution proceedings, the Board is proposing to prohibit covered IHCs from entering into certain financial arrangements that can impede such a resolution.

4. Consideration of Domestic Internal TLAC Requirement

The SPOE resolution strategy assumes (a) that losses will be passed up from the subsidiaries that initially incur them to the covered BHC or covered IHC and (b) that they then will be passed on to either the external TLAC holders (in the case of a covered BHC) or a foreign parent entity (in the case of a covered IHC). This proposal would work to satisfy the second of these assumptions, but it does not address the first. As discussed further below, however, the Board is seeking comment on whether, and if so how, the Board should regulate the mechanisms used by a covered BHC or covered IHC to transfer losses up from the operating subsidiaries that incur them to the covered BHC or covered IHC.

5. Regulatory Capital Deduction for Investments in the Unsecured Debt of Covered BHCs

To limit the potential for financial sector contagion in the event of the failure of a covered BHC, state member banks, certain bank holding companies and savings and loan holding companies with total consolidated assets of at least $1 billion, and intermediate holding companies formed pursuant to the Board's enhanced prudential standards for foreign banking organizations would be required to apply a regulatory capital deduction treatment to any investments in unsecured debt instruments issued by covered BHCs (including unsecured debt instruments that do not qualify as eligible external LTD).

D. Consultation With the FDIC, the Council, and Foreign Authorities

In developing this proposal, the Board consulted with the FDIC, the Financial Stability Oversight Council (Council), and other U.S. financial regulatory agencies. The proposal reflects input that the Board received during this consultation process. The Board also intends to consult with the FDIC, the Council, and other financial regulatory agencies after it reviews comments on the proposal. Furthermore, the Board has consulted with, and expects to continue to consult with, foreign financial regulatory authorities regarding this proposal and the establishment of other standards that would maximize the prospects for the cooperative and orderly cross-border resolution of failed GSIBs.

E. The FSB's Proposal on Total Loss-Absorbing Capacity for GSIBs

In 2013, the G20 Leaders called on the FSB to develop proposals on the adequacy of the loss-absorbing capacity of global systemically important financial institutions (''SIFIs'').[32] In November 2014, the FSB published for consultation a set of principles and a term sheet to implement those principles in the form of an internationally negotiated minimum standard for the total loss-absorbing capacity (''TLAC'') of GSIBs.[33] Under the FSB's proposed standard, GSIBs would be subject to a TLAC requirement equal to the greater of (a) a figure between 16 percent and 20 percent of a banking organization's risk-weighted assets (with the specific figure within that range to be agreed upon later) and (b) twice the Basel III tier 1 leverage ratio requirement. The FSB's proposed standard also contains an expectation that a GSIB would meet at least one-third of its TLAC requirement with eligible long-term debt (''LTD'') rather than equity.

This proposal is generally consistent with the FSB's proposed standard, although it includes a required LTD component that is more stringent than the expectation in the FSB's proposed standard.

The Board considered whether to structure this proposal solely as a TLAC requirement—that is, as a single minimum requirement that could be satisfied by any mixture of capital and eligible LTD—without a specific LTD requirement. In the absence of an LTD requirement, a TLAC requirement would permit each covered firm to reduce its expected systemic impact

[32] The Group of 20, ''G20 Leaders' Declaration'' (September 2013), available at *https://g20.org/wp-content/uploads/2014/12/Saint_Petersburg_Declaration_ENG_0.pdf.*

[33] *See* ''Adequacy of loss-absorbing capacity of global systemically important banks in resolution'' (November 10, 2014), available at *http://www.financialstabilityboard.org/wp-content/uploads/TLAC-Condoc-6-Nov-2014-FINAL.pdf.*

either by reducing its probability of default through increased going-concern capital or by reducing the harm it would cause if it were to fail through increased gone-concern LTD.[34]

This proposal includes a separate LTD requirement in order to address the too-big-to-fail problem. Unlike existing equity, LTD can be used as a fresh source of capital subsequent to failure. Imposing an LTD requirement would help to ensure that a covered firm would have a known and observable quantity of loss-absorbing capacity at the point of failure. Unlike common equity, that loss-absorbing capacity would not be at substantial risk of volatility or depletion before the covered BHC is placed into a resolution proceeding. Thus, the proposed LTD requirements would more assuredly enhance the prospects for the successful resolution of a failed GSIB and thereby better address the too-big-to-fail problem than would TLAC requirements alone.

F. Overview of Statutory Authority

The Board is issuing this proposal under the authority provided by section 165 of the Dodd-Frank Act.[35] Section 165 instructs the Board to impose enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more ''[i]n order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.'' [36] These enhanced prudential standards must increase in stringency based on the systemic footprint and risk characteristics of individual covered firms.[37] In addition to requiring the Board to impose enhanced prudential standards of several specified types, section 165 authorizes the Board to establish ''such other prudential standards as the Board of Governors, on its own or pursuant to a recommendation made by the Council, determines are appropriate.'' [38]

The enhanced prudential standards in this proposal are appropriate because they are intended to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of a GSIB. In particular, the proposed requirements would improve the resolvability of U.S. GSIBs under either the U.S. Bankruptcy Code or Title II and improve their resiliency. The proposed requirements would also improve the resiliency of covered IHCs and their subsidiaries, and thereby increase the likelihood that a failed foreign GSIB with significant U.S. operations would be successfully resolved under an SPOE approach without the failure of the U.S. subsidiaries or, failing that, that the foreign GSIB's U.S. operations could be separately resolved in an orderly manner.

In addition to the authority identified above, section 165 of the Dodd-Frank Act also authorizes the Board to establish ''enhanced public disclosures'' and ''short-term debt limits.'' [39] The proposal includes disclosure requirements and limits on the ability of covered BHCs and covered IHCs to issue short-term debt.

Finally, the Board has tailored this proposal to apply only to those companies whose disorderly resolution would likely pose the greatest risk to the financial stability of the United States: The U.S. GSIBs and the U.S. intermediate holding companies of foreign GSIBs.[40]

Question 1: The Board invites comment on all aspects of this section.

II. External TLAC and LTD Requirements for U.S. GSIBs

A. Scope of Application (Section 252.60 of the Proposed Rule)

The proposed rule would apply to all ''covered BHCs.'' The term ''covered BHC'' would be defined to include any U.S. top-tier bank holding company identified as a GSIB under the Board's GSIB surcharge rule.[41] Under the GSIB surcharge rule, a U.S. top-tier bank holding company subject to the advanced approaches rule must determine whether it is a GSIB by applying a multifactor methodology established by the Board.[42] This methodology evaluates a banking organization's systemic importance on the basis of its attributes in five broad categories: Size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity.

Accordingly, the methodology provides a tool for identifying as GSIBs those banking organizations that pose elevated risks. The proposal's focus on GSIBs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[43]

Under the GSIB surcharge rule's methodology, eight U.S. bank holding companies would currently be identified as GSIBs. Those eight top-tier bank holding companies would therefore be covered BHCs under this proposal.[44] In addition, because the GSIB surcharge methodology is dynamic, other banking organizations could become subject to the proposed rule in the future.

Question 2: The Board invites comment on alternative approaches for determining the scope of application of the proposed external TLAC and LTD requirements.

B. Calibration of the External TLAC and LTD Requirements (Sections 252.62 and 252.63 of the Proposed Rule)

Under the proposal's external TLAC requirement, a covered BHC would be required to maintain outstanding eligible external TLAC in an amount not less than the greater of 18 percent of the covered BHC's total risk-weighted assets [45] and 9.5 percent of the covered BHC's total leverage exposure under the supplementary leverage ratio rule. As described below, an external TLAC buffer would apply in addition to the risk-weighted assets component of the external TLAC requirement.

Under the proposal's external LTD requirement, a covered BHC would be required to maintain outstanding eligible external LTD in an amount not less than the greater of 6 percent plus the surcharge applicable under the GSIB

[34] *See* ''Calibrating the GSIB Surcharge'' at 3 (July 20, 2015), available at *www.federalreserve.gov/aboutthefed/boardmeetings/gsib-methodology-paper-20150720.pdf.*

[35] 12 U.S.C. 5365.

[36] 12 U.S.C. 5365(a)(1).

[37] 12 U.S.C. 5365(a)(1)(B), (b)(3)(A)–(D).

[38] 12 U.S.C. 5365(b)(1)(B)(iv).

[39] 12 U.S.C. 5365(b)(1)(B)(ii) and (iii).

[40] 12 U.S.C. 5365(a)(1)(B).

[41] 12 CFR 217.402; 80 FR 49106 (August 14, 2015).

[42] 12 CFR part 217, subpart E.

[43] 12 U.S.C. 5365(a)(1)(B).

[44] The eight firms currently identified as U.S. GSIBs are Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[45] A covered BHC would calculate risk-weighted assets for purposes of the external TLAC requirement using the same methodology it uses to calculate risk-weighted assets under the Board's regulatory capital rules. See 12 CFR part 217, subparts D and E. The Board's regulatory capital rules require an advanced approaches banking organization (generally, a banking organization with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure) that has successfully completed its parallel run to calculate each of its risk-based capital ratios using the standardized approach and the advanced approaches, and directs the banking organization to use the lower of each ratio as its governing ratio. *See* 12 CFR 217.10.

The risk-weighted assets component of the external TLAC requirement would be phased in as follows: It would be equal to 16 percent of the covered BHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered BHC's risk-weighted assets beginning on January 1, 2022.

surcharge rule (expressed as a percentage) of total risk-weighted assets and 4.5 percent of total leverage exposure. Covered BHCs would be prohibited from redeeming or repurchasing eligible external LTD prior to its stated maturity date without obtaining prior approval from the Board where the redemption or repurchase would cause the covered BHC's eligible external LTD to fall below its external LTD requirement.

The calibration of the proposed external TLAC requirement is based in part on an analysis of the historical loss experience of major financial institutions during financial crises. First, a targeted analysis of losses of U.S. financial firms during the 2007–2009 financial crisis was performed. The analysis considered the loss experiences of the 19 bank holding companies that participated in the Supervisory Capital Assessment Program (SCAP).[46] This analysis combined the losses actually sustained by those firms during the 2007–2008 period with their 2009 SCAP loss projections [47] and the government recapitalization support that they received in order to estimate the level of losses that would likely have been sustained in the absence of extraordinary government intervention in the financial system, which likely prevented substantial losses that each firm would otherwise have incurred as a result of the material financial distress or failure of major counterparties. The purpose of a TLAC requirement is to ensure that GSIBs have sufficient loss-absorbing capacity to absorb significant losses and then be recapitalized to the level necessary for them to face the market on a going-concern basis without public-sector support. Therefore, the sum of losses and public-sector recapitalization provides a good comparator for a TLAC requirement.

The analysis found that the bank holding company with the most severe loss experience incurred estimated losses and recapitalization needs of roughly 19 percent of risk-weighted assets. The risk-weighted assets component of the proposed external TLAC requirement is consistent with this high-water mark from the global financial crisis. This historical analysis provides further confirmation of the appropriateness of the proposed calibration.

Additionally, a quantitative study of the experiences of 13 U.S. and foreign GSIBs and other major financial firms that incurred substantial losses during the 2007–2009 financial crisis and the Japanese financial crisis of the 1990s was conducted. With respect to each firm, the study considered both the peak losses incurred by the firm (measured in terms of total comprehensive income) over the loss period and public-sector capital support, incorporating both direct capital injections and asset relief transactions.

The study examined losses and recapitalization in terms of both risk-weighted assets and total assets, which is relevant to the total leverage exposure component of the external TLAC requirement. The proposed calibration of the external TLAC requirement is consistent with the findings of this historical survey. The risk-weighted assets component of the proposed requirement exceeds a substantial majority of the loss-and-recapitalization experiences surveyed, while the total leverage exposure component of the proposed requirement is slightly higher than the most severe experience surveyed. These are appropriate results in light of the Dodd-Frank Act's focus on the mitigation of risks that could arise from the material financial distress or failure of the largest, most systemic financial institutions.

The proposed external LTD requirement was calibrated primarily on the basis of a ''capital refill'' framework. According to the capital refill framework, the objective of the external LTD requirement is to ensure that each covered BHC has a minimum amount of eligible external LTD such that, if the covered BHC's going-concern capital is depleted and the covered BHC fails and enters resolution, the eligible external LTD will be sufficient to absorb losses and fully recapitalize the covered BHC by replenishing its going-concern capital. Fulfilling this objective is vital to the use of eligible external LTD to facilitate the orderly resolution of a covered BHC, because it is a prerequisite to an orderly SPOE resolution that the resolved firm have sufficient going-concern capital post-resolution to maintain market confidence in its solvency so that other market participants continue to do business with it.

The proposed external LTD requirement was calibrated in accordance with this framework. In terms of risk-weighted assets, a covered BHC's common equity tier 1 capital level is an amount equal to a minimum requirement of 4.5 percent of risk-weighted assets plus a capital conservation buffer, which is itself equal to 2.5 percent plus a firm-specific surcharge determined under the GSIB surcharge rule (expressed as a percentage) of risk-weighted assets.[48] Thus, a covered BHC with a GSIB surcharge of 2 percent would have a common equity tier 1 capital minimum plus buffers of 9 percent.

Under the proposal, a covered BHC would be subject to an external LTD requirement equal to 7 percent of risk-weighted assets plus the applicable GSIB surcharge minus a 1 percentage point allowance for balance-sheet depletion. This results in a requirement of 6 percent plus the applicable GSIB surcharge (expressed as a percentage) of risk-weighted assets. Without the 1 percentage point allowance for balance-sheet depletion, the risk-weighted assets component of a covered BHC's external LTD requirement would require it to maintain outstanding an amount of eligible external LTD equal to its common equity tier 1 capital minimum requirement plus buffers. The 1 percentage point allowance for balance-sheet depletion is appropriate under the capital refill theory because the losses that the covered BHC incurs leading to its failure will deplete its risk-weighted assets as well as its capital. Accordingly, the pre-failure losses would result in a smaller balance sheet for the covered BHC at the point of failure, meaning that a smaller dollar amount of capital would be required to restore the covered BHC's pre-stress capital level. Although the specific amount of eligible external LTD necessary to restore a covered BHC's pre-stress capital level in light of the diminished size of its post-failure balance sheet will vary slightly in light of the varying GSIB surcharges applicable to the covered BHCs, the Board is proposing to apply a uniform 1 percentage point allowance for balance-sheet depletion so as to avoid undue regulatory complexity.

The application of the capital refill framework to the leverage ratio component of the external LTD requirement is analogous. Under the enhanced supplementary leverage ratio applicable to U.S. GSIBs, a covered BHC's tier 1 leverage ratio minimum plus buffer is 5 percent of its total

[46] *See* Press Release, ''Federal Reserve, OCC, and FDIC release results of the Supervisory Capital Assessment Program'' (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20090507a.htm*.

[47] *See* ''The Supervisory Capital Assessment Program: Overview of Results'' (May 7, 2009), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20090507a1.pdf*.

[48] Under the Board's capital rules, the capital conservation buffer can be increased by an additional 2.5 percent of risk-weighted assets through the activation of a countercyclical capital buffer. The proposed external LTD requirement does not incorporate any countercyclical capital buffer because it is likely that no such buffer would be active under the economic circumstances most likely to be associated with the failure and resolution of a covered BHC.

leverage exposure. Under the proposal, a covered BHC would be subject to an external LTD requirement equal to 4.5 percent of its total leverage exposure. This requirement, which incorporates a balance-sheet depletion allowance of 0.5 percentage points, is appropriate to ensure that a covered BHC that has depleted its tier 1 capital and failed will be able to refill its leverage ratio minimum requirement and buffer through the cancellation or the exchange or conversion into equity of its eligible external LTD.

The proposed calibration of the external LTD requirement was also informed by an analysis of the extreme loss tail of the distribution of income for large U.S. bank holding companies over the past several decades. This analysis closely resembled the analysis that informed the calibration of the minimum risk-based capital requirements in the revised capital framework, but it involved looking farther into the tail of the income distribution.

Question 3: The Board invites comment on all aspects of the calibration of the proposed external TLAC and LTD requirements. In particular, the Board invites comment on the probable impact of the proposed requirements on covered BHCs and on markets for senior unsecured debt instruments.

C. Core Features of Eligible External TLAC (Section 252.63(b) of the Proposed Rule)

Under the proposal, a covered BHC's eligible external TLAC would be defined to be the sum of (a) the tier 1 regulatory capital (common equity tier 1 capital and additional tier 1 capital, excluding any tier 1 minority interests) issued directly by the covered BHC and (b) the covered BHC's eligible external LTD, as defined below.[49] Tier 2 capital that meets the definition of eligible external LTD would count toward the external TLAC requirement.

The requirement that regulatory capital be issued out of the covered BHC itself (rather than by a subsidiary) is intended to ensure that the total required amount of loss-absorbing capacity would be available to absorb losses incurred anywhere in the banking organization (through downstreaming of resources from the BHC to the subsidiary that has incurred the losses, if necessary). Regulatory capital that is issued by a subsidiary lacks this key feature of being available to flexibly absorb losses incurred by other subsidiaries.

Question 4: The Board invites comment on all aspects of the proposed definition of eligible external TLAC.

Question 5: In particular, the Board invites comment on the proposed requirement that regulatory capital be issued directly by the covered BHC in order to count as eligible external TLAC. Should the definition of eligible external TLAC be broadened to include minority interests?

Question 6: Should eligible external LTD with a remaining maturity between one and two years be subject to a 50 percent haircut for purposes of the external TLAC requirement, by analogy to the treatment of such eligible external LTD for purposes of the external LTD requirement?

Question 7: Do covered BHCs have outstanding tier 2 capital instruments that would not count as eligible external LTD? What features of such tier 2 capital instruments are inconsistent with the definition of eligible external LTD? Should such tier 2 capital instruments count as eligible external TLAC?

D. External TLAC Buffer (Section 252.63(c) of the Proposed Rule)

An external TLAC buffer would apply in addition to the risk-weighted assets component of the external TLAC requirement. A covered BHC's external TLAC buffer would be equal to the sum of 2.5 percent plus the GSIB surcharge applicable to the covered BHC under method 1 of the GSIB surcharge rule[50] plus any applicable countercyclical capital buffer. The external TLAC buffer would be required to be filled solely with common equity tier 1 capital, and a covered BHC's breach of its external TLAC buffer would subject it to limits on capital distributions and discretionary bonus payments in accordance with Table 1. Thus, the external TLAC buffer would be analogous to the capital conservation buffer applicable under the Board's Regulation Q, except that it would apply in addition to the external TLAC requirement rather than in addition to minimum risk-based capital requirements under Regulation Q and would incorporate only the applicable method 1 GSIB surcharge (rather than the greater of the applicable method 1 GSIB surcharge and the applicable method 2 GSIB surcharge).

TABLE 1—CALCULATION OF MAXIMUM EXTERNAL TLAC PAYOUT AMOUNT

External TLAC buffer level	Maximum external TLAC payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC buffer, *and* greater than 75 percent of the external TLAC buffer.	60 percent.
Less than or equal to 75 percent of the external TLAC buffer, *and* greater than 50 percent of the external TLAC buffer.	40 percent.
Less than or equal to 50 percent of the external TLAC buffer, *and* greater 25 percent of the external TLAC buffer.	20 percent.
Less than or equal to 25 percent of the external TLAC buffer	0 percent.

In order to determine whether it has met the external TLAC requirement and the external TLAC buffer, a covered BHC would calculate an outstanding TLAC amount and an external TLAC buffer level. In keeping with the definition of eligible external TLAC, a covered BHC's outstanding TLAC amount would be equal to the sum of its common equity tier 1 capital, its additional tier 1 capital, and its eligible external LTD. The covered BHC's external TLAC buffer level would be equal to the sum of its common equity tier 1 capital ratio minus that portion (if any) of its common equity tier 1 capital ratio (expressed as a percentage) that is used to meet the risk-weighted assets

[49] Although eligible external LTD with a remaining maturity between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, such eligible external LTD would continue to count at full value for purposes of the external TLAC requirement. As discussed below, eligible external LTD with a remaining maturity of less than one year would not count toward either the external TLAC requirement or the external LTD requirement.

[50] 80 FR 49082 (Aug. 14, 2015).

component of the external TLAC requirement. To calculate its external TLAC buffer level, a covered BHC would subtract from its common equity tier 1 capital ratio the greater of 0 percent and the following figure: The risk-weighted assets component of the covered BHC's external TLAC requirement minus the ratio of its additional tier 1 capital to its risk-weighted assets (additional tier 1 capital ratio) and minus its eligible external LTD.

In order to comply with the external TLAC requirement, the covered BHC would need to have an outstanding TLAC amount sufficient to meet both the risk-weighted assets component and the total leverage exposure component. In order to avoid limitations on capital distributions and discretionary bonus payments pursuant to Table 1, the covered BHC would also have to have an external TLAC buffer level in excess of its external TLAC buffer.

For example, suppose that a covered BHC called ''BHC A'' has a common equity tier 1 capital ratio of 10 percent, an additional tier 1 capital ratio of 2 percent, and an eligible external LTD amount equal to 8 percent of its risk-weighted assets. Suppose further that BHC A is subject to an external TLAC requirement of 18 percent and an external TLAC buffer of 5 percent of risk-weighted assets. BHC A would meet its external TLAC requirement because the sum of its common equity tier 1 capital ratio, its additional tier 1 capital ratio, and the ratio of its eligible external TLAC to risk-weighted assets would be equal to 20, which is greater than 18. Moreover, BHC A would have an external TLAC buffer level equal to $10 - (18 - 2 - 8) = 2$. Because 2 is less than 50 percent and more than 25 percent of the applicable 5 percent external TLAC buffer, BHC A would be subject to a maximum external TLAC payout ratio of 20 percent of eligible retained income.

Although the proposed external TLAC buffer must be met only with common equity tier 1 capital, under the proposal, any covered BHC that meets existing capital requirements and the existing capital conservation buffer would not need to increase its common equity tier 1 capital to meet its external TLAC requirement and its external TLAC buffer. This is because (a) a covered BHC could meet its external TLAC requirement solely through the issuance of eligible external LTD, (b) a covered BHC could use the same common equity tier 1 capital that it uses to meet existing minimum capital requirements and the existing capital conservation buffer to meet the proposed external TLAC requirement and external TLAC buffer, and (c) a covered BHC's external TLAC buffer would always be less than or equal to its existing capital conservation buffer.[51] A covered BHC could thus use its existing common equity tier 1 capital to meet the external TLAC buffer while issuing eligible external LTD as necessary to meet its external TLAC requirement.

