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# Contents

Federal Register

Vol. 80, No. 242

Thursday, December 17, 2015

## Agricultural Marketing Service

### PROPOSED RULES

Tart Cherries Grown in the States of Michigan, et al.:  
Free and Restricted Percentages for the 2015–16 Crop  
Year for Tart Cherries, 78677–78681

## Agriculture Department

See Agricultural Marketing Service

## Army Department

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 78721–78722

## Centers for Disease Control and Prevention

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 78736–78740

## Commerce Department

See Economic Development Administration

See Foreign-Trade Zones Board

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

## Commodity Futures Trading Commission

### PROPOSED RULES

Regulation Automated Trading, 78824–78948

### NOTICES

Meetings; Sunshine Act, 78721

## Comptroller of the Currency

### PROPOSED RULES

Proposed Guidelines:

Standards for Recovery Planning by Certain Large Insured  
National Banks, Insured Federal Savings  
Associations, and Insured Federal Branches, 78681–  
78689

## Consumer Product Safety Commission

### RULES

Toys:

Determination Regarding Heavy Elements Limits for  
Unfinished and Untreated Wood, 78651–78657

## Defense Department

See Army Department

### NOTICES

Meetings:

Defense Acquisition University Board of Visitors, 78722

## Drug Enforcement Administration

### RULES

Schedules of Controlled Substances:

Placement of Eluxadolone into Schedule IV; Correction,  
78657

### NOTICES

Importers of Controlled Substances; Applications:  
Fisher Clinical Services, Inc., 78766

Manufacturers of Controlled Substances; Applications:  
Johnson Matthey, Inc., 78765–78766

National Center for Natural Products Research, 78766–  
78767

Manufacturers of Controlled Substances; Registrations:  
Austin Pharma, LLC, 78765

## Economic Development Administration

### NOTICES

Trade Adjustment Assistance Eligibility; Petitions, 78708

## Employment and Training Administration

### NOTICES

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 78768–78769

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:

Equal Employment Opportunity in Apprenticeship  
Programs, 78772–78773

Occupational Code Assignment, 78769–78770

Guam Military Base Realignment Contractor Recruitment  
Standards, 78770–78772

## Energy Department

See Federal Energy Regulatory Commission

### NOTICES

Charter Renewals:

Biological and Environmental Research Advisory  
Committee, 78723

Nuclear Energy Advisory Committee, 78722–78723

Meetings:

Environmental Management Site-Specific Advisory  
Board, Portsmouth, 78723–78724

Fusion Energy Sciences Advisory Committee, 78723

State Energy Advisory Board; Open Teleconference,  
78724

## Environmental Protection Agency

### PROPOSED RULES

Protection of Stratospheric Ozone; Update to the Refrigerant  
Management Requirements Under the Clean Air Act:  
Extension of Comment Period, 78705

### NOTICES

Pesticide Product Registrations:

Application for a New Active Ingredient, 78730

Applications for New Uses, 78729–78730

Protection of Water Quality from Forest Road Discharges,  
78728–78729

## Farm Credit Administration

### RULES

Federal Agricultural Mortgage Corporation Funding and  
Fiscal Affairs; CFR Correction, 78650

Privacy Act Regulations; CFR Correction, 78649–78650

## Federal Aviation Administration

### RULES

Changes to Production Certificates and Approvals;  
Correction, 78650–78651

### PROPOSED RULES

Airworthiness Directives:

Saab AB, Saab Aeronautics (formerly known as Saab AB,  
Saab Aerosystems), 78702–78704

Saab AB, Saab Aeronautics (formerly known as Saab AB,  
Saab Aerosystems) Airplanes, 78699–78701

**NOTICES**

Petitions for Exemptions; Summaries:  
 AeroCine, LLC, 78815–78816  
 Release of Airport Property:  
 Orlando Executive Airport, Orlando, FL, 78816

**Federal Communications Commission****NOTICES**

Meetings:  
 Open Commission Meeting, 78730–78732

**Federal Deposit Insurance Corporation****NOTICES**

Meetings; Sunshine Act, 78732

**Federal Energy Regulatory Commission****NOTICES**

Applications:  
 Paulsboro Natural Gas Pipeline Co., LLC, 78726  
 Combined Filings, 78724–78726  
 Environmental Reviews:  
 Dominion Carolina Gas Transmission; Columbia to  
 Eastover Project, 78727–78728  
 License Terminations:  
 David O. Harde, 78726–78727

**Federal Highway Administration****NOTICES**

Environmental Impact Statements; Availability, etc.:  
 Pennington County, SD; Pennington County, ME, 78816–  
 78817

**Federal Housing Finance Agency****PROPOSED RULES**

Acquired Member Assets, 78689–78699

**Federal Housing Finance Board****PROPOSED RULES**

Acquired Member Assets, 78689–78699

**Federal Maritime Commission****NOTICES**

Agreements Filed, 78732–78733

**Federal Reserve System****NOTICES**

Formations of, Acquisitions by, and Mergers of Bank  
 Holding Companies, 78733

**Federal Trade Commission****NOTICES**

Requests for Early Terminations of the Waiting Period  
 under the Premerger Notification Rules, 78733–78736

**Financial Crimes Enforcement Network****NOTICES**

Requests for Nominations:  
 Bank Secrecy Act Advisory Group, 78819–78820

**Fish and Wildlife Service****PROPOSED RULES**

Migratory Bird Subsistence Harvest in Alaska; Harvest  
 Regulations for Migratory Birds in Alaska during the  
 2016 Season, 78950–78956

**NOTICES**

Endangered and Threatened Wildlife and Plants:  
 Initiation of 5-Year Status Reviews of One Listed Animal  
 and Five Listed Plant Species, 78751–78752