The rationale for the external TLAC buffer is similar to the rationale for the capital conservation buffer established by the Board's Regulation Q. During the 2007–2009 financial crisis, some banking organizations continued to pay dividends and substantial discretionary bonuses even as their financial condition weakened. These capital distributions weakened the financial system and exacerbated the crisis. The external TLAC buffer would be intended to encourage covered BHCs to practice sound capital conservation and thus to enhance the resilience of covered BHCs and of the financial system as a whole. The external TLAC buffer would pursue this goal by providing covered BHCs with incentives to hold sufficient capital to reduce the risk that their eligible external TLAC would fall below the minimum external TLAC requirement during a period of financial stress.

Question 8: The Board invites comment on the organization and placement of the external TLAC buffer. For example, would the external TLAC buffer be easier to understand if it were incorporated directly into the Board's regulatory capital rules (Regulation Q)?

Question 9: The Board invites comment on an alternative calibration of the total leverage exposure component of the proposed external TLAC requirement pursuant to which covered BHCs would be subject to an external TLAC requirement equal to 7.5 percent of total leverage exposure and a capital conservation buffer equal to 2 percent of total leverage exposure would apply in addition to that external TLAC requirement, by analogy to the enhanced supplementary leverage ratio.

E. Core Features of Eligible External LTD (Section 252.61 of the Proposed Rule)

Under the proposal, a covered BHC's eligible external LTD would be defined to be debt that is paid in and issued directly by the covered BHC, is unsecured, has a maturity of greater than one year from the date of issuance, is ''plain vanilla,'' and is governed by U.S. law. Eligible external LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and eligible external LTD with a remaining maturity of less than one year would not count toward the external LTD requirement.

As discussed below, the general purpose of these requirements is to ensure the adequacy of eligible external LTD instruments to absorb losses in a resolution of the covered BHC.

1. Issuance by the Covered BHC

Eligible external LTD would be required to be paid in and issued directly by the covered BHC itself—that is, by the banking organization's top-tier holding company. Thus, debt instruments issued by a subsidiary would not qualify as eligible external LTD, even if they do qualify as regulatory capital.

This restriction would serve two purposes. First, as with the requirement that regulatory capital be issued directly by the covered BHC in order to count as eligible external TLAC, this restriction helps to ensure that eligible external LTD can be used to absorb losses incurred anywhere in the banking organization. By contrast, loss-absorbing debt issued by a subsidiary would lack this flexibility and would generally be available only to absorb losses incurred by that particular subsidiary.

Second, issuance directly from the covered BHC would enable the use of the eligible external LTD in an SPOE resolution of the covered BHC. Under the SPOE approach, only the covered BHC itself would enter resolution. The covered BHC's eligible external LTD would be used to absorb losses incurred throughout the banking organization, enabling the recapitalization of operating subsidiaries that had incurred losses and enabling those subsidiaries to continue operating on a going-concern basis. For this approach to be implemented successfully, the eligible external LTD must be issued directly by the covered BHC. Debt issued by a subsidiary generally cannot be used to absorb losses even at the issuing subsidiary itself unless that subsidiary enters a resolution proceeding, which would be contrary to the SPOE approach and, in the case of a material operating subsidiary of a covered BHC, would likely present risks to financial stability.

Question 10: The Board invites comment on the benefits or drawbacks

[51] This is because, as discussed above, the external TLAC buffer and the existing capital conservation buffer would have the same components except that the external TLAC buffer would include only the applicable method 1 GSIB surcharge, while the existing capital conservation buffer includes the greater of the applicable method 1 GSIB surcharge and the applicable method 2 GSIB surcharge.

of permitting long-term debt issued by a subsidiary of a covered BHC to count as eligible external LTD and on whether there are other means to ensure that the debt be available to absorb losses incurred anywhere within the banking organization.

2. Unsecured

Eligible external LTD would be required to be unsecured, not guaranteed by the covered BHC or a subsidiary of the covered BHC, and not subject to any other arrangement that legally or economically enhances the seniority of the instrument (such as a credit enhancement provided by an affiliate). The primary rationale for this restriction is to ensure that eligible external LTD can serve its intended purpose of absorbing losses incurred by the banking organization in resolution. To the extent that a creditor is secured, it can avoid suffering losses by seizing the collateral that secures the debt. This would thwart the purpose of eligible external LTD by leaving losses with the covered BHC (which would lose the collateral) rather than imposing them on the eligible external LTD creditor (which could take the collateral).

A secondary purpose of the restriction is to prevent eligible external LTD from contributing to the asset firesales that can occur when a financial institution fails and its secured creditors seize and liquidate collateral. Asset firesales can drive down the value of the assets being sold, which can undermine financial stability by transmitting contagion from the failed firm to other entities that hold similar assets.

Finally, the requirement that eligible external LTD be unsecured ensures that losses can be imposed on that debt in resolution in accordance with the standard creditor hierarchy in bankruptcy, under which secured creditors are paid ahead of unsecured creditors.

Question 11: The Board invites comment on whether eligible external LTD should be required to be contractually subordinated to the general unsecured liabilities of the covered BHC (such as senior unsecured debt). If so, should the subordination requirement apply to all or only to some portion of the debt used to satisfy the external LTD requirement?

3. ''Plain Vanilla''

Eligible external LTD instruments would be required to be ''plain-vanilla'' instruments. The purpose of this requirement is to ensure that eligible external LTD can be effectively used to absorb losses in resolution by prohibiting exotic features that could create complexity and thereby diminish the prospects for an orderly resolution.

These prohibitions would help to ensure that a covered BHC's eligible external LTD represents loss-absorbing capacity with a definite value that can be quickly determined in resolution. In a resolution proceeding, claims represented by such plain-vanilla debt instruments are more easily ascertainable and relatively certain compared to more complex and volatile instruments. Permitting these features could engender uncertainty as to the level of the covered BHC's loss-absorbing capacity and could increase the complexity of the resolution proceeding, both of which could undermine market participants' confidence in an SPOE resolution and potentially result in a disorderly resolution. This could occur, for instance, if creditors and counterparties of the covered BHC's subsidiaries decided to reduce their exposures to the subsidiaries of the failed covered BHC by engaging in a funding run.

Eligible external LTD instruments also would be prohibited from: (a) Being structured notes; (b) having a credit-sensitive feature; (c) including a contractual provision for conversion into or exchange for equity in the covered BHC; or (d) including a provision that gives the holder a contractual right to accelerate payment (including automatic acceleration), other than a right that is exercisable on a one or more dates specified in the instrument, in the event of the insolvency of the covered BHC, or the covered BHC's failure to make a payment on the instrument when due.[52]

For purposes of this proposal, a ''structured note'' is a debt instrument that (a) has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset,[53] entity, index, or embedded derivative or similar embedded feature; (b) has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities; (c) does not specify a minimum principal amount due upon acceleration or early termination; or (d) is not classified as debt under U.S. generally accepted accounting principles. The proposed definition of a structured note is not intended to include non-dollar-denominated instruments or instruments whose interest payments are linked to an interest rate index (for example, a floating-rate note linked to the federal funds rate or to LIBOR) that satisfy the proposed requirements in all other respects.

Structured notes would not count as eligible external LTD because they contain features that could make their valuation uncertain, volatile, or unduly complex, and because they are typically customer liabilities (as opposed to investor liabilities). To promote resiliency and market discipline, it is important that covered BHCs have a minimum amount of loss-absorbing capacity whose value is easily ascertainable at any given time. Moreover, in an orderly resolution of a covered BHC, debt instruments that will be subjected to losses must be able to be valued accurately and with minimal risk of dispute. The requirement that eligible external LTD not contain the features associated with structured notes advances these goals.

Eligible external LTD would be prohibited from including contractual provisions for conversion into or exchange for equity prior to the covered BHC's resolution because the fundamental objective of the external LTD requirement is to ensure that covered BHCs will have at least a fixed minimum amount of loss-absorbing capacity available to absorb losses upon the covered BHC's entry into resolution. Debt instruments that could convert into equity prior to resolution may not serve this goal, since by doing so they would reduce the amount of debt that will be available to absorb losses in resolution.

Finally, eligible external LTD would be prohibited from having a credit-sensitive feature or giving the holder of the instrument a contractual right to the acceleration of payment of principal or interest at any time prior to the instrument's stated maturity (an ''acceleration clause''), other than upon the occurrence of either an insolvency event or a payment default event, except that eligible external LTD instruments would be permitted to give the holder a put right as of a future date certain, subject to the remaining maturity provisions discussed below. This proposed prohibition is similar to but moderately less stringent than the analogous restriction on tier 2 regulatory capital. The main difference between eligible external LTD and tier 2 capital in this regard is that tier 2 capital is also prohibited from containing payment default event acceleration clauses.[54]

[52] This restriction would be subject to an exception that would permit eligible external LTD instruments to give the holder a future put right as of a date certain, subject to the remaining maturity provisions discussed below.

[53] Assets would include loans, debt securities, and other financial instruments.

[54] *See* 12 CFR 217.20(d)(1)(vi).

However, the Board is considering whether to instead impose a restriction on eligible external LTD that is identical to the one applicable to tier 2 capital by also prohibiting eligible external LTD from containing payment default event clauses.

This proposed restriction serves the same purpose as several of the other proposed restrictions discussed above: to ensure that the required amount of loss-absorbing capacity will indeed be available to absorb losses in resolution if the covered BHC fails. Early acceleration clauses, including cross-acceleration clauses, may undermine this prerequisite to orderly resolution by triggering and forcing the covered BHC to make payments prior to its entry into resolution, potentially depleting the covered BHC's eligible external LTD immediately prior to resolution. This concern does not apply to acceleration clauses that are triggered by an insolvency event, however, because the insolvency that triggers the clause would generally occur concurrently with the covered BHC's entry into a resolution proceeding, in which case the payment obligations would generally be stayed and the debt would remain available to absorb losses.

Senior debt instruments issued by covered BHCs commonly also include payment default event clauses. These clauses provide the holder with a contractual right to accelerate payment upon the occurrence of a ''payment default event''—that is, a failure by the covered BHC to make a required payment when due. Payment default event clauses, which are prohibited from tier 2 regulatory capital, raise more concerns than insolvency event clauses because a payment default event may occur (triggering acceleration) before the institution has entered a resolution proceeding and a stay has been imposed. Such a pre-resolution payment default event could cause a decline in the covered BHC's loss-absorbing capacity.

Nonetheless, the proposal would permit eligible external LTD to be subject to payment default event acceleration rights for two reasons. First, default or acceleration rights upon a borrower's default on its direct payment obligations are a standard feature of senior debt instruments, such that a prohibition on such rights could be unduly disruptive to the potential market for eligible external LTD. Second, the payment default of a covered BHC on an eligible external LTD instrument would likely be a credit event of such significance that whatever diminished capacity led to the payment default event would also be a sufficient trigger for an insolvency event acceleration clause, in which case a prohibition on payment default event acceleration clauses would have little or no practical effect.

Question 12: The Board invites comment on the proposed definition of eligible external LTD, including whether such debt securities should be allowed to include any of the features discussed above. The Board also invites comment as to the impact that the proposed restrictions would have on the bindingness of the proposal for covered BHCs or on the markets for senior unsecured debt instruments of covered BHCs. Please provide data supporting your answer.

Question 13: The Board invites comment on whether its proposed definition of eligible external LTD should exclude debt that is subject to a guarantee from any affiliate of the global systemically important BHC.

Question 14: The Board invites comment on whether additional restrictions should be imposed on instruments that qualify as eligible external LTD in order to enhance the usefulness of eligible external LTD in an orderly resolution of the covered BHC.

Question 15: Would an orderly resolution of a covered BHC be facilitated by additional requirements intended to facilitate the process of imposing losses on the claims of holders of eligible external LTD? If so, what additional requirements (e.g., requiring eligible external LTD to be held through a securities settlement system, requiring internal data systems to facilitate the claims process) are appropriate?

Question 16: The Board invites comment on whether currently outstanding instruments that meet all other requirements should be allowed to count as eligible external LTD despite containing features that would be prohibited under the proposal. What is the amount of debt instruments now outstanding that would fall into this category, and what is the remaining maturity of those debt instruments? How burdensome would it be for covered BHCs to modify the terms of any such instruments to eliminate features that would be prohibited under the proposal?

Question 17: The Board invites comment on whether eligible external LTD should be permitted to include acceleration clauses that relate to payment default events. The Board also invites comment on the impact of excluding instruments with such acceleration clauses from the definition of eligible external LTD, including any impact on debt markets for senior unsecured debt instruments.

Question 18: The Board invites comment on whether debt instruments that are convertible into equity (with or without a regulatory conversion triggers) should be permitted to count as eligible external TLAC even if they are excluded from eligible external LTD and on whether such instruments would advance the objectives of an orderly resolution of a covered BHC.

4. Minimum Remaining Maturity and Amortization (Section 252.62(b) of the Proposed Rule)

Eligible external LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, and eligible external LTD with a remaining maturity of less than one year would not count toward the external LTD requirement.

The purpose of this restriction is to limit the debt that would fill the external LTD requirement to debt that will be reliably available to absorb losses in the event that the covered BHC fails and enters resolution. Debt with a remaining maturity of less than one year does not adequately serve this purpose because of the relatively high likelihood that the debt will mature during the period between the time when the covered BHC begins to experience extreme stress and the time when it enters a resolution proceeding. If the debt matures during that period, then the creditor will likely be unwilling to maintain its exposure to the covered BHC and will therefore refuse to roll over the debt or extend new credit and the distressed covered BHC will likely be unable to replace the debt with new long-term debt that would be available to absorb losses in resolution. This run-off dynamic could result in the covered BHC's entering resolution with materially less loss-absorbing capacity than would be required to recapitalize its subsidiaries, potentially resulting in a disorderly resolution. To protect against this outcome, eligible external LTD would cease to count toward the external LTD requirement upon falling below one year of remaining maturity so that the full required amount of loss-absorbing capacity would be available in resolution even if the resolution period were preceded by a year-long stress period.[55]

For analogous reasons, eligible external LTD with a remaining maturity of less than two years would be subject to a 50 percent haircut for purposes of the external LTD requirement, meaning

[55] This requirement also accords with market convention, which generally defines ''long-term debt'' as debt with maturity in excess of one year.

that only 50 percent of the value of its principal amount would count toward the external LTD requirement.[56] This amortization provision is intended to protect a covered BHC's loss-absorbing capacity against a run-off period in excess of one year (as might occur during a financial crisis or other protracted stress period) in two ways. First, it requires covered BHCs that rely on eligible external LTD that is vulnerable to such a run-off period (because it has a remaining maturity of less than two years) to maintain additional loss-absorbing capacity. Second, it incentivizes covered BHCs to reduce or eliminate their reliance on loss-absorbing capacity with a remaining maturity of less than two years, since by doing so they avoid being required to issue additional eligible external LTD in order to account for the haircut. A covered BHC could reduce its reliance on eligible external LTD with a remaining maturity of less than two years by staggering its issuance, by issuing eligible external LTD with a relatively long initial maturity, or by redeeming and replacing eligible external LTD once its remaining maturity falls below two years.

The proposal also provides similar treatment for eligible external LTD that could become subject to a ''put'' right—that is, a right of the holder to require the issuer to redeem the debt on demand—prior to reaching its stated maturity. Such an instrument would be treated as if it were going to mature on the day on which it first became subject to the put right, since on that day the creditor would be capable of demanding payment and thereby subtracting the value of the instrument from the covered BHC's loss-absorbing capacity.[57]

Question 19: The Board invites comment on whether the proposed treatment of eligible external LTD with a remaining maturity of less than two years is appropriate. How would a different remaining maturity requirement or amortization schedule better achieve the objectives of the proposal?

Question 20: The Board invites comment on whether a specific eligible external LTD issuance schedule or similar requirement should be imposed on covered BHCs by regulation. If so, how should the requirement be structured to maximize benefits and minimize costs?

Question 21: The Board invites comment on the proposed treatment of debt instruments that could become subject to put rights in the future. Should such instruments be excluded entirely from the definition of eligible external LTD? If so, what impact would such a prohibition have on markets for senior unsecured debt of covered BHCs?

5. Governing Law

Eligible long-term debt instruments should consist only of liabilities that can be effectively used to absorb losses during the resolution of a covered BHC under the U.S. Bankruptcy Code or Title II without giving rise to material risk of successful legal challenge. To this end, eligible external LTD must be governed by U.S. law, including the U.S. Bankruptcy Code and Title II.

Question 22: The Board invites comment on the proposed governing law requirement, including whether such a requirement is necessary or appropriate. Should the proposed definition of eligible external LTD permit instruments to be governed by or subject to non-U.S. law in any respects? If so, how would that be consistent the purposes of the proposed rule?

6. Contractual Subordination

The Board considered whether to require eligible external LTD instruments to be contractually subordinated to the claims of general creditors of a covered BHC. A contractual subordination requirement could improve the market discipline imposed on a covered BHC by increasing the clarity of treatment for eligible external LTD holders relative to other creditors.

The proposal does not include a contractual subordination requirement for several reasons. First, as discussed above, the structural subordination of a covered BHC's creditors to the creditors and counterparties of the covered BHC's subsidiaries already generally ensures that the covered BHC's creditors would absorb losses ahead of the creditors of the covered BHC's subsidiaries in an SPOE resolution of the covered BHC.[58] Second, the Board is proposing to subject covered BHCs to clean holding company provisions that would limit the amount of non- TLAC instruments that could be pari passu with or junior to eligible external LTD, which will further address any concerns with covered BHCs' unsecured creditor hierarchies.

By limiting the criteria for eligible external LTD to those necessary to achieve the objectives of the proposal, the proposal seeks to retain the broadest possible market for eligible external LTD instruments. Allowing covered BHCs to retain the flexibility to satisfy the external LTD requirement with either senior or subordinated debt instruments should allow covered BHCs to comply with the requirement efficiently, to adapt to debt investors' risk preferences, and to avoid re-issuances of outstanding long-term senior debt instruments that would otherwise meet the criteria for eligible external LTD.

Question 23: Should the Board require that eligible external LTD be contractually subordinated to the general unsecured liabilities of the covered BHC.

F. Costs and Benefits

An analysis of the potential costs and benefits of the external TLAC and LTD requirements was conducted. To evaluate the costs attributable to the proposed requirements, this analysis estimated (a) the extent by which the covered BHCs' required capital and currently outstanding long-term debt fall short of the proposed requirements, (b) the increase in each U.S. GSIB's ongoing cost of funding that would result from meeting the proposed requirements, (c) the expected increase in the interest rates that the U.S. GSIBs would charge to borrowers to make up for their higher funding costs, and (d) any decline in the gross domestic product (GDP) of the United States that would result from these increased lending rates.

The following components relevant to the benefits of the proposed requirements were evaluated: (a) The probability of a financial crisis occurring in a given year, (b) the cumulative economic cost that a financial crisis would impose if it were to occur, and (c) the extent to which the proposed requirements would decrease the likelihood and cost of a financial crisis.

The analysis concluded that the estimated benefits would outweigh the estimated costs and that the proposed external TLAC and LTD requirements would yield a substantial net benefit for the U.S. economy.

[56] As discussed above, the proposed amoritization would apply only to eligible external LTD, not to eligible external TLAC. Thus, an eligible external LTD instrument that counts for only half value toward the external LTD requirement because of the 50 percent amortization provision would continue to count for full value toward the external TLAC requirement, although debt with a remaining maturity of less than one year would not count toward either requirement.

[57] The remaining maturity would be calculated from the date the put right would first be exerciseable regardless of whether the put right would only be exerciseable on that date if another event occurred (*e.g.,* a credit rating downgrade).

[58] As discussed above, in an insolvency proceeding, direct third-party claims on a parent holding company's subsidiaries would be superior to the parent holding company's equity claims on the subsidiaries.

1. Shortfall Analysis

To evaluate the U.S. GSIBs' shortfalls relative to the proposed external TLAC and LTD requirements, information was collected on the long-term debt that covered BHCs had outstanding as of year-end 2014.

Several assumptions were made for purposes of the shortfall analysis. First, to provide an accurate estimate of shortfalls relative to the proposed requirements using 2014 data, it was assumed that the covered BHCs were already compliant with the other capital requirements (including capital conservation buffers) that will be in effect as of 2019, when the proposed external TLAC and LTD requirements would begin to take effect. This assumption was necessary to ensure that the analysis would attribute to the proposed external TLAC and LTD requirements only those costs that would result from those requirements, as distinct from other requirements that the Board has imposed but that were not fully phased in as of year-end 2014. As a result of this assumption, a certain amount of ''capital catch-up'' was allocated to five of the U.S. GSIBs to bring their capital levels into alignment with the rules that will be in effect as of 2019.

Second, for purposes of this analysis, all of the U.S. GSIB debt that met the primary attributes of eligible external LTD was treated as eligible LTD, including issuance directly from the covered BHC, remaining maturity of at least one year, and the absence of derivative-linked features. Although these instruments may not meet every one of the other proposed elements of eligible external LTD, it appears that the cost of meeting any remaining elements would be relatively minor.

Under the proposal, covered BHCs would have an aggregate external LTD requirement of approximately $680 billion. This amounts to approximately 9.6 percent of aggregate risk-weighted assets and 4.9 percent of aggregate total leverage exposure for the covered BHCs. The covered BHCs' aggregate shortfall relative to the proposed external TLAC requirement was approximately $100 billion. The covered BHCs' aggregate shortfall relative to the proposed external LTD requirement was approximately $90 billion. For four of the covered BHCs, the risk-weighted assets component of the external LTD requirement was binding; for the other four covered BHCs, the supplementary leverage exposure component was binding.

The covered BHCs' overall aggregate shortfall from the two proposed requirements was approximately $120 billion, or 1.7 percent of aggregate risk-weighted assets.[59] The proposed external TLAC requirement was the binding requirement for three of the covered BHCs, while the proposed external LTD requirement was the binding requirement for the other five covered BHCs. Two of the covered BHCs had no shortfall under either requirement, while the largest overall shortfall for any covered BHC amounted to 3.2 percent of its risk-weighted assets.

2. Cost-of-Funding Analysis

The analysis also considered the effect that filling the $120 billion shortfall through the issuance of additional eligible external LTD would have on the covered BHCs' cost of funding. This analysis relied on additional information about the amounts and costs of funding of the debt that the covered BHCs and their subsidiaries currently have outstanding.

Several additional assumptions were made at this stage of the analysis. First, it was assumed that covered BHCs would fill their shortfalls by replacing existing, ineligible debt with eligible external LTD during the period prior to the effective date of the proposed requirements, rather than by expanding their balance sheets by issuing the new debt while maintaining existing liabilities outstanding. Second, it was assumed that covered BHCs would minimize the cost associated with meeting the proposed external TLAC and LTD requirements by first replacing with eligible external LTD their ''near-eligible debt''—that is, their outstanding debt that comes closest to meeting all requirements for eligible external LTD (and that therefore entails a cost of funding almost as high as that associated with eligible external LTD)—and by proceeding in this cost-minimizing fashion until the proposed requirements were met. Thus, the marginal cost of each additional dollar of eligible external LTD was assumed to be the surplus of the funding cost associated with eligible external LTD over the funding cost of the covered BHC's highest-cost remaining ineligible debt. Finally, if total near-eligible liabilities were insufficient to fill the shortfall, it was assumed that the covered BHC proceeded to replace more senior, short-term liabilities, such as deposits, with eligible external LTD.

Roughly $65 billion of the aggregate $120 billion shortfall could be filled through the issuance of eligible external LTD in the place of existing near-eligible debt, most of which takes the form of long-term bonds issued by the covered BHCs' bank subsidiaries.[60] Based on market data, it was estimated that the spread between this near-eligible debt and eligible external LTD is between 20 and 30 basis points. The remaining $55 billion shortfall could then be filled through the issuance of eligible external LTD in the place of existing deposits or other lower-cost liabilities. It was estimated that the spread between these liabilities and eligible external LTD is approximately equal to the spread between the risk-free interest rate and the eligible external LTD rate, which is estimated to be between 100 and 150 basis points.

The figures at the low ends of these ranges—20 basis points for replacing near-eligible debt and 100 basis points for replacing lower-cost liabilities such as deposits—result in an aggregate increased cost of funding for the covered BHCs of $680 million per year.

A more conservative estimate was produced using figures at the high ends of these ranges and then further adjusted them upward to reflect a potential supply effect of 30 basis points (that is, an increase in the interest rate on eligible external LTD caused by the increase in the supply of eligible external LT as a result of the proposed external LTD requirement). The aggregate shortfall in eligible LTD amounts to approximately 20 percent of the covered BHCs' current eligible LTD, implying that the covered BHCs in the aggregate would need to increase their outstanding eligible external LTD by 3 to 4 percent each year through 2022, when the proposed requirements would be fully phased in. On the basis of both internal analysis and an international survey of market participants in which Board staff participated, it is estimated that this increase in supply would increase spreads of covered BHCs'

[59] This figure is less than the sum of the separate aggregate shortfalls for the external TLAC requirement and the external LTD requirement because of substantial overlap between the two requirements (that is, because eligible external LTD would also count toward the external TLAC requirement).

[60] For purposes of this analysis, structured notes were not treated as near-eligible debt. Structured notes could be viewed as near-eligible debt, but in many cases structured notes serve different purposes than debt that was treated as near-eligible (such as plain-vanilla bonds issued by covered BHCs' bank subsidiaries). As a result, the analysis assumed that covered BHCs would not replace their outstanding structured notes with eligible external LTD. On the assumption that covered BHCs would indeed replace their outstanding structured notes with eligible external LTD, covered BHCs would be able to meet roughly $100 billion of the aggregate $120 billion shortfall by replacing near-eligible debt with eligible external LTD, which would result in a lower estimated cost impact from the proposed requirements.

eligible external LTD by approximately 30 basis points.

Using the resulting, higher figures—60 basis points for replacing near-eligible debt and 200 basis points for replacing lower-cost liabilities—resulted in an estimated aggregate increased cost of funding for the covered BHCs of approximately $1.5 billion per year.

Thus, the aggregate increased cost of funding attributable to the proposed external TLAC and LTD requirement are estimated to be in the range of $680 million to $1.5 billion annually.

3. Increased Lending Rate Analysis

To arrive at a conservative estimate of the effect of the proposed external TLAC and LTD requirements on lending rates, it was next assumed that the U.S. GSIBs would maintain their current return-on-equity levels by passing all of their increased funding costs on to borrowers, holding constant their level of lending activity. The increased lending rates that the U.S. GSIBs would charge to borrowers were calculated by dividing both the low-end and the high-end estimated cost-of-funding increases by the U.S. GSIBs' aggregate outstanding loans of roughly $3.2 trillion. Under this analysis, covered BHCs would employ an increased lending rate of 1.3 to 3.1 basis points as a result of the proposed external TLAC and LTD requirements.

4. Macroeconomic Costs Analysis

In prior assessments of the economic impact of regulations on banking organizations, increases in lending rates have been assumed to produce a drag on GDP growth. However, the very modest lending rate increases estimated above—from 1.3 to 3.1 basis points—do not rise to the level of increase that could be expected to meaningfully affect GDP. Thus, from the standpoint of the economy as a whole, it appears that the costs associated with the proposed external TLAC and LTD requirements would be minimal.

5. Macroeconomic Benefits Analysis

To estimate the benefits of the proposed requirements, the analysis built on the framework considered in a recent study titled ''An assessment of the long-term economic impact of stronger capital and liquidity requirements'' (''LEI report'').[61] The LEI report estimated that, prior to the regulatory reforms undertaken since 2009, the probability of a financial crisis occurring in a given year was between 3.5 percent and 5.2 percent and the cumulative cost was between 20 percent and 100 percent of annual economic output. Even assuming that the lower ends of these ranges are accurate, these estimates reflect the well-understood fact that financial crises impose very substantial costs on the real economy. And the disorderly failures of major financial institutions play a major role in causing and deepening financial crises, as Congress recognized in enacting section 165 of the Dodd-Frank Act.

This proposal would materially reduce the risk that the failure of a covered BHC would pose to the financial stability of the United States by enhancing the prospects for the orderly resolution of such a firm. Moreover, by ensuring that the losses caused by the failure of such a firm are borne by private-sector investors and creditors (the holders of the covered BHC's eligible external TLAC), this proposal would materially reduce the probability that a covered BHC would fail in the first place by giving the firm's shareholders and creditors stronger incentives to discipline its excessive risk-taking. Both of these reductions would promote financial stability and concomitantly materially reduce the probability that a financial crisis would occur in any given year. The proposed rule would therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial potential losses associated with a higher probability of financial crises.

Question 24: The Board invites comment on all aspects of the foregoing evaluation of costs and benefits.

III. Internal TLAC and LTD Requirements for U.S. Intermediate Holding Companies of Foreign Banking Organizations

A. Scope of Application (Section 252.160 of the Proposed Rule)

The proposed rule would apply to all ''covered IHCs.'' The term ''covered IHC'' would be defined to include any U.S. intermediate holding company that (a) is required to be formed under the Board's enhanced prudential standards rule (IHC rule) and (b) is controlled by a foreign banking organization that would be designated as a GSIB under either the Board's capital rules if it were subject to the Board's GSIB surcharge on a consolidated basis or the BCBS assessment methodology (foreign GSIB).

The purpose of these criteria is to identify those foreign banking organizations that are global systemically important banking organizations and that have substantial operations in the United States. The Board's IHC rule identifies foreign banking organizations with a substantial U.S. presence and requires them to form a single U.S. intermediate holding company over their U.S. subsidiaries.[62] Thus, the fact that a foreign banking organization is required to form a U.S. intermediate holding company is an indicator of whether its U.S. presence is substantial.

The Board's GSIB surcharge rule identifies the most systemically important banking organizations. As discussed above with respect to covered BHCs, its methodology evaluates a banking organization's systemic importance on the basis of its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. The firms that score the highest on these attributes are classified as GSIBs. While the GSIB surcharge rule itself applies only to U.S. BHCs, its methodology is equally well-suited to evaluating the systemic importance of foreign banking organizations. The Board's methodology for identifying GSIBs is aligned with that of the assessment methodology for the GSIB surcharge framework developed by the BCBS. Moreover, foreign jurisdictions collect information from banking organizations in connection with that framework that parallels the information collected by the Board for purposes of the Board's GSIB surcharge rule.

Under the proposal, a foreign banking organization that controls a U.S. intermediate holding company would be required to determine whether it is a GSIB under that BCBS assessment methodology if the foreign banking organization already prepares or reports, for any purpose, the information necessary to determine whether it is a GSIB under the BCBS assessment methodology. A foreign banking organization that determines under this requirement that it is a GSIB would be a foreign GSIB under the proposal.

A foreign banking organization that controls a U.S. intermediate holding company also would be a foreign GSIB under the proposal if the Board determines that the foreign banking organization has the characteristics of a GSIB under the BCBS assessment methodology or the Board's methodology for determining whether U.S. bank holding companies are GSIBs for purposes of the Board's capital rules,

[61] Basel Committee on Banking Supervision, ''An assessment of the long-term economic impact of stronger capital and liquidity requirements'' (August 2010), available at *http://www.bis.org/publ/bcbs173.pdf.*

[62] The IHC rule generally requires any foreign banking organization with total consolidated non-branch U.S. assets of $50 billion or more to form a single U.S. intermediate holding company over its U.S. subsidiaries. 12 CFR 252.153; 79 FR 17329 (May 27, 2014).

or if the Board determines that the U.S. intermediate holding company would itself be a GSIB under the Board's methodology. The proposal would therefore require each top-tier foreign banking organization that controls an U.S. intermediate holding company to notify the Board by January first of each year whether its home country supervisor (or other appropriate home country regulatory authority) has adopted standards consistent with the BCBS assessment methodology, whether the organization prepares or reports the indicators used by the BCBS assessment methodology, and if it does prepare or report such indicators, whether the organization has determined that it has the characteristics of a global systemically important banking organization under the BCBS assessment methodology.[63]

As with covered BHCs, the proposal's focus on GSIBs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[64] Furthermore, the use of the GSIB surcharge rule to identify foreign GSIBs as well as U.S. GSIBs (and thus to identify both covered BHCs and covered IHCs) promotes a level playing field between U.S. and foreign banking organizations.

Question 25: The Board invites comment on alternative approaches for determining the scope of application of the proposed internal TLAC and LTD requirements. Should the Board apply the proposed internal TLAC and LTD requirements to all U.S. intermediate holding companies required to be formed under the IHC rule rather than limiting it to U.S. intermediate holding companies that are controlled by foreign GSIBs?

Question 26: Is the proposed method for determining whether a foreign banking organization is a foreign GSIB—application of the relevant portion of the Board's GSIB surcharge rule to the foreign banking organization's balance sheet—an appropriate method for making that determination? Would an alternative method for identifying foreign GSIBs—such as looking to whether the foreign banking organization has been classified as a GSIB by its home supervisory authority or by the FSB—be more appropriate?

Question 27: What additional modifications, if any, would be appropriate to the definition "top-tier foreign banking organization" to sufficiently explain the types of entities that may be considered top-tier foreign banking organizations under the proposal?

B. Calibration of the Internal TLAC and LTD Requirements (Sections 252.162 and 252.164 of the Proposed Rule)

Under the internal TLAC requirement, the amount of eligible internal total loss-absorbing capacity ("eligible internal TLAC") that a covered IHC would be required to maintain outstanding would depend on whether the covered IHC (or any of its subsidiaries) is expected to enter resolution if a foreign parent entity fails, rather than being maintained as a going concern while a foreign parent entity is resolved. If the home country resolution authority for the parent foreign banking organization of the covered IHC provides a certification to the Board indicating that the authority's planned resolution strategy for the foreign banking organization does not involve the covered IHC or any subsidiary of the covered IHC entering a resolution proceeding in the United States, then the covered IHC would be considered a "non-resolution entity." [65]

Covered IHCs that are non-resolution entities would be required to maintain outstanding eligible internal TLAC in an amount not less than the greater of: (a) 16 percent of the covered IHC's total risk-weighted assets; [66] (b) for covered IHCs that are subject to the supplementary leverage ratio,[67] 6 percent of the covered IHC's total leverage exposure; and (c) 8 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.[68] All other covered IHCs would be required to maintain outstanding eligible internal TLAC in an amount not less than the greater of: (a) 18 percent of the covered IHC's total risk-weighted assets; [69] (b) 6.75 percent of the covered IHC's total leverage exposure (if applicable); and (c) 9 percent of the covered IHC's average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio.

As described below, an internal TLAC buffer would apply to all covered IHCs in addition to the applicable risk-weighted assets component of the internal TLAC requirement.

Under the internal LTD requirement, a covered IHC would be required to maintain outstanding eligible internal long-term debt instruments ("eligible internal LTD") in an amount not less than the greater of: (a) 7 percent of total risk-weighted assets; (b) 3 percent of the total leverage exposure (if applicable); and (c) 4 percent of average total consolidated assets, as computed for purposes of the U.S. tier 1 leverage ratio. Covered IHCs would be prohibited from redeeming eligible internal LTD prior to its stated maturity date without obtaining prior approval from the Board where such redemption would cause the covered IHC's eligible internal LTD to fall below its internal LTD requirement.

The rationale for the proposed internal TLAC and LTD requirements is generally parallel to the rationale for the proposed external TLAC and LTD requirements, which is discussed above. Covered IHCs, other than those that are non-resolution entities, would be subject to an internal TLAC requirement with a risk-weighted assets component identical to the risk-weighted assets component of the proposed external TLAC requirement. They would be subject to a supplementary leverage ratio component (if applicable) that is lower than the supplementary leverage ratio component of the proposed

[63] Under the proposal, these notice and determination requirements would apply to the "top-tier foreign banking organization." The proposal defines top-tier foreign banking organization, with respect to a foreign bank, as the top-tier entity that controls the foreign bank (if any) unless the Board specifies a subsidiary of such entity as the "top-tier foreign banking organization." Thus, the definition would include the top-tier entity that controls a foreign bank, which would be the foreign bank if no entity controls the foreign bank, or the entity specified by the Board that is a subsidiary of the top-tier entity.

[64] 12 U.S.C. 5365(a)(1)(B).

[65] If the home country resolution authority for the foreign banking organization that controls the covered IHC subsequently indicates that its planned resolution strategy for the foreign banking organization does involve the covered IHC or its subsidiaries being separately resolved in the United States, the covered IHC would cease to be a non-resolution entity one year after the Board provides the covered IHC with notice of the change.

[66] The risk-weighted assets component of the internal TLAC requirement would be phased in as follows: It would be equal to 14 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

[67] Under the IHC rule, U.S. intermediate holding companies with total consolidated assets of $250 billion or more or on-balance sheet foreign exposure equal to $10 billion or more are required to meet a minimum supplementary leverage ratio of 3 percent. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014).

[68] The final rule imposes the same leverage capital requirements on U.S. intermediate holding companies as it does on U.S. bank holding companies. 12 CFR 252.153(e)(2); 79 FR 17329 (March 27, 2014). These leverage capital requirements include the generally-applicable leverage ratio and the supplementary leverage ratio for U.S. intermediate holding companies that meet the scope of application for that ratio.

[69] The risk-weighted assets component of the internal TLAC requirement for covered IHCs of MPOE firms would be phased in as follows: It would be equal to 16 percent of the covered IHC's risk-weighted assets beginning on January 1, 2019, and would be equal to 18 percent of the covered IHC's risk-weighted assets beginning on January 1, 2022.

external TLAC requirement in recognition of the fact that covered IHCs are not U.S. GSIBs and so would not be subject to the enhanced supplementary leverage ratio that applies to U.S. GSIBs. Finally, because some covered IHCs may not be subject to the supplementary leverage ratio, a third component based on the U.S. tier 1 leverage ratio was added to the internal LTD requirement. The proposed calibration of this component is consistent with the proposed calibration of the supplementary leverage ratio component.[70]

Covered IHCs that are non-resolution entities would be subject to a slightly lower internal TLAC requirement. Most foreign GSIBs are expected to be resolved by their home jurisdiction resolution authorities through an SPOE resolution and are therefore expected to be non-resolution entities under the proposal. Were such an SPOE resolution to succeed, the covered IHC would avoid entering resolution and would continue as a going concern, with its eligible internal TLAC and eligible internal LTD used to pass up the covered IHC's going-concern losses to the parent foreign GSIB, to the extent necessary. However, the Board also recognizes the need to plan for the contingency in which the covered IHC enters a U.S. resolution proceeding. The proposed calibration for such a covered IHC is based on the desirability of providing support for the preferred SPOE resolution of the foreign GSIB, which requires that the foreign GSIB be allowed to have some internal loss-absorbing capacity at the parent level that can be freely allocated to whichever subsidiaries have incurred the greatest losses (including non-U.S. subsidiaries), balanced with the need to ensure that sufficient loss-absorbing capacity is prepositioned with the covered IHC to ensure that it can be kept operating as a going concern or subjected to an orderly resolution in the United States if the foreign GSIB is not subjected to an SPOE resolution.

By contrast, covered IHCs that are not designated as non-resolution entities are more analogous to covered BHCs, which are themselves resolution entities. For these covered IHCs, there is no need to apply a diminished eligible internal TLAC requirement in order to support an SPOE resolution of the parent foreign GSIB. These covered IHCs would therefore be subject to eligible internal TLAC requirements in line with the eligible external TLAC requirements that would apply to covered BHCs, as discussed above.

The proposed internal LTD requirements are based on the capital refill framework discussed above with respect to the proposed external LTD requirements. Because covered IHCs are not U.S. GSIBs and are therefore not subject to a GSIB surcharge or to the enhanced supplementary leverage ratio, a covered IHC is subject to a common equity tier 1 capital level of 7 percent of risk-weighted assets (4.5 percent plus a 2.5 percent capital conservation buffer) and, if the supplementary leverage ratio applies to the covered IHC, to a tier 1 capital supplementary leverage ratio requirement of 3 percent of total leverage exposure. Because some covered IHCs may not be subject to the supplementary leverage ratio, a third component based on the U.S. tier 1 leverage ratio was added to the internal LTD requirement. The applicable requirement under that leverage ratio is 4 percent of on-balance sheet assets. The calibration of the proposed internal LTD requirements derives from the application of the capital refill framework described above to these requirements.

Question 28: The Board invites comment on all aspects of the proposed calibration of the internal TLAC and LTD requirements, including any impact on the internal funding structures of the covered IHC's parent foreign bank.

Question 29: The Board invites comment on its proposed method for identifying covered IHCs that are non-resolution entities.

Question 30: The Board invites comment on whether, instead of being subject to differing internal TLAC requirements on the basis of whether or not they are non-resolution entities, all covered IHCs should be subject to either the lower proposed internal TLAC requirement or to the higher proposed internal TLAC requirement.

Question 31: The Board invites comment on whether to eliminate the proposed internal TLAC requirement and subject covered IHCs to the proposed internal LTD requirement only.

C. Core Features of Eligible Internal TLAC (Section 252.164 of the Proposed Rule)

The definition of eligible internal TLAC is similar to the definition of eligible external TLAC. A covered IHC's eligible internal TLAC would be defined to be the sum of (a) the tier 1 regulatory capital (common equity tier 1 capital and additional tier 1 capital) issued from the covered IHC to a foreign entity that directly or indirectly controls the covered IHC (''foreign parent entity'') and (b) the covered IHC's eligible internal LTD, as defined below.[71] Similar to the definition of eligible external TLAC, tier 2 capital that meets the definition of eligible internal LTD would count toward the internal TLAC requirement.

The rationale for the requirement that regulatory capital be issued directly by the covered IHC, rather than by a subsidiary of the IHC, in order to count as eligible internal TLAC is identical to the rationale for the analogous requirement for eligible external TLAC: To ensure that the required quantity of loss-absorbing capacity will be available to absorb losses incurred anywhere by any subsidiary of the IHC. Regulatory capital that is issued by one subsidiary of the covered IHC would not necessarily be available to absorb losses incurred by another subsidiary.

Regulatory capital must meet one additional requirements in order to count as eligible internal TLAC: It must be issued to a foreign parent entity of the covered IHC. The requirement of issuance to a foreign parent, rather than to a U.S. affiliate or to third parties, would ensure that losses incurred by the U.S. intermediate holding company of a foreign GSIB would be upstreamed to a foreign parent rather than being transferred to other U.S. entities. This requirement would minimize the risk that such losses pose to the financial stability of the United States, regardless of whether the covered IHC enters a resolution proceeding.

The requirement of issuance to a foreign parent that controls the covered IHC, rather than to another foreign entity within the foreign GSIB or to a third party, would prevent the conversion of eligible internal TLAC into equity from effecting a change in

[70] Generally, a bank holding company is subject to a 4 percent on-balance sheet leverage ratio requirement and a 3 percent supplementary leverage ratio requirement (if the supplementary leverage ratio applies to the bank holding company). The proposed calibration of the on-balance sheet leverage ratio component of the proposed internal TLAC requirement, 8 percent, is twice the 4 percent requirement because the proposed calibration of the supplementary leverage ratio requirement, 6 percent, is twice the 3 percent requirement. The aim was to ensure that covered IHCs that are not subject to the supplementary leverage ratio would be subject to a roughly analogous component under the internal TLAC requirement.

[71] Although eligible internal LTD with a remaining maturity between one and two years would be subject to a 50 percent haircut for purposes of the internal LTD requirement, such eligible internal LTD would continue to count at full value for purposes of the internal TLAC requirement. As discussed below, eligible internal LTD with a remaining maturity of less than one year would not count toward either the internal TLAC requirement or the internal LTD requirement.

control over the covered IHC. A change in control could create additional and undesirable regulatory and management complexity during a failure scenario and would severely disrupt an SPOE resolution strategy.

Question 32: The Board invites comment on all aspects of the proposed definition of eligible internal TLAC.

Question 33: Should eligible internal LTD with a remaining maturity between one and two years be subject to a 50 percent haircut for purposes of the internal TLAC requirement, by analogy to the treatment of such eligible internal LTD for purposes of the internal LTD requirement?

D. Internal TLAC Buffer

An internal TLAC buffer would apply in addition to the risk-weighted assets component of the internal TLAC requirement. The internal TLAC buffer would be generally analogous to the proposed external TLAC buffer described above, although the internal TLAC buffer would not include a GSIB surcharge component because covered IHCs are not subject to the GSIB surcharge rule. A covered IHC's internal TLAC buffer would thus be equal to the sum of 2.5 percent plus any applicable countercyclical capital buffer.

The internal TLAC buffer would be required to be filled solely with common equity tier 1 capital, and a covered IHC's breach of its internal TLAC buffer would subject it to limits on capital distributions and discretionary bonus payments in accordance with Table 2. Thus, the internal TLAC buffer would be analogous to the capital conservation buffer applicable under the Board's Regulation Q, except that it would apply in addition to the internal TLAC requirement rather than in addition to minimum risk-based capital requirements under Regulation Q.

As discussed above with respect to the external TLAC buffer, a covered IHC that already meets the applicable capital requirements and the existing capital conservation buffer would not need to increase its common equity tier 1 capital to meet its internal TLAC requirement and its internal TLAC buffer.

TABLE 2—CALCULATION OF MAXIMUM INTERNAL TLAC PAYOUT AMOUNT

Internal TLAC buffer level	Maximum internal TLAC payout ratio (as a percentage of eligible retained income)
Greater than the internal TLAC buffer	No payout ratio limitation applies.
Less than or equal to the internal TLAC buffer, *and* greater than 75 percent of the internal TLAC buffer.	60 percent.
Less than or equal to 75 percent of the internal TLAC buffer, *and* greater than 50 percent of the internal TLAC buffer.	40 percent.
Less than or equal to 50 percent of the internal TLAC buffer, *and* greater than 25 percent of the internal TLAC buffer.	20 percent.
Less than or equal to 25 percent of the internal TLAC buffer	0 percent.

E. Core Features of Eligible Internal LTD (Section 252.161 of the Proposed Rule)

A covered IHC's eligible internal LTD would generally be subject to the same requirements as would apply to eligible external LTD: It would be required to be debt that is paid in and issued directly from the covered IHC, is unsecured, has a maturity of greater than one year from the date of issuance, is ''plain vanilla,'' and is governed by U.S. law. Eligible internal LTD with a remaining maturity of between one and two years would be subject to a 50 percent haircut for purposes of the internal LTD requirement, and eligible internal LTD with a remaining maturity of less than one year would not count toward the internal LTD requirement. The proposal would treat an instrument that could become subject to a put right in the future as if the first day on which the put right could be exercised were the instrument's stated maturity date. The rationales for these proposed provisions are generally the same as the rationales for the identical provisions in the context of eligible external LTD, which are discussed above.[72]

However, several additional requirements would apply to eligible internal LTD. Eligible internal LTD would be required to be issued to a foreign parent entity of the covered IHC, to be contractually subordinated to all third-party liabilities of the covered IHC, and to include a contractual trigger pursuant to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into tier 1 common equity on a going-concern basis under certain specified conditions.

Question 34: The Board invites comment on the appropriateness of subjecting eligible internal LTD to the same requirements as apply to eligible external LTD.

Question 35: The Board invites comment on the requirement that eligible internal LTD instruments be governed by U.S. law. Is this requirement adequate to ensure that losses can be imposed on such instruments under the U.S. Bankruptcy Code or Title II without undue legal risk? Are additional requirements appropriate? In particular, would a requirement that such instruments be subject to the contract law of one or more States be appropriate? Is it appropriate to permit such instruments to be governed by non-U.S. laws in any respects?

1. Issuance to a Foreign Parent Entity That Controls the Covered IHC

Eligible internal LTD would be required to be paid in and issued to a foreign parent entity that controls the covered IHC. The rationale for this requirement is the same as the rationale for the identical requirement with respect to regulatory capital that counts as eligible internal TLAC, which is discussed above.

Question 36: The Board invites comment on all aspects of the requirement that eligible internal LTD be issued to a foreign parent entity that controls the covered IHC. In particular, the Board invites comment with respect to whether covered IHCs that are expected to enter resolution themselves in a failure scenario should be permitted to issue eligible internal LTD to third parties, as covered BHCs would. Should internal LTD be required to be issued to the top-tier foreign parent of the covered IHC?

2. Contractual Subordination

Eligible internal LTD would be required to be contractually

[72] In addition, the proposal requires that eligible internal LTD be governed by U.S. law in order to clarify that the conversion, exchange, and cancellation provisions of these instruments, which would be held by foreign companies, are enforceable under U.S. law.

subordinated to all third-party liabilities of the covered IHC, with the exception of liabilities that are related to eligible internal TLAC. The exception for liabilities that are related to eligible internal TLAC applies to instruments that were eligible internal TLAC when issued and have ceased to be eligible solely because their remaining maturity is less than one year, because they have become subject to a put right, or because they could become subject to a put right within one year, as well as to payables (such as dividend- or interest-related payables) that are associated with such liabilities.

The proposed contractual subordination requirement would ensure that the foreign parent generally would absorb the covered IHC's losses ahead of the third-party creditors and counterparties of the covered IHC and its subsidiaries. Such a requirement should reduce the risk of third-party challenges to the recapitalization of the covered IHC and reduce the risk that a change in control could result from the recapitalization of the covered IHC. Both legal challenges to the recapitalization and a change in control over the covered IHC could create obstacles to an orderly resolution.

This requirement is more stringent than the requirements for eligible external LTD, which is allowed to be senior unsecured debt and to be senior to a limited amount of a capped amount of liabilities of the covered BHC that do not count as eligible external LTD. The Board is proposing to apply this more stringent requirement to eligible internal LTD because the costs of doing so are likely to be less than the costs of imposing an identical requirement on eligible external LTD and are likely to be outweighed by the benefits described above. In particular, the cost of imposing this contractual subordination requirement on covered IHCs should be substantially lower than the cost of imposing the same requirement on covered BHCs because a covered BHC must issue its long-term debt to third-party market participants, some of which do not invest in contractually subordinated debt instruments, whereas a covered IHC would issue its long-term debt to a parent entity in an internal transaction.[73]

Question 37: The Board invites comment on the appropriateness of the proposed contractual subordination requirement for eligible internal LTD.

3. Contractual Conversion Trigger

Eligible internal LTD would be required to include a contractual trigger pursuant to which the Board could require the covered IHC to cancel the eligible internal LTD or convert or exchange it into tier 1 common equity on a going-concern basis (that is, without the covered IHC's entry into a resolution proceeding) if: (a) the Board determines that the covered IHC is ''in default or in danger of default''; [74] and (b) any of the following circumstances apply (i) the top-tier foreign banking organization or any subsidiary outside of the United States is placed into resolution proceedings, (ii) the home country supervisory authority consents to the cancellation, exchange, or conversion, or does not object to the cancellation, exchange, or conversion following 48 hours' notice, or (iii) the Board has made a written recommendation to the Secretary of the Treasury that the FDIC should be appointed as receiver of the covered IHC under Title II.[75] The terms in the debt instrument would have to be approved by the Board.

The principal purpose of this requirement is to ensure that losses incurred by the covered IHC are shifted to a foreign parent without the covered IHC's having to enter a resolution proceeding. If the covered IHC's eligible internal LTD is sufficient to recapitalize the covered IHC in light of the losses that the covered IHC has incurred, this goal could be achieved through conversion of the eligible internal LTD into equity upon the occurrence of the trigger conditions. The covered IHC's entry into a resolution proceeding could pose a risk to the financial stability of the United States, and so avoiding the need for such a resolution proceeding would advance the Dodd-Frank Act's goal of ''mitigat[ing] risks to the financial stability of the United States that could arise from the material financial distress'' of the covered IHC.[76]

The proposed trigger conditions represent a compromise between the interests of home and host regulators. From the perspective of a host regulator, it is desirable to have the power to impose losses on eligible internal LTD quickly and easily upon a determination that the hosted subsidiary is in danger of default, in order to remove those losses from the host jurisdiction's financial system and thereby promote financial stability in the host jurisdiction. The proposed trigger conditions advance this interest by giving the Board the power to do so upon a determination that the covered IHC is in danger of default where the home jurisdiction supervisory authority either consents or fails to object within 48 hours or where the home jurisdiction resolution authority has placed the parent foreign banking organization into resolution proceedings. At the same time, from the perspective of a home regulator, it is desirable that host regulators not impose losses on the top-tier parent entity except where doing so is appropriate to prevent the failure of the hosted subsidiary, since doing so drains loss-absorbing capacity from the top-tier parent entity that may be needed to support other subsidiaries in the home jurisdiction or in another host jurisdiction. The proposed trigger conditions advance this interest by giving the home jurisdiction supervisory authority the right to object to the triggering decision within 48 hours, except where the home jurisdiction resolution authority has placed the parent foreign banking entity into resolution proceedings. The United States is home to numerous U.S. GSIBs and also hosts substantial operations of numerous foreign GSIBs, making both considerations relevant to U.S. interests. U.S. financial regulatory agencies are discussing the application of similar standards by foreign regulatory authorities in jurisdictions that host the operations of U.S. GSIBs.

Question 38: The Board invites comment on all aspects of the contractual conversion trigger requirement, including the appropriateness of the requirement for foreign GSIBs with SPOE and MPOE resolution strategies, whether an alternative to the ''in default or in danger of default'' standard would be more appropriate, and any legal risks associated with the Board's conversion of eligible internal LTD into equity in order to recapitalize the covered IHC.

[73] While the Board does not propose to subject covered BHCs to this contractual subordination requirement, it does propose to impose a cap on the value of a covered BHC's non-eligible external LTD-related liabilities that can be pari passu with or junior to its eligible long-term debt. This aspect of the proposal is discussed below.

[74] The phrase ''in default or in danger of default'' would be defined consistently with the standard provided by section 203(c)(4) of Title II of the Dodd-Frank Act. *See* 12 U.S.C. 5383. Consistent with section 203's definition of the phrase, a covered IHC would be considered to be in default or in danger of default upon a determination by the Board that (A) a case has been, or likely will promptly be, commenced with respect to the [covered IHC] under the U.S. Bankruptcy Code; (B) the covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion; (C) the assets of the [covered IHC] are, or are likely to be, less than its obligations to creditors and others; or (D) the [covered IHC] is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

[75] *See* 12 U.S.C. 5383.

[76] 12 U.S.C. 5365(a)(1).

Question 39: The Board invites comment on its proposed method to identify the home jurisdiction supervisory authority of a foreign GSIB for purposes of issuing an internal debt conversion order.

Question 40: The Board invites comment on whether the conversion condition that refers to the placement of a foreign banking organization that controls the covered IHC or any subsidiary of the top-tier-foreign banking organization being placed into resolution in its home country is appropriate in scope.

IV. Clean Holding Company Requirements (sections 252.64 and 252.165 of the proposed rule)

To further facilitate the resolution of a covered BHC, a covered IHC, or a foreign parent entity of a covered IHC, the Board proposes to prohibit both covered BHCs and covered IHCs (together, ''covered holding companies'') from engaging in certain classes of transactions that could pose an obstacle to the orderly SPOE resolution of a covered holding company or increase the risk that financial market contagion would result from the resolution of a covered holding company.

In particular, the Board proposes to prohibit covered holding companies from having outstanding liabilities in the following categories: Third-party debt instruments with an original maturity of less than one year, including deposits (''short-term debt''); qualified financial contracts with a third party (''third-party QFCs''); guarantees of a subsidiary's liabilities if the covered holding company's insolvency or entry into a resolution proceeding would create default rights for a counterparty of the subsidiary; and liabilities that are guaranteed by a subsidiary of the covered holding company (''upstream guarantees'') or are subject to rights that would allow a third party to offset its debt to a subsidiary upon the covered holding company's default on an obligation owed to the third party.

Additionally, the Board proposes to cap the total value of each covered BHC's non-TLAC-related third-party liabilities that are either pari passu with or subordinated to any eligible external TLAC to 5 percent of the value of the covered BHC's eligible external TLAC. (As discussed above, the Board proposes to prohibit covered IHCs from having any non-TLAC-related third-party liabilities that are pari passu with or subordinated to eligible internal LTD by requiring that eligible internal LTD be contractually subordinated to all third-party debt claims. Therefore, the proposed cap is not relevant to covered IHCs.)

The proposed prohibitions and cap would apply only to the corporate practices and liabilities of the covered holding company itself. They would not directly restrict the corporate practices and liabilities of the subsidiaries of the covered holding company.

These proposed clean holding company provisions would advance three related goals of SPOE resolution. First, a successful SPOE resolution proceeding requires the ability to impose losses on the creditors of the covered holding company without causing material disruption to the financial system. The proposed clean holding company restrictions would advance this goal by minimizing the risk of short-term funding runs, asset firesales, and severe losses to other large financial firms that might otherwise be associated with an SPOE resolution of a covered holding company.

Second, the clean holding company provisions would limit the extent to which the subsidiaries of a covered holding company would experience losses as a result of the failure of the covered holding company. In particular, the prohibition on holding company liabilities that are subject to upstream guarantees or offset rights would prevent a failed covered holding company's creditors from passing their losses on to the covered holding company's subsidiaries. This would serve SPOE resolution's goal of ensuring that the failed holding company's operating subsidiaries are able to continue their normal operations throughout the resolution of the failed holding company by protecting those subsidiaries from losses that might threaten their viability.

Third, SPOE resolution seeks to achieve the rapid recapitalization of the material subsidiaries of a covered holding company with minimal interruption to the ordinary operations of those subsidiaries. An entity's complexity can pose a major obstacle to rapid and orderly resolution. Limitations on the types of transactions that a covered holding company may enter into serve to limit its legal and operational complexity and thereby facilitate a prompt resolution and recapitalization with minimal uncertainty and delay.

The proposed clean holding company provisions would also enhance the overall resiliency of covered holding companies by removing complexity from their balance sheets and limiting their reliance on short-term funding.

A. Third-Party Short-Term Debt Instruments (Sections 252.64(a)(1) and 252.165(a) of the Proposed Rule)

The Board proposes to prohibit covered holding companies from issuing debt instruments with an original maturity of less than one year to a third party (as opposed to an affiliate of the covered holding company). Such a liability would be considered to have an original maturity of less than one year if it would provide the creditor with the option to receive repayment within one year of the creation of the liability, or if it would create such an option or an automatic obligation to pay upon the occurrence of an event that could occur within one year of the creation of the liability (other than an event related to the covered holding company's insolvency). The proposed prohibition would also cover short-term and demand deposits at the covered holding company.[77]

One objective of SPOE resolution is to mitigate the risk of destabilizing funding runs. A funding run occurs when the short-term creditors of a financial company observe stress at that institution and seek to minimize their exposures to it by refusing to roll over its debts. The resulting liquidity stress can hasten the company's failure, including by forcing it to engage in asset firesales to come up with the liquidity to pay the short-term creditors. Because they reduce the value of similar assets held by other firms, asset firesales are a key channel for the propagation of stress throughout the financial system. The short-term creditors of a failing GSIB may also run on other counterparties that are similar to the failing firm in certain respects, weakening those firms and forcing further firesales. And depositors, who generally have the ability to demand their funds on short notice, present analogous issues.

The Board's proposal seeks to mitigate these risks in two complementary ways. First, although the operating subsidiaries of covered holding companies rely on short-term funding, in an SPOE resolution, their short-term creditors would not bear losses incurred by the subsidiaries because those losses would instead be borne by the external TLAC holders of the covered holding company. To the extent that market participants view SPOE resolution as workable, the subsidiaries' short-term creditors should have reduced incentives to run because their direct counterparty will not default in such a resolution. Second, the covered holding

[77] For purposes of the proposal, deposits would include those that are captured in line item 11 of schedule PC of FR Y–9LP.

companies themselves—which would (or, in the case of a covered IHC, might) enter into resolution and default on certain of their debts in a failure scenario—would be prohibited from relying on short-term funding, reducing the run risk associated with the failure of such an entity. This is a particularly important objective in light of the likely liquidity needs of a GSIB during SPOE resolution, because a short-term funding run on a covered holding company would drain liquidity that might be needed to support the group's operating subsidiaries.

The proposed prohibition applies to both secured and unsecured short-term borrowings. Although secured creditors are less likely to take losses in resolution than unsecured creditors, secured creditors may nonetheless be unwilling to maintain their exposures to a covered holding company that comes under stress. In particular, if the covered holding company were to enter into a resolution proceeding, the collateral used to secure the debt would be subject to a stay, preventing the creditor from liquidating it immediately. (Qualified financial contracts, which are not subject to a stay under the U.S. Bankruptcy Code but which present other potential difficulties for SPOE resolution, are discussed below.) The creditor would therefore face two risks: The risk that the value of the collateral would decline before it could be liquidated and the liquidity risk attributable to the fact that the creditor would be stayed from liquidating the collateral for some time. Knowing this, secured short-term creditors may well decide to withdraw funding from a covered holding company that comes under stress.

Additionally, many short-term lenders to GSIBs are themselves maturity-transforming financial firms that are vulnerable to runs (for instance, money market mutual funds). If such firms incur losses, then they may be unable to meet their obligations to their own investors and counterparties, which would cause further losses throughout the financial system. Because SPOE resolution relies on imposing losses on the covered holding company's creditors while protecting the creditors and counterparties of its material operating subsidiaries, it is desirable that the holding company's creditors be limited to those entities that can be exposed to losses without materially affecting financial stability. This proposal seeks to further enhance the credibility of the SPOE approach by removing undue complexity from the resolution of a covered holding company.

Finally, the proposed prohibition on short-term debt instruments would promote the resiliency of covered holding companies as well as their resolvability. As discussed above, reliance on short-term funding creates the risk of a short-term funding run that could destabilize the covered holding company by draining its liquidity and forcing it to engage in capital-depleting asset firesales. The increase in covered holding company resiliency yielded by the proposed prohibition provides a secondary justification for the proposal.

Question 41: The Board invites comment on whether the proposed prohibition would advance SPOE resolution by helping to minimize the run risk and potential negative externalities associated with issuance of short-term debt by covered holding companies. In particular, the Board invites comment on the appropriate scope of the proposed prohibition and whether the prohibition is sufficiently clear.

Question 42: The Board invites comment on whether the purpose of the proposed prohibition would be served by a further requirement that covered holding companies not redeem or buy back their liabilities without prior regulatory approval, to prevent covered holding companies from doing so to preserve their franchise in response to creditor requests, which could hasten a failure by draining liquidity or requiring asset firesales.

Question 43: The Board invites comment on the appropriate treatment of pre-existing notes that would require redemption or create a put right upon the occurrence of an event that could (but might not) occur within one year of issuance.

B. Qualified Financial Contracts with Third Parties (Sections 252.64(a)(3) and 252.165(c) of the Proposed Rule)

Under the proposal, covered BHCs could only enter into qualified financial contracts (QFCs) with their subsidiaries and covered IHCs could only enter into QFCs with their affiliates. The proposal defines QFCs by reference to Title II of the Dodd-Frank Act, which defines QFCs to include securities contracts, commodities contracts, forward contracts, repurchase agreements, and swap agreements.[78]

The failure of a large financial organization that is a party to a material amount of third-party QFCs could pose a substantial risk to the stability of the financial system. Specifically, it is likely that many of that institution's QFC counterparties would respond to the institution's default by immediately liquidating their collateral and seeking replacement trades with other dealers, which could cause firesale effects and propagate financial stress to other firms that hold similar assets by depressing asset prices.

The proposed restriction on third-party QFCs would mitigate this threat to financial stability by two means. First, covered holding companies' operating subsidiaries, which are parties to large quantities of QFCs, should remain solvent and not fail to meet any ordinary course payment or delivery obligations during a successful SPOE resolution. Therefore, assuming that the cross-default provisions of the QFCs engaged in by the operating subsidiaries of covered holding companies are appropriately structured, their QFC counterparties generally would have no contractual right to terminate or liquidate collateral on the basis of the covered holding company's entry into resolution proceedings.[79] Second, the covered holding companies themselves would have no QFCs with external counterparties, and so their entry into resolution proceedings would not result in QFC terminations and related firesales. The proposed restriction on third-party QFCs would therefore materially diminish the firesale risk and contagion effects associated with the failure of a covered holding company.

Question 44: The Board invites comment with respect to whether the prohibition on third-party QFCs should be subject to an exception for derivatives contracts that are intended to hedge the exposures of the covered holding company and, if so, the appropriate scope of any such exception. The Board also invites comment on whether the definition of ''qualified financial contracts'' provides an appropriate scope for this prohibition and, in particular, whether the scope should be narrowed to permit covered holding companies to enter into certain third-party QFCs or broadened to prohibit additional classes of transactions.

Question 45: The Board invites comment on the appropriate treatment of pre-existing third-party QFCs, some of which may be long-dated. Should some or all pre-existing third-party QFCs be included in the proposed restriction? Commenters are invited to provide information on the characteristics of existing third-party QFCs to which a covered holding company is a party.

[78] 12 U.S.C. 5390(c)(8)(D).

[79] *See* International Swaps and Derivatives Association's (''ISDA'') 2014 Resolution Stay Protocol (November 4, 2014).

C. Guarantees that Are Subject to Cross-Defaults (Sections 252.64(a)(4) and 252.165(d) of the Proposed Rule)

The proposal would prohibit a covered holding company from guaranteeing (including by providing credit support) with respect to any liability between a direct or indirect subsidiary of the covered holding company and an external counterparty if the covered holding company's insolvency or entry into resolution (other than resolution under Title II of the Dodd-Frank Act) would directly or indirectly provide the subsidiary's counterparty with a default right.[80] Guarantees by covered holding companies of liabilities that are not subject to such cross-default rights would be unaffected by the proposal.

The proposed prohibition would advance the key SPOE resolution goal of ensuring that a covered holding company's subsidiaries would continue to operate normally upon the covered holding company's entry into resolution. This goal would be jeopardized if the covered holding company's entry into resolution or insolvency operated as a default by the subsidiary and empowered the subsidiary's counterparties to take default-related actions, such as ceasing to perform under the contract or liquidating collateral. Were the counterparty to take such actions, the subsidiary could face liquidity, reputational, or other stress that could undermine its ability to continue operating normally, for instance by prompting a short-term funding run on the subsidiary. The proposed prohibition would be a complement to other work that has been done or is underway to facilitate SPOE resolution through the stay of cross-defaults, including the ISDA 2014 Resolution Stay Protocol.[81]

Question 46: The Board invites comment on the appropriate definition of ''default right'' in the proposed regulations, and on whether the definition of this term should specifically exclude contracts that provide for termination on demand. The Board also invites comment on whether, for the purposes of this proposal, contractual provisions that require the parties to negotiate new terms (*e.g., Annex III (Term Loans) of the Global Master Securities Lending Agreement) should be treated the same as a right to terminate on demand.*

Question 47: The Board invites comment on whether a covered holding company should be permitted to guarantee the liabilities of its subsidiaries if such liabilities permit a person to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause. Should a covered holding company be permitted to guarantee any particular class or classes of liabilities of its subsidiaries that include such provisions?

Question 48: The Board invites comment on whether a covered IHC should be permitted to guarantee liabilities of affiliates of the covered IHC that are not subsidiaries of the *covered IHC, and whether any prohibition should distinguish between the foreign banking organization's non-U.S. operations and its U.S. branches and agencies.*

Question 49: The Board invites comment on whether additional limitations or exceptions for guarantees by covered holding companies are necessary or appropriate.

D. Upstream Guarantees and Offset Rights (Sections 252.64(a)(2), (5) and 252.165(b)(e) of the Proposed Rule)

The Board proposes to prohibit covered holding companies from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary of the holding company. SPOE resolution relies on imposing all losses incurred by the group on the covered holding company's eligible external TLAC holders while ensuring that its operating subsidiaries continue to operate normally. This arrangement could be undermined if a liability of the covered holding company is subject to an upstream guarantee, because the effect of such a guarantee is to subject the guaranteeing subsidiary (and, ultimately, its creditors) to the losses that would otherwise be imposed on the holding company's creditors. A prohibition on upstream guarantees would facilitate the SPOE resolution strategy by increasing the certainty that the covered holding company's eligible external TLAC holders will be exposed to loss ahead of the creditors of its subsidiaries.

Upstream guarantees do not appear to be common among covered holding companies. Section 23A of the Federal Reserve Act already limits the ability of a U.S. insured depository institution to issue guarantees on behalf of its parent holding company.[82] The principal effect of the proposed prohibition would therefore be to prevent the future issuance of such guarantees by material non-bank subsidiaries.

For analogous reasons, the Board also proposes to prohibit covered holding companies from issuing an instrument if the holder of the instrument has a contractual right to offset its or its affiliates' liabilities to the covered holding company's subsidiaries against the covered holding company's liability under the instrument.[83] The prohibition would include all such offset rights regardless of whether the right is provided in the instrument itself. Such offset rights are another device by which losses that should flow to the covered holding company's external TLAC holders in an SPOE resolution could instead be imposed on operating subsidiaries and their creditors.

Question 50: The Board invites comment on the appropriate scope of the ''upstream guarantee'' prohibition and on whether any exceptions to the proposed prohibition on such guarantees are necessary or appropriate. The Board also invites comment on the appropriate scope of the offset rights prohibition, including whether the proposed prohibition is adequate to achieve the goals expressed above. For example, should this provision be limited to debt instruments that provide contractual offset rights? The Board invites comment with respect to whether any exceptions or limitations to the proposed restrictions on such rights, such as a limitation of the restriction to eligible external TLAC instruments, are necessary or appropriate.

Question 51: The Board invites comment on the types of instruments that provide contractual offset rights and the amount of such instruments issued by covered BHCs.

Question 52: The Board invites comment on whether arrangements other than upstream guarantees and offset rights could also have the effect of forcing the creditors of material operating subsidiaries to take losses before holding company creditors (for instance, a subsidiary's entry into a credit default swap referencing the debt of the covered holding company) and, if so, whether they should also be restricted by regulation. Finally, the Board invites comment on whether the prohibition should be limited to certain material operating subsidiaries rather than covering all subsidiaries of a covered holding company and, if so, the

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[80] The proposal defines the term ''default right'' broadly.

[81] *See* ISDA 2014 Resolution Stay Protocol.

[82] Transactions subject to the quantitative limits of section 23A of the Federal Reserve Act and Regulation W include guarantees issued by a bank on behalf of an affiliate. *See* 12 U.S.C. 371c(b)(7); 12 CFR 223.3(h).

[83] The prohibition for covered IHCs also would include contractual rights to offset against the covered IHC because the covered IHC itself may not enter resolution or insolvency proceedings.

appropriate scope of the limitation on the types of subsidiaries.

E. Cap on Other Third-Party Liabilities (section 252.64(b) of the proposed rule)

Finally, the Board proposes to limit the total value of certain other liabilities of covered BHCs that could create obstacles to orderly resolution to 5 percent of the value of the covered BHC's eligible external TLAC. The cap would apply to non-contingent liabilities to third parties (*i.e.,* persons that are not affiliates of the covered BHC) that would rank either pari passu with or junior to the covered BHC's eligible LTD in the priority scheme of either the U.S. Bankruptcy Code or Title II.[84] The cap would not apply to eligible external TLAC; to instruments that were eligible external TLAC when issued and have ceased to be eligible (because their remaining maturity is less than one year) as long as the holder of the instrument does not have a currently exercisable put right; or to payables (such as dividend- or interest-related payables) that are associated with such liabilities.

Because the Board proposes to require that a covered IHC's eligible internal LTD be contractually subordinated to all of the covered IHC's third-party liabilities, this proposed cap would have no relevance to those firms. The Board accordingly does not propose to apply the cap to covered IHCs.

Liabilities that would be expected to be subject to the cap include debt instruments with derivative-linked features (*i.e.,* structured notes); external vendor and operating liabilities, such as for utilities, rent, fees for services, and obligations to employees; and liabilities arising other than through a contract (*e.g.,* liabilities created by a court judgment).

The liabilities subject to the cap fall into two groups: Those that could be subjected to losses alongside eligible external TLAC without potentially undermining SPOE resolution or financial stability, and those that potentially could not.

The first group includes structured notes. The proposal defines structured notes so as to avoid capturing debt instruments that pay interest based on the performance of a single index but to otherwise capture all debt instruments that have a principal amount, redemption amount, or stated maturity, that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature.[85] Such liabilities could be subjected to losses in resolution alongside eligible external TLAC, but the proposal would cap them in light of their greater complexity relative to the plain-vanilla debt that qualifies as external TLAC. In an orderly resolution of a covered BHC, debt instruments that will be subjected to losses should be able to be valued accurately and with minimal risk of dispute. Structured notes contain features that could make their valuation uncertain, volatile, or unduly complex. Additionally, structured notes are often customer products sold to purchasers who are primarily seeking exposure to a particular asset class and not seeking credit exposure to the covered BHC, and the need to impose losses on a financial institution's customers in resolution may create obstacles to orderly resolution. The proposed cap on structured notes would promote the resolvability of covered BHCs by limiting their issuance of instruments that present these issues. The cap would not limit a covered BHC's ability to issue structured notes out of subsidiaries.

The second group includes, for example, vendor liabilities and obligations to employees. Successful resolution may require that the covered BHC continue to perform on certain of its unsecured liabilities in order to ensure that it is not cut off from vital services and resources. If these vital liabilities were pari passu with eligible external LTD, protecting these vital liabilities from loss would entail treating these liabilities differently from eligible external LTD of the same priority, which could present both operational and legal risk. The operational risk flows from the need to identify such liabilities quickly in the context of a complex resolution proceeding, reducing the covered holding company's complexity by capping the amount of these liabilities that it can have outstanding mitigates this risk. The legal risk flows from the no-creditor-worse-off principle, according to which each creditor of a firm that enters resolution is entitled to recover at least as much as it would have if the firm had simply been liquidated under chapter 7 of the U.S. Bankruptcy Code.[86] As creditors of a given priority receive special treatment (that is, as they are paid in full to ensure that the firm maintains access to vital external services and resources), the pool of resources available to other creditors of the same priority shrinks, making it more likely that those creditors will recover less than they would have in liquidation. Thus, imposing a cap on the total value of liabilities that are pari passu with or junior to eligible external TLAC but that might need to receive special treatment in resolution mitigates this no-creditor-worse-off risk.

The rationale for calibrating the proposed cap to 5 percent of a covered BHC's eligible TLAC is as follows. The Board collected data from the U.S. GSIBs and determined that covered BHCs have outstanding certain third-party operational liabilities that may rank pari passu with eligible LTD and that could not be eliminated without substantial cost and complexity. These liabilities include (among other things) tax payables, compensation payables, and accrued benefit plan obligations. For the eight current U.S. GSIBs, the value of these operating liabilities ranges from 1 percent to 4 percent of the sum of the covered BHC's equity and long-term debt, which provides a reasonable proxy for the amount of eligible external TLAC it would have under this proposal. The cap was calibrated to allow these existing operational liabilities while limiting the excessive growth of these and other liabilities at the covered BHC so that the problems discussed in the preceding paragraphs may be avoided. In particular, several covered BHCs may need to limit the value of structured notes that they have outstanding. This result would be consistent with the rationale for the clean holding company requirements because, as noted above, such structured notes are customer liabilities rather than vital operating liabilities and because their presence at the holding company could create undue complexity during resolution.

By subjecting the total value of a covered BHC's liabilities of both types to a single cap, the Board's proposal gives covered BHCs greater discretion to manage their own affairs than would a proposal that applied separate, smaller caps to the two types of liability.

Question 53: The Board invites comment on the appropriate definition of ''structured notes,'' and whether the provisions of the definition are adequate to achieve the goals expressed above. The Board invites comment on use and scope of the term ''assets'' as used in the definition of structured note, and whether a different term would be more appropriate in this context.

[84] *See* 11 U.S.C. 507; 12 U.S.C. 5390(b).

[85] In addition, the definition captures debt instruments that have more than one embedded derivative (or similar embedded feature) or are not treated as debt under generally accepted accounting principles.

[86] *See, e.g.,* 11 U.S.C. 1129(a)(7); 12 U.S.C. 5390(d)(2).

Question 54: Should liabilities subject to the proposed cap on certain third-party liabilities be netted against reserves held with respect to such liabilities for purposes of determining compliance with the proposed cap?

Question 55: The Board invites comment on the appropriate size of the proposed cap. The Board also invites comment as to the appropriate scope of the cap, including the liabilities excluded from the cap and the formulation of the proposed exemption for certain liabilities associated with eligible external TLAC.

Question 56: The Board invites comment regarding whether a grandfather of existing liabilities that would be subject to the proposed cap would be appropriate. In particular, the Board invites comment on the appropriate design of such a grandfather and the likely impact on covered BHCs and debt markets of the failure to include such a grandfather. Please support your response with data.

Question 57: The Board invites comment on the appropriate accounting treatment to be used in determining the total value of the liabilities subject to the cap, including whether and to what extent guarantees by the resolution entity of the liabilities of its subsidiaries should be subject to the cap.

Question 58: The Board invites comment on whether secured liabilities and liabilities that otherwise represent a claim that would be senior to eligible debt securities under bankruptcy proceedings or a Title II resolution should be subject to the limit on unrelated liabilities of the covered BHC.

Question 59: The Board invites comment on what, if any, additional restrictions on corporate practices or operations of covered BHCs would be appropriate.

F. Disclosure Requirements (Section 252.65 of the Proposed Rule)

The Board proposes to require each covered BHC to publicly disclose a description of the financial consequences to unsecured debtholders of the covered BHC's entry into a resolution proceeding in which the covered BHC is the only entity that would enter resolution.

Consistent with the disclosure requirements imposed by the Board's capital regulations, the covered BHC would be permitted to make this disclosure on its Web site or in more than one public financial report or other public regulatory report, provided that the covered BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.[87] Because the disclosure requirement is primarily intended to inform holders of a covered BHC's eligible external LTD that they are subject to loss ahead of other creditors of the covered BHC or its subsidiaries, the proposal would also require the covered BHC to disclose the required information in the offering documents for all of its eligible external LTD.

The Board has long supported meaningful public disclosure by banking organizations, with the objective of improving market discipline and encouraging sound risk-management practices.[88] By helping holders of eligible external LTD and other unsecured debt issued by a covered BHC to understand that they will be allowed to suffer losses in a resolution and generally will absorb losses ahead of the creditors of the covered BHC's subsidiaries, the proposed disclosure requirement should encourage potential investors to carefully assess the covered BHC's risk profile when making investment decisions. This careful assessment should lead to an improvement in the market pricing of the unsecured debt of covered BHCs, including eligible external LTD, providing supervisors and market participants with more accurate market signals about the financial condition and risk profile of the covered BHC.

Question 60: The Board invites comment on the proposed disclosure requirements, including whether additional disclosures would further advance the goals of this proposal. In particular, the Board invites comment on whether a covered BHC should be required to disclose that the public section of its most recent resolution plan is available online.

Question 61: The Board invites comment on whether the proposed methods for a covered BHC to make the required disclosures are appropriate and on whether covered BHCs should be permitted to use additional methods to make the required disclosures.

Question 62: Should the Board require covered BHCs to provide specific disclosure language that is designed to notify potential investors of the resolution-related risks of investing in unsecured debt instruments issued by covered BHCs? If so, what language would be appropriate?

[87] *See* 12 CFR 217.62(a), 12 CFR 217.172(c)(1).

[88] *See, e.g.,* 78 FR 62018, 62128–29 (October 11, 2013).

V. Consideration of Public Reporting Requirements for Eligible External and Internal TLAC and LTD

The Board intends to propose for a comment a requirement that covered BHCs and covered IHCs report publicly their amounts of eligible external TLAC and LTD and eligible internal TLAC and LTD, respectively, on a regular basis. By rendering each covered holding company's loss-absorbing capacity transparent to regulators and market participants, public reporting requirements would promote both supervision and market discipline, which could be expected to disincentivize excessive risk-taking by covered BHCs and covered IHCs and thereby mitigate risks to the financial stability of the United States.

Question 63: The Board invites comment on its plan to propose a reporting requirement for eligible external TLAC and LTD and eligible internal TLAC and LTD.

VI. Consideration of Domestic Internal TLAC Requirement

Under the SPOE resolution strategy, severe losses must be passed up from the operating subsidiaries that initially incur them to the covered holding company, and then on to the eligible external TLAC holders (in the case of a covered BHC) or the foreign parent (in the case of a covered IHC). Both steps are necessary to achieve the key goal of the SPOE resolution strategy: Allowing material operating subsidiaries to continue to operate normally by ensuring that losses that would otherwise fall on their creditors (potentially sparking contagious runs and other generators of financial instability) will instead be borne by the holders of the TLAC issued by the covered holding company. The proposed rule is intended to ensure that covered holding companies issue a sufficient amount of loss-absorbing resources to absorb such losses, but the proposed rule does not ensure that firms have in place adequate mechanisms for transferring severe losses up from their operating subsidiaries to the covered holding company—that is, domestic internal total loss-absorbing capacity (''domestic internal TLAC'').

The Board is therefore considering the costs and benefits of imposing domestic internal TLAC requirements between covered holding companies and their subsidiaries. Such requirements could complement this proposed rule and could enhance the prospects for a successful SPOE resolution of a covered BHC or of the parent foreign GSIB of a covered IHC.

The domestic internal TLAC framework that the Board is considering would require identification of covered holding companies' material operating subsidiaries (''covered subsidiaries''). The framework would then subject each covered holding company to a domestic internal TLAC requirement with respect to each of its covered subsidiaries. The size of the requirement with respect to a given covered subsidiary would depend on the subsidiary's total risk-weighted assets, its total leverage exposure, or both.[89]

Under the framework that the Board is considering, domestic internal TLAC would be divided into two categories: ''contributable resources'' and ''prepositioned resources.'' Contributable resources would be assets that are held by the covered holding company and would enable the covered holding company to make contributions to covered subsidiaries that incur severe losses, which would have the effect of recapitalizing those subsidiaries. The principal benefit of contributable resources is that they avoid the ''misallocation risk'' associated with prepositioned resources: Whereas an investment that has been prepositioned with a particular subsidiary cannot easily be used to recapitalize a different subsidiary that incurs unexpectedly high losses, contributable resources can be flexibly allocated among subsidiaries in light of the losses they suffer. The rationale for requiring that contributable resources be held by the covered holding company (rather than allowing them to be held at its subsidiaries) would be that it could help to avoid operational risks and other potential limitations on the firm's ability to move the assets to the parts of the organization that need them most.

To ensure that the contributable resources would retain sufficient value to recapitalize a subsidiary, including under conditions of severe market stress, a domestic internal TLAC framework could require that the contributable resources requirement be met entirely or substantially with assets that would qualify as high-quality liquid assets (HQLA) under the U.S. liquidity coverage ratio rule.[90] Requiring a firm's contributable resources to be made up of HQLA, rather than a broader set of high-quality assets, would have two further advantages beyond helping to ensure that the assets remain valuable during a stress period. First, the contribution of such assets to a subsidiary would provide the subsidiary with additional liquidity as well as capital. Second, some subsidiaries are subject to limitations on the kinds of assets they are permitted to hold (for example, U.S. banks generally cannot hold equities).[91] If a firm's contributable resources consist of HQLA, then these limitations should not pose an obstacle to recapitalization because the firm will be able to convert the assets into cash and then contribute the cash to its subsidiaries.

Prepositioned resources would be a covered holding company's debt and equity investments in a covered subsidiary (including investments made indirectly through lower-tier parent entities of the covered subsidiary). A covered holding company's equity investment in a subsidiary would transfer losses from the subsidiary to the holding company automatically, while a holding company's debt investment could be used to absorb losses incurred by the subsidiary through forgiveness of the debt, conversion of the debt into equity, or another economically similar procedure. To qualify as prepositioned resources, debt could be required to be unsecured, be plain vanilla, have a remaining maturity of at least one year, and be of lower priority than all third-party claims on the subsidiary. The rationale for these restrictions would be to ensure that the loss-absorbing capacity will indeed be available if and when it is needed, to reduce operational risk by eliminating unnecessary complexity, and to mitigate possible legal risk associated with insolvency law.

Question 64: The Board invites comment on all aspects of this potential domestic internal TLAC framework. In particular, the Board invites comment on whether the Board should impose domestic internal TLAC requirements on covered holding companies. If so, how should the Board regulate the following key elements: The definition of ''covered subsidiary''; the calibration of the domestic internal TLAC requirement with respect to each covered subsidiary; the division of domestic internal TLAC between ''contributable resources'' and ''prepositioned resources''; the definition of ''contributable resources,'' including whether certain non-HQLA resources should be allowed to count toward the requirement; the definition of ''prepositioned resources,'' including any minimum maturity and subordination requirements; and the legal risks associated with passing losses from a subsidiary to a holding company by means of the mechanisms described above in the context of SPOE resolution, including risks under insolvency law, as well as potential mitigants for these risks.

Question 65: The Board also seeks comment on whether, in a domestic internal TLAC framework, contributable resources and prepositioned debt should be required to be subject to a capital contribution agreement that would impose upon the covered holding company a legal obligation to recapitalize the subsidiary upon the occurrence of a trigger outside the firm's discretion (such as the current or projected insolvency of the subsidiary, or a government order), and on the appropriate design of such a trigger. Finally, the Board invites comment on whether any domestic internal TLAC framework proposed by the Board should treat foreign subsidiaries of covered holding companies differently from their domestic subsidiaries.

VII. Regulatory Capital Deduction for Investments in the Unsecured Debt of Covered BHCs

Background

The Board's regulatory capital rules (Regulation Q) impose minimum capital requirements on all state member banks, as well as on certain bank holding companies, and certain savings and loan holding companies (''Board-regulated institutions'').[92] These minimum requirements take the form of minimum ratios of various forms of regulatory capital to different measures of assets.[93] The risk-based ratios are the common equity tier 1 ratio, the tier 1 risk-based capital ratio, and the total risk-based capital ratio.[94] Regulation Q also includes a leverage ratio that measures the proportion of a Board-regulated institution's tier 1 capital to its total

[89] *See generally* 12 CFR 217.10.

[90] 79 FR 61440 (October 10, 2014).

[91] *See* 12 U.S.C. 24(7).

[92] *See* 12 CFR 217.1(c). Savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities are exempt temporarily from Regulation Q. *See* 12 CFR 217.1(c)(1)(iii); and 12 CFR 217.2, definition of ''Covered savings and loan holding company.'' In addition, any bank holding company that is subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C) is exempt from Regulation Q. *See* 12 CFR 217.1(c)(1)(ii). In addition, any savings and loan holding company that meets the requirements of the Small Bank Holding Company Policy Statement ''as if the savings and loan holding company were a bank holding company and the savings association were a bank'' is exempt from Regulation Q. *See* 12 CFR 217.1(c)(1)(iii).

At this time, the proposed capital deduction will not apply to nonbank SIFIs. Following the finalization of the regulatory capital framework applicable to one or more nonbank SIFIs, the Board would determine whether, and how, the proposed capital deduction would apply to such companies.

[93] *See* 12 CFR 217.10.

[94] *See* 12 CFR 217.10(a)(1) through (3).

assets.[95] In addition, certain internationally active Board-regulated institutions are subject to a supplementary leverage ratio, which incorporates certain off-balance sheet exposures into the measure of total assets.[96]

In calculating its capital ratios under these rules, a Board-regulated institution is required to deduct fully from regulatory capital certain assets, such as goodwill and other intangible assets.[97] Certain other assets must be deducted from regulatory capital to the extent they exceed a particular threshold, such as mortgage servicing assets and certain deferred tax assets.[98]

The regulatory capital rules include two broad categories of deductions related to investments in capital instruments. First, Regulation Q requires that a Board-regulated institution fully deduct any investment in its own regulatory capital instruments and investments in regulatory capital instruments held reciprocally with another financial institution.[99] Second, Regulation Q requires that a Board-regulated institution deduct investments in capital instruments issued by other financial institutions that would be regulatory capital if issued by the Board-regulated institution.[100] In this second case, a Board-regulated institution may be required to fully deduct the investment or may be required to deduct the investment above a particular threshold, depending on the circumstances.[101] In both cases, the Board-regulated institution is required to make the deduction from the category of regulatory capital for which the instrument qualifies or would qualify if issued by the Board-regulated institution.[102] Thus, a Board-regulated institution that purchases its own subordinated debt instrument that qualifies as tier 2 capital must deduct the debt instrument from its tier 2 capital. Similarly, a Board-regulated institution that owns less than 10 percent of the common equity of an unaffiliated bank must deduct from its common equity the amount, if any, by which the Board-regulated institution's investment exceeds 10 percent of the Board-regulated institution's common equity.

Proposed deductions from regulatory capital

To address the potential contagion stemming from the failure of a GSIB, the proposal would amend Regulation Q to require a Board-regulated institution to deduct from its regulatory capital the amount of any investment in, or exposure to, unsecured debt issued by a covered BHC. In particular, for purposes of the deductions, a Board-regulated institution would be required to treat unsecured debt issued by a covered BHC in a similar manner to an investment in a tier 2 capital instrument.[103] The form and amount of the deduction would depend on the type of investment and various other factors, as described below.

Analysis conducted by Board staff has not indicated that Board-regulated institutions currently own a substantial amount of unsecured debt issued by covered BHCs. The proposed deduction requirement would substantially reduce the incentive of a Board-regulated institution to invest in unsecured debt issued by a covered BHC, thereby increasing the prospects for an orderly resolution of a covered BHC by reducing the risk of contagion spreading to other Board-regulated institutions.

To implement the proposed deduction requirements for investments in covered debt instruments, the proposal would add or amend certain definitions in Regulation Q. The proposal would add new definitions of ''covered debt instrument'' and ''investment in a covered debt instrument'' to § 217.2 of Regulation Q. A ''covered debt instrument'' would be defined as any unsecured debt security issued by a global systemically important BHC, excluding any instrument that qualifies as tier 2 capital. An ''investment in a covered debt instrument'' would be defined as a net long position in a covered debt instrument, including direct, indirect, and synthetic exposures to a covered debt instrument. This definition would exclude underwriting positions held for five or fewer business days for purposes of certain deductions. In addition, the proposal would amend the definitions of ''indirect exposure'' and ''synthetic exposure'' in Regulation Q to add exposures to covered debt instruments. Further, the definition of ''investment in the capital of an unconsolidated financial institution'' would be amended to correct a typographical error.

In addition, as discussed more fully in the following section, the proposal would revise § 217.22(c), (f), and (h) of Regulation Q to incorporate the proposed deductions for investments in covered debt instruments. The proposed revisions to Regulation Q would take effect on January 1, 2019, consistent with the other aspects of the proposal; provided that the proposed correction to the definition of ''investment in the capital of an unconsolidated financial institution'' would take effect on April 1, 2016.

To be most effective, the proposed deduction approach for investments in unsecured debt instruments of a covered BHC would apply to all depository institution holding companies and insured depository institutions covered by the capital rules issued by the Board, OCC, and FDIC. The Board intends to consult with the OCC and FDIC on the proposed deductions for covered debt instruments in Regulation Q regarding consistent treatment among all banking organizations subject to the regulatory capital rules.

Section-by-Section Discussion of the Proposed Deductions for Covered Debt Instruments

Under the Board's current regulatory capital rules, a Board-regulated institution must deduct any investment in its own capital instruments and any investment in the capital of other financial institutions that it holds reciprocally under § 217.22(c)(1) and (3) of Regulation Q.[104] The proposal would amend § 217.22(c)(1) and (3) of Regulation Q to require, respectively, a covered BHC to deduct from its tier 2 capital any investment in its own unsecured debt instruments that are not tier 2 capital and the carrying value of any investment in the unsecured debt issued by a covered BHC that is held reciprocally with the covered BHC.

Under § 217.22(c)(4) and (5) of Regulation Q, a Board-regulated institution must deduct certain investments in the capital of unconsolidated financial institutions.[105] The amount of the deduction depends on whether or not the Board-regulated institution has a ''significant'' investment in the unconsolidated financial institution, with ''significant'' defined as ownership of more than 10

[95] *See* 12 CFR 217.10(a)(4).

[96] *See* 12 CFR 217.10(a)(5).

[97] *See* 12 CFR 217.22.

[98] *Id.*

[99] 12 CFR 217.22(c)(1).

[100] *See* 12 CFR 217.22(c)(2).

[101] *See* 12 CFR 217.22(c)(3) through (5).

[102] *See* 12 CFR 217.22(c)(1) and (2).

[103] Unsecured debt issued by a covered BHC may or may not qualify as tier 2 capital, depending on its characteristics. *See* 12 CFR 217.20(d). Similarly, unsecured debt issued by a covered BHC may or may not qualify as eligible long term debt under this proposal, depending on its characteristics. *See* Proposed 12 CFR 252.61, 252.161.

[104] 12 CFR 217.22(c)(1) and 12 CFR 217.22(c)(3). The definition of ''financial institution'' in the Board's regulatory capital rules includes bank holding companies. Therefore, each covered BHC is a ''financial institution'' for purposes of these deductions. *See* 12 CFR 217.2.

[105] 12 CFR 217.22(c)(4) and (5).

percent of the common stock of the unconsolidated financial institution.[106]

If the Board-regulated institution has a ''non-significant investment'' in an unconsolidated financial institution, the Board-regulated institution must deduct its investments in the capital of the unconsolidated financial institution to the extent that the Board-regulated institution's investment exceeds 10 percent of the Board-regulated institution's common equity tier 1 capital.[107] The proposal would amend § 217.22(c)(4) of Regulation Q to require a Board-regulated institution with a non-significant investment in a covered BHC to deduct any investment in unsecured debt issued by the covered BHC in the same manner as if the unsecured debt were tier 2 capital.

If a Board-regulated institution has a significant investment in an unconsolidated financial institution, the Board-regulated institution must fully deduct under § 217.22(c)(5) of Regulation Q any investment in the capital instruments of the unconsolidated financial institution that are not in the form of common stock.[108] The proposal would amend § 217.22(c)(5) of Regulation Q to require a Board-regulated institution with a significant investment in a covered BHC to deduct any investment in unsecured debt issued by the covered BHC in the same manner as if the unsecured debt were tier 2 capital.

For each of the proposed deductions, the same rules and standards that apply to investments in capital instruments issued by financial institutions would also apply to an investment in a covered debt instrument. For example, the proposal would amend the ''corresponding deduction approach'' in § 217.22(c)(2) of Regulation Q to specify that unsecured debt issued by a covered BHC would be treated as tier 2 capital for purposes of deductions from capital. Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution making the deduction.[109] If the Board-regulated institution does not have enough of the component of capital to carry out the deduction, the corresponding deduction approach provides that any amount of the investment not already deducted would be deducted from the next higher, that is, more subordinated, component of capital.[110] If the next higher level is insufficient to effect the remaining deduction and there is a higher level of capital, any amount not already deducted is deducted from the highest level.[111]

Under Regulation Q, if a Board-regulated institution has an investment in the tier 2 capital of an unconsolidated financial institution that the Board-regulated institution is required to deduct from capital, the Board-regulated institution must make the deduction from its tier 2 capital. Under the proposal, if a Board-regulated institution has a significant investment in a covered BHC and also owns unsecured debt of the covered BHC, the Board-regulated institution would be required to deduct the unsecured debt amount from its tier 2 capital. If the Board-regulated institution does not have sufficient tier 2 capital to complete this deduction, then the Board-regulated institution would be required to deduct any shortfall amount from its additional tier 1 capital. If the Board-regulated institution does not have sufficient additional tier 1 capital to complete this deduction, the institution would deduct any remaining amount of the investment from its common equity tier 1 capital.

The proposal would follow the same general approach as under the current requirements in Regulation Q regarding the calculation of the amount of any deduction and the treatment of guarantees and indirect investments for purposes of the deductions. Under Regulation Q, the amount of a Board-regulated institution's investment in its own capital instrument or in the capital instrument of an unconsolidated financial institution is the Board-regulated institution's net long position in the capital instrument as calculated under § 217.22(h) of Regulation Q.[112] Under § 217.22(h) of Regulation Q, a Board-regulated institution may net certain gross short positions in a capital instrument against a gross long position in the instrument to determine the net long position. The proposal would modify § 217.22(h) of Regulation Q such that a Board-regulated institution would follow the same procedures to determine its net long position in an exposure to its own covered debt instrument or in a covered debt instrument issued by an unconsolidated financial institution. The calculation of the net long position, under the proposal, also would take into account direct investments in unsecured debt instruments as well as indirect exposures to covered debt instruments held through investment funds in the same manner as under the regulatory capital rules.

With regard to an indirect exposure to a capital instrument in the form of, for example, a direct exposure to an investment fund, a Board-regulated institution has three options under Regulation Q to measure its gross long position in the capital instrument.[113] The proposal would amend § 217.22(h)(2)(ii) of Regulation Q to provide the same three options to determine the gross long position in the form of an indirect fund investment in a covered debt instrument.

The first option would be to deduct the entire carrying value of the investment. The second option would be, with the prior approval of the Board, for the Board-regulated institution to use a conservative estimate of the amount of the investment in the unsecured debt instrument held through a fund. The third option would be to multiply the carrying value of the Board-regulated institution's investment in a fund by either the exact percentage of the unsecured debt issued by a covered BHC held by the investment fund or by the highest stated prospectus limit for such investments held by the investment fund. In each case, the amount of the gross long position may be reduced by the Board-regulated institution's qualified short positions to reach the net long position.[114]

An investment in the unsecured debt of a covered BHC would be defined in § 217.2 of Regulation Q to include synthetic exposures to covered debt instruments, including, for example, the issuance a guarantee of such debt or selling a credit default swap referencing such debt.[115] For purposes of any deduction required for a Board-regulated institution's investment in the capital of an unconsolidated financial institution, the amount of unsecured debt issued by a covered BHC would include any contractual obligations of the Board-regulated institution to purchase such instruments, but would exclude positions held in a bona fide underwriting capacity for five or fewer business days.[116]

Question 66: The Board invites comment on the appropriateness of the proposed deduction for investments in a

[106] 12 CFR 217.2, (''significant investment in the capital of an unconsolidated financial institution'').

[107] *See* 12 CFR 217.22(c)(4).

[108] *See* 12 CFR 217.22(c)(5).

[109] *See* 12 CFR 217.22(c)(2).

[110] *See* 12 CFR 217.22(c)(2); 12 CFR 217.22(f).

[111] *See* 12 CFR 217.22(f).

[112] *See* 12 CFR 217.22(h).

[113] *See* 12 CFR 217.22(h)(2).

[114] 12 CFR 217.22(h)(1).

[115] *See* 12 CFR 217.2 (''investment in the capital of an unconsolidated financial institution'' and ''investment in the Board-regulated institution's own capital instrument'').

[116] *See* 12 CFR 217.2 (''investment in the capital of an unconsolidated financial institution'').

covered BHC's unsecured debt instruments from regulatory capital, including (a) its implementation through amendment of the Board's regulatory capital rules and (b) whether such an approach would impact underwriting and market making for unsecured debt instruments of covered BHCs.

Question 67: The Board invites comment on whether holdings of a covered BHC's debt instruments that result from dealing or market-making activities should be exempt from the proposed deduction, including costs and benefits of such an exemption.

Question 68: The Board invites comment on all aspects of the proposed capital deduction treatment for investments by banking organizations in debt instruments of a covered BHC, specifically, whether the debt instruments required to be deducted should be all unsecured debt directly issued by a covered BHC or only eligible long-term debt? If the long-term debt instruments required to be deducted were limited to eligible long-term debt, how best to identify eligible long-term debt for the purposes of the deduction?

Questions 69: The Board invites comment on alternatives to the proposed deduction approach, including a stringent risk-weighting approach, integrating eligible long-term debt into the Basel III threshold deduction system as a new class of regulatory capital, or an outright prohibition of bank ownership of covered BHC's unsecured debt instruments.

Question 70: The Board invites comment on whether to expand the proposed capital deduction treatment to cover investments by banking organizations in debt instruments issued by nonbank financial companies supervised by the Board and non-U.S. GSIBs.

VIII. Transition Periods

The Board proposes to generally require firms that are covered BHCs as of the date on which the final rule is issued to achieve compliance with the rule as of January 1, 2019. However, the Board proposes to phase in the risk-weighted assets component of the external TLAC requirement in two stages. A 16 percent requirement would apply as of January 1, 2019. The requirement would then increase to 18 percent as of January 1, 2022. The purpose of the proposed transition period is to minimize the effect of the implementation of the proposal on credit availability and credit costs in the U.S. economy.

Firms that become covered BHCs after the date on which the final rule is issued would be required to comply by the later of three years after becoming covered BHCs and the effective date applicable to firms that are covered BHCs as of the date on which the final rule is issued.

Foreign GSIBs that are required to form U.S. intermediate holding companies as of the date on which the final rule is issued would similarly be required to achieve compliance as of January 1, 2019. However, the Board proposes to phase in the risk-weighted assets component of the internal TLAC requirement applicable to covered IHCs that are expected to enter resolution in a failure scenario in two stages. A 16 percent requirement would apply as of January 1, 2019. The requirement would then increase to 18 percent as of January 1, 2022.

Where a foreign banking organization becomes subject to a requirement to form a covered IHC after the date on which the final rule is issued,[117] that covered IHC would be required to comply with the rule's requirements by the later of three years after the date on which the foreign banking organization first becomes subject to the requirement to form the U.S. intermediate holding company and the effective date applicable to foreign GSIBs that are required to form U.S. intermediate holding companies as of the date on which the final rule is issued. The Board may accelerate or extend this transition period in writing.

Board-regulated institutions would be required to comply with the proposed regulatory capital deduction for investments in the unsecured debt of a covered BHC as of January 1, 2019.

Question 71: The Board invites comments on all aspects of the transition period, including whether the proposed phase-in period for the risk-weighted assets components of the proposed external and internal TLAC requirements is appropriate. Would it be appropriate to instead require compliance with those higher requirements as of January 1, 2019?

Question 72: The Board invites comment with respect to whether a grandfather provision is necessary or appropriate for any existing instruments. What types and volumes of outstanding long-term debt instruments of covered BHCs would fail to meet the proposed requirements for eligible external or internal LTD? How burdensome would it be for covered holding companies to modify the terms of such instruments to align with the proposed requirements?

[117] This could occur where a foreign banking organization that is already required to form a U.S. intermediate holding company becomes a foreign GSIB (rendering its U.S. intermediate holding company a covered IHC) or where a foreign GSIB first becomes required to form a U.S. intermediate holding company (which would be a covered IHC upon formation).

IX. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). The Board reviewed the proposed rule under the authority delegated to the Board by OMB. The disclosure requirements are found in § 252.65 and the reporting requirements are found in § 252.153(b)(5). These information collection requirements would implement section 165 of the Dodd Frank Act, as described in the Abstract below. In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would revise the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350).

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–395–5806, Attention, Federal Reserve Desk Officer.

Proposed Revision, With Extension, of the Following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY.

OMB Control Number: 7100–0350.

Frequency of Response: Annual, semiannual, quarterly, one-time, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more, including global systemically important foreign banking organizations with $50 billion or more in U.S. non-branch assets. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such banking organizations as the Board determines are appropriate.

Disclosure Requirements

Section 252.65 of the proposed rule would require a global systemically important BHC to publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding. A global systemically important BHC must provide the disclosure required of this section: (1) In the offering documents for all of its eligible debt securities; and (2) either on the global systemically important BHC's Web site, or in more than one public financial report or other regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

Reporting Requirements

Section 252.153(b)(5) of the proposed rule would require each top-tier foreign banking organization that controls a U.S. intermediate holding company to submit to the Board by January 1 of each calendar year through the U.S. intermediate holding company: (1) Notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization of the U.S. intermediate holding company has adopted standards consistent with the BCBS assessment methodology for identifying global systemically important banking organizations; and (2) notice of whether the top-tier foreign banking organization prepares or reports the indicators used by the BCBS assessment methodology to identify a banking organization as a global systemically important banking organization and, if it does, whether the top-tier foreign banking organization has determined that it has the characteristics of a global systemically important banking organization under the BCBS assessment methodology.

Estimated Paperwork Burden for Proposed Revisions

Estimated Number of Respondents:

Disclosure Burden

Section 252.65—8 respondents.

Reporting Burden

Section 252.153(b)(5)—15 respondents.

Estimated Burden per Response:

Disclosure Burden

Section 252.65—1 hour (annual), 5 hours (one-time burden).

Reporting Burden

Section 252.153(b)(5)—1 hour (annual).

Total estimated one-time burden: 40 hours.

Current estimated annual burden for Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY): 118,546 hours.

Proposed revisions estimated annual burden: 23 hours.

Total estimated annual burden: 118,609 hours.

B. Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organizations).[118] As of June 30, 2015, there were 628 small state member banks. As of June 30, 2015, there were approximately 180 small savings and loan holding companies and 3,351 small bank holding companies.

This proposed rule is designed to improve the resolvability of covered BHCs and covered IHCs by requiring such institutions maintain outstanding a minimum amount of loss-absorbing instruments, including a minimum amount of unsecured long-term debt, and imposing restrictions on the corporate practices and liabilities of such organizations. The proposed rule is also designed to help reduce the potential contagion stemming from the failure of a GSIB by requiring state member banks, bank holding companies, savings and loan holding companies, and intermediate holding companies subject to the Board's capital rules to deduct from their regulatory capital investments in unsecured debt issued by covered BHCs.

The majority of the provisions of the proposed rule would apply to a top-tier bank holding company domiciled in the United States with $50 billion or more in total consolidated assets and has been identified as a GSIB, and to a U.S. intermediate holding company of a foreign GSIB. Bank holding companies and U.S. intermediate holding companies of foreign GSIBs that are subject to the proposed rule therefore substantially exceed the $550 million asset threshold at which a banking entity would qualify as a small banking organization. However, small state member banks would be subject to the provisions of the proposed rule that impose regulatory capital deductions for investments in eligible external long-term debt of covered BHCs. The provisions of the proposed rule related

[118] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

to regulatory capital deductions generally would not apply to small savings and loan holding companies and small bank holding companies.

The proposed regulatory capital deductions for investments in the unsecured debt of covered BHCs would require small state member banks to deduct holdings of unsecured debt issued by a covered BHC from regulatory capital, in a similar manner as small state member banks must deduct investments in tier 2 capital instruments from their regulatory capital, as described in Part VII. State member banks would be required to make internal reporting changes to comply with the proposed capital rules and corresponding reporting requirements. As described in Part VII, these requirements would reduce the incentives of a small state member bank to invest in the unsecured debt of a covered BHC, and thereby increase the prospect for an orderly resolution not a covered BHC.

Depository institutions do not presently report their holdings in the unsecured debt of U.S. GSIBs. However, regulatory reports filed by depository institutions provide a listing of the holdings by such institutions of ''other domestic debt,'' which would include holdings of unsecured debt issued by U.S. GSIBs. Therefore, the reported holdings of ''other domestic debt'' held by small depository institutions provides a conservative estimate of the amount of unsecured debt of GSIBs held by such institutions.

As of June 30, 2015, such institutions held ''other domestic debt'' equal to approximately 0.5 percent of their total assets. Excluding depository institutions that report no holdings of ''other domestic debt,'' such depository institutions held ''other domestic debt'' equal to only 2.2 percent of their total assets. The low level of reported holdings of ''other domestic debt'' by such institutions supports the view that the proposed regulatory capital deductions would not have a material impact on small state member banks. In addition, in light of the reported holdings of ''other domestic debt'' by small depository institutions, such institutions should be able to replace their holdings of unsecured debt by GSIBs without a material economic impact.

The proposed rule does not appear to duplicate, overlap, or conflict with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities. Nonetheless, the Board invites comment on whether the proposed rule would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purpose of the proposed rule. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

C. Riegle Community Development and Regulatory Improvement Act of 1994

In determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on state member banks, the Board is required to consider, consistent with the principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, and the benefits of such regulations.[119] In addition, new regulations that impose additional reporting disclosures or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[120]

The proposed regulatory capital deductions applicable to state member banks would take effect on the first day of a calendar quarter. The proposed rule would provide state member banks a reasonable period of time to make the incremental internal reporting changes necessary to comply with the proposed revisions to the regulatory capital rules. The proposed revisions to the regulatory capital rules would also be reflected in amendments to the Board's regulatory reporting forms, and the instructions to such forms. The internal reporting changes are expected to be minimal because the banking organizations subject to the proposed rule are already required to track similar information to comply with current capital rules and reporting requirements.

As described above in Part IX.B, depository institutions do not presently report their holdings in the unsecured debt of U.S. GSIBs, but do report holdings of ''other domestic debt,'' which would include holdings of unsecured debt issued by U.S. GSIBs. Therefore, the reported holdings of ''other domestic debt'' held by depository institutions provides a conservative estimate of the amount of unsecured debt of GSIBs held by such institutions.

As of June 30, 2015, state member banks held ''other domestic debt'' equal to approximately 0.57 percent of their total assets. Excluding state member banks that report no holdings of ''other domestic debt,'' such depository institutions held ''other domestic debt'' equal to only 0.77 percent of their total assets. The reported holdings of ''other domestic debt'' by such institutions supports the view that the incremental administrative reporting burden imposed by the proposed revisions to the Board's regulatory capital rules on such institutions is expected to be minimal. These administrative burdens are offset by the safety and soundness and financial stability benefits that will accrue to the financial system as a result of the proposed rule, as described herein.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is the section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 252

12 CFR Chapter II

Administrative practice and procedure, Banks, banking, Federal

[119] *See* Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802.

[120] 12 U.S.C. 4802(b).

Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR parts 217 and 252 as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q).

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. In § 217.2:
■ a. Add the definition of ''Covered debt instrument'' in alphabetical order;
■ b. Revise the definition of ''Indirect exposure'';
■ c. Add the definition of ''Investment in a covered debt instrument,'' in alphabetical order;
■ d. Revise the definition of ''Investment in the capital of an unconsolidated financial institution''; and
■ e. Revise the definition of ''Synthetic exposure;''

The additions and revisions read as follows:

§ 217.2 Definitions.

* * * * *

Covered debt instrument means an unsecured debt security issued by a global systemically important BHC, including direct, indirect, or synthetic exposures to such a debt security, other than an unsecured debt security that qualifies as tier 2 capital pursuant to § 217.20(d).

* * * * *

Indirect exposure means an exposure that arises from the Board-regulated institution's investment in an investment fund which holds an investment in the Board-regulated institution's own capital instrument, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument.

* * * * *

Investment in a covered debt instrument means a Board-regulated institution's net long position calculated in accordance with § 217.22(h) in a covered debt instrument, including direct, indirect, and synthetic exposures to the debt instrument, excluding for purposes of § 217.22(c)(4) and (5) any underwriting positions held by the Board-regulated institution for five or fewer business days.

* * * * *

Investment in the capital of an unconsolidated financial institution means a net long position calculated in accordance with § 217.22(h) in an instrument that is recognized as capital for regulatory purposes by the primary supervisor of an unconsolidated regulated financial institution or in an instrument that is part of the GAAP equity of an unconsolidated unregulated financial institution, including direct, indirect, and synthetic exposures to the capital instruments, excluding underwriting positions held by the Board-regulated institution for five or fewer business days.

* * * * *

Synthetic exposure means an exposure whose value is linked to the value of an investment in the Board-regulated institution's own capital instrument, to the value of an investment in the capital of an unconsolidated financial institution, or to the value of an investment in a covered debt instrument.

* * * * *

■ 3. In § 217.22, revise paragraphs (c) and its footnotes, (f), and (h) to read as follows:

§ 217.22 Regulatory capital adjustments and deductions.

* * * * *

(c) *Deductions from regulatory capital related to investments in capital instruments*[23]—(1) *Investment in the Board-regulated institution's own capital or covered debt instruments.* A Board-regulated institution must deduct an investment in the Board-regulated institution's own capital instruments or an investment in the Board-regulated institution's own covered debt instruments as follows:

(i) A Board-regulated institution must deduct an investment in the Board-regulated institution's own common stock instruments from its common equity tier 1 capital elements to the extent such instruments are not excluded from regulatory capital under § 217.20(b)(1);

(ii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own additional tier 1 capital instruments from its additional tier 1 capital elements;

(iii) A Board-regulated institution must deduct an investment in the Board-regulated institution's own tier 2 capital instruments from its tier 2 capital elements; and

(iv) A Board-regulated institution that is a global systemically important BHC must deduct an investment in the Board-regulated institution's own covered debt instruments from its tier 2 capital elements. If the Board-regulated institution does not have a sufficient amount of tier 2 capital to effect this deduction, the Board-regulated institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital.

(2) *Corresponding deduction approach.* For purposes of subpart C of this part, the corresponding deduction approach is the methodology used for the deductions from regulatory capital related to reciprocal cross holdings (as described in paragraph (c)(3) of this section), non-significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(4) of this section), and non-common stock significant investments in the capital of unconsolidated financial institutions (as described in paragraph (c)(5) of this section). Under the corresponding deduction approach, a Board-regulated institution must make deductions from the component of capital for which the underlying instrument would qualify if it were issued by the Board-regulated institution itself, as described in paragraphs (c)(2)(i) through (iii) of this section. If the Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the required deduction, the Board-regulated institution must deduct the shortfall amount from its capital according to paragraph (f) of this section.

(i) If an investment is in the form of an instrument issued by a financial institution that is not a regulated financial institution, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock or represents the most subordinated claim in liquidation of the financial institution; and

(B) An additional tier 1 capital instrument if it is subordinated to all creditors of the financial institution and is senior in liquidation only to common shareholders.

(ii) If an investment is in the form of an instrument issued by a regulated financial institution and the instrument does not meet the criteria for common

[23] The Board-regulated institution must calculate amounts deducted under paragraphs (c) through (f) of this section after it calculates the amount of ALLL includable in tier 2 capital under § 217.20(d)(3).

equity tier 1, additional tier 1 or tier 2 capital instruments under § 217.20, the Board-regulated institution must treat the instrument as:

(A) A common equity tier 1 capital instrument if it is common stock included in GAAP equity or represents the most subordinated claim in liquidation of the financial institution;

(B) An additional tier 1 capital instrument if it is included in GAAP equity, subordinated to all creditors of the financial institution, and senior in a receivership, insolvency, liquidation, or similar proceeding only to common shareholders; and

(C) A tier 2 capital instrument if it is a covered debt instrument or if it is not included in GAAP equity but considered regulatory capital by the primary supervisor of the financial institution.

(iii) If an investment is in the form of a non-qualifying capital instrument (as defined in §217.300(c)), the Board-regulated institution must treat the instrument as:

(A) An additional tier 1 capital instrument if such instrument was included in the issuer's tier 1 capital prior to May 19, 2010; or

(B) A tier 2 capital instrument if such instrument was included in the issuer's tier 2 capital (but not includable in tier 1 capital) prior to May 19, 2010.

(3) *Reciprocal cross holdings in the capital of financial institutions.* A Board-regulated institution must deduct an investment in the capital of another financial institution that the Board-regulated institution holds reciprocally with another financial institution and an investment in any covered debt instrument that the Board-regulated institution holds reciprocally with another financial institution, where such reciprocal cross holdings result from a formal or informal arrangement to swap, exchange, or otherwise intend to hold each other's capital instruments, by applying the corresponding deduction approach in paragraph (c)(2) of this section.

(4) *Non-significant investments in the capital of unconsolidated financial institutions.* (i) If a Board-regulated institution has a non-significant investment in the capital of an unconsolidated financial institution, the Board-regulated institution must deduct any such investment and must deduct, if the unconsolidated financial institution is a global systemically important BHC, any investment in a covered debt instrument issued by the unconsolidated financial institution, to the extent that the combined amount of the investment in capital and the investment in covered debt instruments exceed 10 percent of the sum of the Board-regulated institution's common equity tier 1 capital elements minus all deductions from and adjustments to common equity tier 1 capital elements required under paragraphs (a) through (c)(3) of this section (the 10 percent threshold for non-significant investments) by applying the corresponding deduction approach in paragraph (c)(2) of this section.[24] The deductions described in this paragraph are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, a Board-regulated institution that underwrites a failed underwriting, for the period of time stipulated by the Board, is not required to deduct from capital a non-significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph (c)(4) to the extent the investment is related to the failed underwriting.[25]

(ii) The amount to be deducted under this section from a specific capital component is equal to:

(A) The Board-regulated institution's aggregate non-significant investments in the capital of an unconsolidated financial institution and, if applicable, any investments in a covered debt instrument subject to deduction under this paragraph (c)(4), exceeding the 10 percent threshold for non-significant investments, multiplied by

(B) The ratio of the Board-regulated institution's aggregate non-significant investments in the capital of an unconsolidated financial institution (in the form of such capital component) to the Board-regulated institution's total non-significant investments in unconsolidated financial institutions, with an investment in a covered debt instrument being treated as tier 2 capital for this purpose.

(5) *Significant investments in the capital of unconsolidated financial institutions that are not in the form of common stock.* If a Board-regulated institution has a significant investment in the capital of an unconsolidated financial institution, the Board-regulated institution must deduct from capital any such investment and any covered debt instrument issued by the unconsolidated financial institution that is held by the Board-regulated institution other than an investment in the form of common stock by applying the corresponding deduction approach in paragraph (c)(2) of this section.[26] The deductions described in this section are net of associated DTLs in accordance with paragraph (e) of this section. In addition, with the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution that underwrites a failed underwriting is not required to deduct a significant investment in the capital of an unconsolidated financial institution or an investment in covered debt instruments pursuant to this paragraph (c)(5) if such investment is related to such failed underwriting.

* * * * *

(f) *Insufficient amounts of a specific regulatory capital component to effect deductions.* Under the corresponding deduction approach, if a Board-regulated institution does not have a sufficient amount of a specific component of capital to effect the full amount of any deduction from capital required under paragraph (d) of this section, the Board-regulated institution must deduct the shortfall amount from the next higher (that is, more subordinated) component of regulatory capital. Any investment by a Board-regulated institution in a covered debt instrument must be treated as an investment in the tier 2 capital of the global systemically important BHC for purposes of this paragraph.

* * * * *

(h) *Net long position.* (1) For purposes of calculating the amount of a Board-regulated institution's investment in the Board regulated institution's own capital instrument, investment in the capital of an unconsolidated financial institution, and investment in a covered debt instrument, the Board-regulated institution's net long position is its gross long position in the underlying instrument determined in accordance with paragraph (h)(2) of this section, as

[24] With the prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution is not required to deduct a non-significant investment in the capital instrument of an unconsolidated financial institution or an investment in a covered debt instrument pursuant to this paragraph if the financial institution is in distress and if such investment is made for the purpose of providing financial support to the financial institution, as determined by the Board.

[25] Any non-significant investment in the capital of an unconsolidated financial institution or any investment in a covered debt instrument that is not required to be deducted under this paragraph (c)(4) or otherwise under this section must be assigned the appropriate risk weight under subparts D, E, or F of this part, as applicable.

[26] With prior written approval of the Board, for the period of time stipulated by the Board, a Board-regulated institution is not required to deduct a significant investment in the capital of an unconsolidated financial institution or an investment in a covered debt instrument under this paragraph (c)(5) or otherwise under this section if such investment is made for the purpose of providing financial support to the financial institution as determined by the Board.

adjusted to recognize any short position by the Board-regulated institution in the same instrument subject to paragraph (h)(3) of this section.

(2) *Gross long position.* A gross long position is determined as follows:

(i) For an equity exposure that is held directly by the Board-regulated institution, the adjusted carrying value of the exposure as that term is defined in §217.51(b);

(ii) For an exposure that is held directly and that is not an equity exposure or a securitization exposure, the exposure amount as that term is defined in §217.2; and

(iii) For each indirect exposure, the Board-regulated institution's carrying value of its investment in an investment fund or, alternatively:

(A) A Board-regulated institution may, with the prior approval of the Board, use a conservative estimate of the amount of its indirect investment in the Board-regulated institution's own capital instruments, its indirect investment in the capital of an unconsolidated financial institution, or its indirect investment in a covered debt instrument held through a position in an index, as applicable; or

(B) A Board-regulated institution may calculate the gross long position for an indirect exposure by multiplying the Board-regulated institution's carrying value of its investment in the investment fund by either:

(*1*) The highest stated investment limit (in percent) for an investment in the Board-regulated institution's own capital instruments, an investment in the capital of an unconsolidated financial institution, or an investment in a covered debt instrument, as applicable, as stated in the prospectus, partnership agreement, or similar contract defining permissible investments of the investment fund; or

(*2*) The investment fund's actual holdings of the investment in the Board-regulated institution's own capital instruments, investment in the capital of an unconsolidated financial institution, or investment in an covered debt instrument, as applicable; and

(iv) For a synthetic exposure, the amount of the Board-regulated institution's loss on the exposure if the reference capital instrument were to have a value of zero.

(3) *Adjustments to reflect a short position.* In order to adjust the gross long position to recognize a short position in the same instrument under paragraph (h)(1) of this section, the following criteria must be met:

(i) The maturity of the short position must match the maturity of the long position, or the short position must have a residual maturity of at least one year (maturity requirement); or

(ii) For a position that is a trading asset or trading liability (whether on- or off-balance sheet) as reported on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, if the Board-regulated institution has a contractual right or obligation to sell the long position at a specific point in time and the counterparty to the contract has an obligation to purchase the long position if the Board-regulated institution exercises its right to sell, this point in time may be treated as the maturity of the long position such that the maturity of the long position and short position are deemed to match for purposes of the maturity requirement, even if the maturity of the short position is less than one year; and

(iii) For an investment in a Board-regulated institution's own capital instrument under paragraph (c)(1) of this section, an investment in a capital of an unconsolidated financial institution under paragraphs (c)(4), (c)(5), and (d)(1)(iii) of this section, and an investment in a covered debt instrument under paragraphs (c)(1), (c)(4), and (c)(5) of this section:

(A) The Board-regulated institution may only net a short position against a long position in an investment in the Board-regulated institution's own capital instrument or own covered debt instrument under paragraph (c)(1) of this section if the short position involves no counterparty credit risk;

(B) A gross long position in an investment in the Board-regulated institution's own capital instrument, an investment in the capital instrument of an unconsolidated financial institution, or an investment in a covered debt instrument due to a position in an index may be netted against a short position in the same index;

(C) Long and short positions in the same index without maturity dates are considered to have matching maturities; and

(D) A short position in an index that is hedging a long cash or synthetic position in an investment in the Board-regulated institution's own capital instrument, an investment in the capital instrument of an unconsolidated financial institution, or an investment in a covered debt instrument can be decomposed to provide recognition of the hedge. More specifically, the portion of the index that is composed of the same underlying instrument that is being hedged may be used to offset the long position if both the long position being hedged and the short position in the index are reported as a trading asset or trading liability (whether on- or off-balance sheet) on the Board-regulated institution's Call Report, for a state member bank, or FR Y–9C, for a bank holding company or savings and loan holding company, as applicable, and the hedge is deemed effective by the Board-regulated institution's internal control processes, which have not been found to be inadequate by the Board.

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY).

■ 4. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a(g), 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3904, 3906–3909, 4808, 5361, 5365, 5366, 5367, 5368, 5371.

■ 5. In § 252.2, redesignate paragraphs (t) through (z) as paragraphs (aa) through (gg) and redesignate paragraphs (n) through (s) as (t) through (y); and add new paragraphs (n) through (s) and (z).

The additions read as follows:

§ 252.2 Definitions.

* * * * *

(n) *Global methodology* means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time.

(o) *Global systemically important banking organization* means a global systemically important bank, as such term is defined in the global methodology.

(p) *Global systemically important foreign banking organization* means a top-tier foreign banking organization that is identified as a global systemically important foreign banking organization under § 252.153(b)(4) of this part.

(q) *Home country,* with respect to a foreign banking organization, means the country in which the foreign banking organization is chartered or incorporated.

(r) *Home country resolution authority,* with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the resolution of the top-tier foreign banking organization.

(s) *Home country supervisor,* with respect to a foreign banking organization, means the governmental entity or entities that under the laws of the foreign banking organization's home county has responsibility for the

supervision and regulation of the top-tier foreign banking organization.

* * * * *

(z) *Top-tier foreign banking organization,* with respect to a foreign bank, means the top-tier foreign banking organization or, alternatively, a subsidiary of the top-tier foreign banking organization designated by the Board.

* * * * *

■ 6. Add subpart G to read as follows:

Subpart G—External Long-term Debt Requirement, External Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for U.S. Global Systemically Important Banking Organizations

Sec.
252.60 Applicability.
252.61 Definitions.
252.62 External long-term debt requirement.
252.63 External total loss-absorbing capacity requirement and buffer.
252.64 Restrictions on corporate practices of U.S. global systemically important banking organizations.
252.65 Disclosure requirements.

§ 252.60 Applicability.

(a) *General applicability.* This subpart applies to any U.S. bank holding company that is identified as a global systemically important BHC.

(b) *Initial applicability.* A global systemically important BHC shall be subject to the requirements of this subpart beginning on the later of:

(1) January 1, 2019; or

(2) 1095 days (three years) after the date on which the company becomes a global systemically important BHC.

§ 252.61 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in 12 CFR 217.20(c).

Common equity tier 1 capital has the same meaning as in 12 CFR 217.20(b).

Common equity tier 1 capital ratio has the same meaning as in 12 CFR 217.10(b)(1) and 12 CFR 217.10(c), as applicable.

Common equity tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to liquidate, terminate, cancel, rescind, or accelerate the agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Discretionary bonus payment has the same meaning as under 12 CFR 217.2.

Distribution has the same meaning as under 12 CFR 217.2.

Global systemically important BHC has the same meaning as in 12 CFR 217.2.

Eligible debt security means, with respect to a global systemically important BHC, a debt instrument that:

(1) Is paid in, and issued by the global systemically important BHC;

(2) Is not secured, not guaranteed by the global systemically important BHC or a subsidiary of the global systemically important BHC, and is not subject to any other arrangement that legally or economically enhances the seniority of the instrument;

(3) Has a maturity of greater than 365 days (one year) from the date of issuance;

(4) Is governed by the laws of the United States or any State thereof;

(5) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument, except a right that is exercisable on one or more dates that are specified in the instrument or in the event of (i) a receivership, insolvency, liquidation, or similar proceeding of the global systemically important BHC or (ii) a failure of the global systemically important BHC to pay principal or interest on the instrument when due;

(6) Does not have a credit-sensitive feature, such as an interest rate that is reset periodically based in whole or in part on the global systemically important BHC's credit quality, but may have an interest rate that is adjusted periodically independent of the global systemically important BHC's credit quality, in relation to general market interest rates or similar adjustments;

(7) Is not a structured note; and

(8) Does not provide that the instrument may be converted into or exchanged for equity of the global systemically important BHC.

External TLAC buffer means, with respect to a global systemically important BHC, the sum of 2.5 percent, any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage), and the global systemically important BHC's method 1 capital surcharge.

GAAP means generally accepted accounting principles as used in the United States.

GSIB surcharge has the same meaning as in 12 CFR 217.2.

Method 1 capital surcharge means, with respect to a global systemically important BHC, the most recent method 1 capital surcharge (expressed as a percentage) the global systemically important BHC was required to calculate pursuant to subpart H of Regulation Q (12 CFR 217.400 through 217.406).

Outstanding eligible external long-term debt amount is defined in § 252.62(a).

Person has the same meaning as in 12 CFR 225.2.

Qualified financial contract has the same meaning as in § 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)), including any "swap" defined in section 1a(47) of the Commodities Exchange Act (7 U.S.C. 1a(47)) and in any rules or regulations issued by the Commodity Futures Trading Commission pursuant to such section; any "security-based swap" defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and in any rules or regulations issued by the Securities and Exchange Commission pursuant to such section; and any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any

similar agreement that the Federal Deposit Insurance Corporation determines by regulation to be a qualified financial contract as provided in 12 U.S.C. 5390(c)(8)(D)(i).

Structured note means a debt instrument that:

(1) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(2) Has an embedded derivative or similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(3) Does not specify a minimum principal amount due upon acceleration or early termination; or

(4) Is not classified as debt under GAAP.

Tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Tier 2 capital has the same meaning as in 12 CFR 217.20(d).

Total leverage exposure has the same meaning as in 12 CFR 217.10(c)(4)(ii).

Total risk-weighted assets means the greater of total risk-weighted assets as calculated under 12 CFR 217, subpart D (the standardized approach) or 12 CFR 217, subpart E (the advanced approaches).

§ 252.62 External long-term debt requirement.

(a) *External long-term debt requirement.* Except as provided under paragraph (c) of this section, a global systemically important BHC must maintain an outstanding eligible external long-term debt amount that is no less than the amount equal to the greater of:

(1) The global systemically important BHC's total risk-weighted assets multiplied by the sum of 6 percent plus the global systemically important BHC's GSIB surcharge (expressed as a percentage); and

(2) 4.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding eligible external long-term debt amount.* (1) A global systemically important BHC's outstanding eligible external long-term debt amount is the sum of:

(i) One hundred (100) percent of the unpaid principal amount of the outstanding eligible debt securities issued by the global systemically important BHC that have a remaining maturity greater than or equal to 730 days (two years);

(ii) Fifty (50) percent of the unpaid principal amount of the outstanding eligible debt securities issued by the global systemically important BHC that have a remaining maturity of greater than or equal to 365 days (one year) and less than 730 days (two years); and

(iii) Zero (0) percent of the unpaid principal amount of the outstanding eligible debt securities issued by the global systemically important BHC that have a remaining maturity of less than 365 days (one year).

(2) For purposes of paragraph (b)(1) of this section, the remaining maturity of an outstanding eligible debt security is calculated from the earlier of:

(i) The final payment date of the principal, without respect to any right of the holder to accelerate payment of principal; and

(ii) The date the holder of the instrument first has the contractual right to request or require payment of principal, provided that, with respect to a right that is exercisable on one or more dates that are specified in the instrument only on the occurrence of an event (other than an event of a receivership, insolvency, liquidation, or similar proceeding of the global systemically important BHC, or a failure of the global systemically important BHC to pay principal or interest on the instrument when due), the date for the outstanding eligible debt security under this paragraph (b)(2)(ii) will be calculated as if the event has occurred.

(c) *Redemption and repurchase.* A global systemically important BHC may not redeem or repurchase any outstanding eligible debt security without the prior approval of the Board if, immediately after the redemption or repurchase, the global systemically important BHC would not meet its external long-term debt requirement under paragraph (a) of this section, or its external total loss-absorbing capacity requirement under § 252.63(a).

§ 252.63 External total loss-absorbing capacity requirement and buffer.

(a) *External total loss-absorbing capacity requirement.* A global systemically important BHC must maintain an outstanding external total loss-absorbing capacity amount that is no less than the amount equal to the greater of:

(1)(i) From January 1, 2019 through December 31, 2021, 16 percent of the global systemically important BHC's total risk-weighted assets; and

(ii) Beginning January 1, 2022, 18 percent of the global systemically important BHC's total risk-weighted assets; and

(2) 9.5 percent of the global systemically important BHC's total leverage exposure.

(b) *Outstanding external total loss-absorbing capacity amount.* A global systemically important BHC's outstanding external total loss-absorbing capacity amount is the sum of:

(1) The global systemically important BHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest);

(2) The global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest); and

(3) The global systemically important BHC's outstanding eligible external long-term debt amount plus 50 percent of the unpaid principal amount of outstanding eligible debt securities issued by the global systemically important BHC that have a remaining maturity, as calculated in § 252.62(b)(2), of greater than or equal to 365 days (one year) but less than 730 days (two years).

(c) *External TLAC buffer*—(1) *Composition of the External TLAC buffer.* The external TLAC buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this paragraph, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a global systemically important BHC is the global systemically important BHC's net income for the four calendar quarters preceding the current calendar quarter, based on the global systemically important BHC's FR Y–9C, net of any distributions and associated tax effects not already reflected in net income. Net income, as reported in the FR Y–9C, reflects discretionary bonus payments and certain distributions that are expense items (and their associated tax effects).

(ii) *Maximum external TLAC payout ratio.* The maximum external TLAC payout ratio is the percentage of eligible retained income that a global systemically important BHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum external TLAC payout ratio is based on the global systemically important BHC's external TLAC buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.63.

(iii) *Maximum external TLAC payout amount.* A global systemically important BHC's maximum external TLAC payout amount for the current calendar quarter is equal to the global systemically important BHC's eligible retained income, multiplied by the applicable maximum external TLAC

payout ratio, as set forth in Table 1 to § 252.63.

(3) *Calculation of the external TLAC buffer level.* (i) A global systemically important BHC's external TLAC buffer level is equal to the global systemically important BHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) (*1*) From January 1, 2019 through December 31, 2021, 16 percent; and

(*2*) Beginning January 1, 2022, 18 percent; minus

(B) The ratio (expressed as a percentage) of the global systemically important BHC's additional tier 1 capital (excluding any tier 1 minority interest) to its total risk-weighted assets; and minus

(C) The ratio (expressed as a percentage) of the global systemically important BHC's eligible external long-term debt amount to total risk-weighted assets.

(ii) Notwithstanding paragraph (c)(3)(i) of this section, if the ratio (expressed as a percentage) of a global systemically important BHC's external total loss-absorbing capacity amount as calculated under paragraph (b) of this section to its risk-weighted assets is less than or equal to, from January 1, 2019, through December 31, 2021, 16 percent and beginning January 1, 2022, 18 percent, the global systemically important BHC's external TLAC buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A global systemically important BHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum external TLAC payout amount.

(ii) A global systemically important BHC with an external TLAC buffer level that is greater than the external TLAC buffer is not subject to a maximum external TLAC payout amount.

(iii) Except as provided in paragraph (c)(4)(iv) of this section, a global systemically important BHC may not make distributions or discretionary bonus payments during the current calendar quarter if the global systemically important BHC's:

(A) Eligible retained income is negative; and

(B) External TLAC buffer level was less than the external TLAC buffer as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (c)(4)(i) through (iii) of this section, the Board may permit a global systemically important BHC to make a distribution or discretionary bonus payment upon a request of the global systemically important BHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the global systemically important BHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 252.63—CALCULATION OF MAXIMUM EXTERNAL TLAC PAYOUT AMOUNT

External TLAC buffer level	Maximum External TLAC payout ratio (as a percentage of eligible retained income)
Greater than the external TLAC buffer	No payout ratio limitation applies.
Less than or equal to the external TLAC buffer, *and* greater than 75 percent of the external TLAC buffer.	60 percent.
Less than or equal to 75 percent of the external TLAC buffer, *and* greater than 50 percent of the external TLAC buffer.	40 percent.
Less than or equal to 50 percent of the external TLAC buffer, *and* greater 25 percent of the external TLAC buffer.	20 percent.
Less than or equal to 25 percent of the external TLAC buffer	0 percent.

(v)(A) A global systemically important BHC is subject to the lowest of the maximum payout amounts as determined under 12 CFR 217.11(a)(2)(iii) and (iv) and the maximum external TLAC payout amount as determined under this paragraph.

(B) Additional limitations on distributions may apply to a global systemically important BHC under 12 CFR 225.4, 225.8, and 263.202.

§ 252.64 Restrictions on corporate practices of U.S. global systemically important banking organizations.

(a) *Prohibited corporate practices.* A global systemically important BHC may not directly:

(1) Issue any debt instrument with an original maturity of less than 365 days (one year), including short term deposits and demand deposits, to any person, unless the person is a subsidiary of the global systemically important BHC;

(2) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to a subsidiary of the global systemically important BHC against the amount, or a portion of the amount, owed by the global systemically important BHC under the instrument;

(3) Enter into a qualified financial contract with a person that is not a subsidiary of the global systemically important BHC;

(4) Guarantee a liability of a subsidiary of the global systemically important BHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the global systemically important BHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394); or

(5) Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

(b) *Limit on unrelated liabilities.* (1) The aggregate amount, on an unconsolidated basis, of unrelated liabilities of a global systemically important BHC owed to persons that are not affiliates of the global systemically important BHC may not exceed 5 percent of the systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b).

(2) For purposes of paragraph (b)(1) of this section, an unrelated liability is any non-contingent liability of the global systemically important BHC owed to a person that is not an affiliate of the global systemically important BHC other than:

(i) The instruments that satisfy the global systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b);

(ii) Any dividend or other liability arising from the instruments that satisfy the global systemically important BHC's external total loss-absorbing capacity amount, as calculated under § 252.63(b)(2);

(iii) An eligible debt security that does not provide the holder of the instrument with a currently exercisable right to require immediate payment of the total or remaining principal amount; and

(iv) A secured liability, to the extent that it is secured, or a liability that otherwise represents a claim that would be senior to eligible debt securities in Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(b)) and the Bankruptcy Code (11 U.S.C. 507).

§ 252.65 Disclosure requirements.

(a) A global systemically important BHC must publicly disclose a description of the financial consequences to unsecured debtholders of the global systemically important BHC entering into a resolution proceeding in which the global systemically important BHC is the only entity that would be subject to the resolution proceeding.

(b) A global systemically important BHC must provide the disclosure required by paragraph (a) of this section:

(1) In the offering documents for all of its eligible debt securities; and

(2) Either:

(i) On the global systemically important BHC's Web site; or

(ii) In more than one public financial report or other public regulatory reports, provided that the global systemically important BHC publicly provides a summary table specifically indicating the location(s) of this disclosure.

■ 7. Add § 252.153(b)(4), (5), and (6) to read as follows:

§ 252.153 U.S. intermediate holding company requirement for foreign banking organizations with U.S. non-branch assets of $50 billion or more.

* * * * *

(b) * * *

(4) For purposes of this part, a top-tier foreign banking organization that controls a U.S. intermediate holding company is a global systemically important foreign banking organization if any of the following conditions are met:

(i) The top-tier foreign banking organization determines, pursuant to paragraph (b)(6) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(ii) The Board, using information reported by the top-tier foreign banking organization or its U.S. subsidiaries, information that is publicly available, and confidential supervisory information, determines:

(A) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important BHC under § 217.402 of the Board's Regulation Q; or

(C) That the U.S. intermediate holding company, if it were subject to § 217.402 of the Board's Regulation Q, would be identified as a global systemically important BHC.

(5) Each top-tier foreign banking organization that controls a U.S. intermediate holding company shall submit to the Board by January 1 of each calendar year through the U.S. intermediate holding company:

(i) Notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization of the U.S. intermediate holding company has adopted standards consistent with the global methodology; and

(ii) Notice of whether the top-tier foreign banking organization prepares or reports the indicators used by the global methodology to identify a banking organization as a global systemically important banking organization and, if it does, whether the top-tier foreign banking organization has determined that it has the characteristics of a global systemically important banking organization under the global methodology pursuant to paragraph (b)(6) of this section.

(6) A top-tier foreign banking organization that controls a U.S. intermediate holding company and prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

* * * * *

■ 8. Add subpart P to read as follows:

Subpart P—Internal Long-Term Debt Requirement, Internal Total Loss-absorbing Capacity Requirement and Buffer, and Restrictions on Corporate Practices for Intermediate Holding Companies of Global Systemic Foreign Banking Organizations

Sec.
252.160 Applicability.
252.161 Definitions.
252.162 Internal long-term debt requirement.
252.163 Internal debt conversion order.
252.164 Internal total loss-absorbing capacity requirement and buffer.
252.165 Restrictions on corporate practices of intermediate holding companies of foreign banking organizations.

§ 252.160 Applicability.

(a) *General applicability.* This subpart applies to a U.S. intermediate holding company that is required to be established pursuant to § 252.153 and is controlled by a global systemically important foreign banking organization (Covered IHC).

(b) *Initial applicability.* A Covered IHC is subject to the requirements of this subpart beginning on the later of:

(1) January 1, 2019; and

(2) 1095 days (three years) after the earlier of date on which a:

(i) Global systemically important foreign banking organization is required to establish a U.S. intermediate holding company pursuant to § 252.153; and

(ii) Foreign banking organization that is required to establish a U.S. intermediate holding company pursuant to § 252.153 becomes a global systemically important foreign banking organization.

§ 252.161 Definitions.

For purposes of this subpart:

Additional tier 1 capital has the same meaning as in 12 CFR 217.20(c).

Average total consolidated assets means the denominator of the leverage ratio as described in 12 CFR 217.10(b)(4).

Common equity tier 1 capital has the same meaning as in 12 CFR 217.20(b).

Common equity tier 1 capital ratio has the same meaning as in 12 CFR 217.10(b)(1) and 12 CFR 217.10(c), as applicable.

Common equity tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Covered IHC is defined in § 252.160.

Default right (1) Means any:

(i) Right of a party, whether contractual or otherwise (including rights incorporated by reference to any other contract, agreement or document, and rights afforded by statute, civil code, regulation and common law), to

liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay or defer payment or performance thereunder, modify the obligations of a party thereunder or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure; and

(2) Does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

Discretionary bonus payment has the same meaning as under 12 CFR 217.2.

Distribution has the same meaning as under 12 CFR 217.2.

Eligible internal debt security means a debt instrument that:

(1) Is paid in, and issued by a Covered IHC to and remains held by a company that is incorporated or organized outside of the United States that directly or indirectly controls the Covered IHC;

(2) Is unsecured and would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceeding of the Covered IHC;

(3) Has a maturity at issuance of greater than 365 days (one year) from the date of issuance;

(4) Does not provide the holder of the instrument a contractual right to accelerate payment of principal or interest on the instrument;

(5) Has a contractual provision that is approved by the Board that provides for the immediate conversion or exchange of the instrument into common equity tier 1 of the Covered IHC, or the cancellation of the instrument, in either case upon issuance by the Board of an internal debt conversion order;

(6) Is governed by the laws of the United States or any State thereof; and

(7) Is not a structured note.

GAAP means generally accepted accounting principles as used in the United States.

Internal debt conversion order, with respect to a Covered IHC, means an order by the Board to immediately convert or exchange all eligible internal debt securities of the Covered IHC to common equity tier 1 capital or immediately cancel all eligible internal debt securities of the Covered IHC.

Internal TLAC buffer means, with respect to a Covered IHC, the sum of 2.5 percent and any applicable countercyclical capital buffer under 12 CFR 217.11(b) (expressed as a percentage).

Outstanding eligible internal long-term debt amount is defined in § 252.162(b).

Person has the same meaning as in 12 CFR 225.2.

Qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)) including, any ''swap'' defined in section 1a(47) of the Commodities Exchange Act (7 U.S.C. 1a(47)) and in any rules or regulations issued by the Commodity Futures Trading Commission pursuant to such section; any ''security-based swap'' defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and in any rules or regulations issued by the Securities and Exchange Commission pursuant to such section; and any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Federal Deposit Insurance Corporation determines by regulation to be a qualified financial contract as provided in 12 U.S.C. 5390(c)(8)(D)(i).

Standardized total risk-weighted assets has the same meaning as in 12 CFR 217.2.

Structured note means a debt instrument that:

(1) Has a principal amount, redemption amount, or stated maturity that is subject to reduction based on the performance of any asset, entity, index, or embedded derivative or similar embedded feature;

(2) Has an embedded derivative or other similar embedded feature that is linked to one or more equity securities, commodities, assets, or entities;

(3) Does not specify a minimum principal amount due upon acceleration or early termination; or

(4) Is not classified as debt under GAAP.

Supplementary leverage ratio has the same meaning as in 12 CFR 217.10(c)(4).

Tier 1 minority interest has the same meaning as in 12 CFR 217.2.

Tier 2 capital has the same meaning as in 12 CFR 217.20(d).

Total leverage exposure has the same meaning as in 12 CFR 217.10(c)(4)(ii).

Total risk-weighted assets, with respect to a Covered IHC, is equal to the Covered IHC's standardized total risk-weighted assets.

§ 252.162 Internal long-term debt requirement.

(a) *Internal long-term debt requirement.* A Covered IHC must have an outstanding eligible internal long-term debt amount that is no less than the amount equal to the greater of:

(1) 7 percent of the Covered IHC's total risk-weighted assets;

(2) If the Covered IHC is required to maintain a minimum supplementary leverage ratio, 3 percent of the Covered IHC's total leverage exposure; and

(3) 4 percent of the Covered IHC's average total consolidated assets.

(b) *Outstanding eligible internal long-term debt amount.* A Covered IHC's outstanding eligible internal long-term debt amount is the sum of:

(1) One hundred (100) percent of the unpaid principal amount of the outstanding eligible internal debt securities issued by the Covered IHC that have a remaining maturity greater than or equal to 730 days (two years); and

(2) Fifty (50) percent of the unpaid principal amount of the outstanding eligible internal debt securities issued by the Covered IHC that have a remaining maturity of greater than or equal to 365 days (one year) and less than 730 days (two years); and

(3) Zero (0) percent of the unpaid principal amount of the outstanding eligible internal debt securities issued by the Covered IHC that have a remaining maturity of less than 365 days (one year).

(c) *Redemption and repurchase.* Without the prior approval of the Board, a Covered IHC may not redeem or repurchase any outstanding eligible internal debt security if, immediately after the redemption or repurchase, the Covered IHC would not have an outstanding eligible internal long-term debt amount that is sufficient to meet its internal long-term debt requirement under paragraph (a) of this section.

§ 252.163 Internal debt conversion order.

(a) The Board may issue an internal debt conversion order if:

(1) The Board has determined that the Covered IHC is in default or danger of default; and

(2) Any of the following circumstances apply:

(i) A foreign banking organization that directly or indirectly controls the Covered IHC or any subsidiary of the top-tier foreign banking organization has been placed into resolution proceedings (including the application of statutory resolution powers) in its home country;

(ii) The home country supervisor of the top-tier foreign banking organization has consented or not promptly objected after notification by the Board to the conversion, exchange, or cancellation of the eligible internal debt securities of the Covered IHC; or

(iii) The Board has made a written recommendation to the Secretary of the Treasury pursuant to 12 U.S.C. 5383(a) regarding the Covered IHC.

(b) For purposes of paragraph (a) of this section, the Board will consider:

(1) A Covered IHC in default or danger of default if

(i) A case has been, or likely will promptly be, commenced with respect to the Covered IHC under the Bankruptcy Code (11 U.S.C. 101 *et seq.*);

(ii) The Covered IHC has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the Covered IHC to avoid such depletion;

(iii) The assets of the Covered IHC are, or are likely to be, less than its obligations to creditors and others; or

(iv) The Covered IHC is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business; and

(2) An objection by the home country supervisor to the conversion, exchange or cancellation of the eligible internal debt securities to be prompt if the Board receives the objection no later than 48 hours after the Board requests such consent or non-objection from the home country supervisor.

§ 252.164 Internal total loss-absorbing capacity requirement and buffer.

(a) *Internal total loss-absorbing capacity requirement.* Except as provided in paragraph (b) of this section, a Covered IHC must have an outstanding internal total loss-absorbing capacity amount that is no less than the amount equal to the greater of:

(1) (i) From January 1, 2019 through December 31, 2021, 16 percent of the Covered IHC's total risk-weighted assets; and

(ii) Beginning January 1, 2022, 18 percent of the Covered IHC's total risk-weighted assets;

(2) If the Board requires the Covered IHC to maintain a minimum supplementary leverage ratio, 6.75 percent of the Covered IHC's total leverage exposure; and

(3) Nine (9) percent of the Covered IHC's average total consolidated assets.

(b) *Internal total loss-absorbing capacity requirement for a Covered IHCs that is a non-resolution entity.* A Covered IHC that is a non-resolution entity must have an outstanding internal total loss-absorbing capacity no less than the amount equal to the greater of:

(1) (i) From January 1, 2019 through December 31, 2021, 14 percent of the Covered IHC's total risk-weighted assets; and

(ii) Beginning January 1, 2022, 16 percent of the Covered IHC's total risk-weighted assets;

(2) If the Board requires the Covered IHC to maintain a minimum supplementary leverage ratio, 6 percent of the Covered IHC's total leverage exposure; and

(3) Eight (8) percent of the Covered IHC's average total consolidated assets.

(c) *Internal Total loss-absorbing capacity amount.* A Covered IHC's internal total loss-absorbing capacity amount is equal to the sum of:

(1) The Covered IHC's common equity tier 1 capital (excluding any common equity tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC;

(2) The Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC; and

(3) The Covered IHC's outstanding eligible internal long-term debt amount plus 50 percent of the unpaid principal amount of outstanding eligible internal debt securities issued by the Covered IHC that have a remaining maturity of greater than or equal to 365 days (one year) but less than 730 days (two years).

(d) *Identification of non-resolution entities.* (1) A Covered IHC is a non-resolution entity for purposes of this section if the home country resolution authority for the top-tier foreign banking organization that controls the Covered IHC has certified to the Board that the authority's planned resolution strategy for the foreign banking organization does not involve the Covered IHC or the subsidiaries of the Covered IHC entering resolution, receivership, insolvency or similar proceedings in the United States.

(2) A Covered IHC will cease to be a non-resolution entity 365 days (one year) from the date the Board first provided notice to the Covered IHC that the home country resolution authority for the top-tier foreign banking organization that controls the Covered IHC has indicated that the authority's planned resolution strategy for the foreign banking organization involves the Covered IHC or one or more of the subsidiaries of the Covered IHC entering resolution, receivership, insolvency or similar proceedings in the United States.

(e) *Internal TLAC buffer.*—(1) *Composition of the internal TLAC buffer.* The internal TLAC buffer is composed solely of common equity tier 1 capital.

(2) *Definitions.* For purposes of this paragraph, the following definitions apply:

(i) *Eligible retained income.* The eligible retained income of a Covered IHC is its net income for the four calendar quarters preceding the current calendar quarter, based on the Covered IHC's FR Y–9C, or other applicable regulatory report as determined by the Board, net of any distributions and associated tax effects not already reflected in net income. Net income, as reported in the FR Y–9C, reflects discretionary bonus payments and certain distributions that are expense items (and their associated tax effects).

(ii) *Maximum internal TLAC payout ratio.* The maximum internal TLAC payout ratio is the percentage of eligible retained income that a Covered IHC can pay out in the form of distributions and discretionary bonus payments during the current calendar quarter. The maximum internal TLAC payout ratio is based on the Covered IHC's internal TLAC buffer level, calculated as of the last day of the previous calendar quarter, as set forth in Table 1 to § 252.164.

(iii) *Maximum internal TLAC payout amount.* A Covered IHC's maximum internal TLAC payout amount for the current calendar quarter is equal to the Covered IHC's eligible retained income, multiplied by the applicable maximum internal TLAC payout ratio, as set forth in Table 1 to § 252.164.

(3) *Calculation of the internal TLAC buffer level.* (i) A Covered IHC's internal TLAC buffer level is equal to the Covered IHC's common equity tier 1 capital ratio (expressed as a percentage) minus the greater of zero and the following amount:

(A) (*1*) From January 1, 2019, through December 31, 2021, 14 percent for a

Covered IHC that is a non-resolution entity, and 16 percent for all other Covered IHCs; and

(*2*) Beginning January 1, 2022, 16 percent for a Covered IHC that is a non-resolution entity, and 18 percent for all other Covered IHCs; minus

(B) The ratio (expressed as a percentage) of the Covered IHC's additional tier 1 capital (excluding any tier 1 minority interest) held by a company that is incorporated or organized outside of the United States and that directly or indirectly controls the Covered IHC to its total risk-weighted assets; and minus

(C) The ratio (expressed as a percentage) of the Covered IHC's eligible internal long-term debt to total risk-weighted assets.

(ii) (A) Except as provided in paragraph (e)(3)(ii)(B) of this section and notwithstanding paragraph (e)(3)(i) of this section, if the ratio (expressed as a percentage) of the Covered IHC's internal total loss-absorbing capacity amount, as calculated under § 252.164(a), to the Covered IHC's risk-weighted assets is less than or equal to, from January 1, 2019, through December 31, 2021, 16 percent and beginning January 1, 2022, 18 percent, the Covered IHC's internal TLAC buffer level is zero.

(B) With respect to a Covered IHC that is a non-resolution entity, notwithstanding paragraph (e)(3)(i) of this section, if the ratio (expressed as a percentage) of the Covered IHC's internal total loss-absorbing capacity amount, as calculated under § 252.164(b), to the Covered IHC's risk-weighted assets is less than or equal to, from January 1, 2019, through December 31, 2021, 14 percent and beginning January 1, 2022, 16 percent, the Covered IHC's internal TLAC buffer level is zero.

(4) *Limits on distributions and discretionary bonus payments.* (i) A Covered IHC shall not make distributions or discretionary bonus payments or create an obligation to make such distributions or payments during the current calendar quarter that, in the aggregate, exceed the maximum internal TLAC payout amount.

(ii) A Covered IHC with an internal TLAC buffer level that is greater than the internal TLAC buffer is not subject to a maximum internal TLAC payout amount.

(iii) Except as provided in paragraph (e)(4)(iv) of this section, a Covered IHC may not make distributions or discretionary bonus payments during the current calendar quarter if the Covered IHC's:

(A) Eligible retained income is negative; and

(B) Internal TLAC buffer level was less than the internal TLAC buffer as of the end of the previous calendar quarter.

(iv) Notwithstanding the limitations in paragraphs (e)(4)(i) through (iii) of this section, the Board may permit a Covered IHC to make a distribution or discretionary bonus payment upon a request of the Covered IHC, if the Board determines that the distribution or discretionary bonus payment would not be contrary to the purposes of this section, or to the safety and soundness of the Covered IHC. In making such a determination, the Board will consider the nature and extent of the request and the particular circumstances giving rise to the request.

TABLE 1 TO § 252.164—CALCULATION OF MAXIMUM INTERNAL TLAC PAYOUT AMOUNT

Internal TLAC buffer level	Maximum internal TLAC payout ratio (as a percentage of eligible retained income)
Greater than the internal TLAC buffer	No payout ratio limitation applies
Less than or equal to the internal TLAC buffer, *and* greater than 75 percent of the internal TLAC buffer.	60 percent.
Less than or equal to 75 percent of the internal TLAC buffer, *and* greater than 50 percent of the internal TLAC buffer.	40 percent.
Less than or equal to 50 percent of the internal TLAC buffer, *and* greater 25 percent of the internal TLAC buffer.	20 percent.
Less than or equal to 25 percent of the internal TLAC buffer	0 percent.

(v) (A) A Covered IHC is subject to the lowest of the maximum payout amounts as determined under 12 CFR 217.11(a)(2)(iii) and (iv) and the maximum internal TLAC payout amount as determined under this paragraph.

(B) Additional limitations on distributions may apply to a Covered IHC under 12 CFR 225.4, 225.8, and 263.202.

§ 252.165 Restrictions on corporate practices of intermediate holding companies of foreign banking organizations.

A Covered IHC may not directly:

(a) Issue any debt instrument with an original maturity of less than 365 days (one year), including short term deposits and demand deposits, to any person, unless the person is an affiliate of the covered IHC;

(b) Issue any instrument, or enter into any related contract, with respect to which the holder of the instrument has a contractual right to offset debt owed by the holder or its affiliates to the Covered IHC or a subsidiary of the Covered IHC against the amount, or a portion of the amount, owed by the Covered IHC under the instrument;

(c) Enter into a qualified financial contract with a person that is not an affiliate of the Covered IHC;

(d) Guarantee a liability of an affiliate of the Covered IHC if such liability permits the exercise of a default right that is related, directly or indirectly, to the Covered IHC becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 through 5394); or

(e) Enter into, or otherwise benefit from, any agreement that provides for its liabilities to be guaranteed by any of its subsidiaries.

By order of the Board of Governors of the Federal Reserve System, November 17, 2015.

Robert deV. Frierson,

Secretary of the Board.

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