**Meetings:**

Sport Fishing and Boating Partnership Council;  
 Teleconference, 78752–78753

**Food and Drug Administration****NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals:  
 Guidance for Industry on Oversight of Clinical  
 Investigations, A Risk-Based Approach to  
 Monitoring, 78745–78746  
 Guidance for Industry on Safety Labeling Changes,  
 78740–78741  
 Determination That Drug Products, Were Not Withdrawn  
 From Sale for Reasons of Safety or Effectiveness:  
 Vancomycin Hydrochloride Injection, 78747–78748  
 Guidance for Industry:  
 Safety Assessment for Investigational New Drug  
 Application Safety Reporting; Availability, 78743–  
 78745  
 Medical Device Single Audit Program Operational Phase;  
 Announcements:  
 Medical Device ISO 13485:2003 Voluntary Audit Report  
 Pilot Program; Termination of Pilot Program, 78741–  
 78742  
 Meetings:  
 Twentieth Food and Drug Administration International  
 Separation Science Society Symposium on the  
 Interface of Regulatory and Analytical Sciences for  
 Biotechnology Health Products, 78742–78743

**Foreign-Trade Zones Board****NOTICES**

Reorganizations under Alternative Site Framework:  
 Foreign-Trade Zone 147, Berks County, PA, 78708–78709

**Geological Survey****NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals, 78753–78754

**Health and Human Services Department**

*See Centers for Disease Control and Prevention*  
*See Food and Drug Administration*  
*See Health Resources and Services Administration*

**Health Resources and Services Administration****NOTICES**

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals, 78748–78749

**Housing and Urban Development Department****NOTICES**

Statutorily Mandated Designations of Difficult Development  
 Areas and Qualified Census Tracts:  
 Revision of Effective Date for 2015 Designations, 78749–  
 78751

**Industry and Security Bureau****RULES**

Definitions of Terms; CFR Correction, 78651  
 Recordkeeping; CFR Correction, 78651

**Interior Department**

*See Fish and Wildlife Service*  
*See Geological Survey*  
*See Ocean Energy Management Bureau*  
*See Reclamation Bureau*

See Surface Mining Reclamation and Enforcement Office

**NOTICES**

Senior Executive Service Performance Review Board  
Appointments, 78754–78755

**Internal Revenue Service****NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 78820

**International Trade Administration****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,  
or Reviews:

Certain Pasta from Italy, 78710

Drawn Stainless Steel Sinks from the People's Republic  
of China: Partial Rescission of Antidumping Duty  
Administrative Review; 2014–2015, 78709–78710

**International Trade Commission****NOTICES**

Investigations; Determinations, Modifications, and Rulings,  
etc.:

Certain Computer Cables, Chargers, Adapters, Peripheral  
Devices and Packaging Containing the Same, 78763–  
78764

Probable Economic Effects of Certain Modifications to the  
CAFTA–DR Rules of Origin, 78764–78765

**Justice Department**

See Drug Enforcement Administration

**NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:

Body Worn Camera Supplement to the Law Enforcement  
Management and Administrative Statistics Survey,  
78767–78768

Voluntary Magazine Questionnaire For Agencies/Entities  
Who Store Explosive Materials, 78767

**Labor Department**

See Employment and Training Administration

See Occupational Safety and Health Administration

**National Credit Union Administration****RULES**

Administrative Actions, Adjudicative Hearings, Rules of  
Practice and Procedure, and Investigations; CFR  
Correction, 78650

**NOTICES**

Meetings; Sunshine Act, 78776

**National Highway Traffic Safety Administration****RULES**

Federal Motor Vehicle Safety Standard; Lamps, Reflective  
Devices, and Associated Equipment, 78664–78670

**NOTICES**

Petitions for Temporary Exemption:

Columbia Body Manufacturing Co., 78817–78819

**National Oceanic and Atmospheric Administration****RULES**

Fisheries of the Caribbean, Gulf of Mexico, and South  
Atlantic:

Coastal Migratory Pelagic Resources in the Gulf of  
Mexico and Atlantic Region; Framework Amendment  
3, 78670–78675

Fisheries of the Exclusive Economic Zone Off Alaska:

Other Hook-and-Line Fishery by Catcher Vessels in the  
Gulf of Alaska, 78675–78676

**PROPOSED RULES**

Fisheries of the Exclusive Economic Zone Off Alaska:

Observer Coverage Requirements for Small Catcher/  
Processor in the Gulf of Alaska and Bering Sea and  
Aleutian Islands Groundfish Fisheries, 78705–78707

**NOTICES**

Endangered and Threatened Species:

Recovery Plans, 78719–78721

Indirect Cost Rates for the Damage Assessment,

Remediation, and Restoration Program for Fiscal Year  
2014, 78718–78719

Meetings:

Fisheries of the Gulf of Mexico; Southeast Data,  
Assessment, and Review, 78718

Pacific Fishery Management Council, 78717–78718

Permits:

Taking of Threatened or Endangered Marine Mammals  
Incidental to Commercial Fishing Operations, 78711–  
78717

**Nuclear Regulatory Commission****NOTICES**

Exemptions:

Entergy Nuclear Operations, Inc., Vermont Yankee  
Nuclear Power Station, 78776–78788

**Occupational Safety and Health Administration****NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

Hexavalent Chromium Standards, 78775–78776

Standard on 4, 4'-Methylenedianiline (MDA) in  
Construction, 78773–78775

**Ocean Energy Management Bureau****NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

Renewable Energy and Alternate Uses of Existing  
Facilities on the Outer Continental Shelf, 78756–  
78763

**Postal Regulatory Commission****NOTICES**

New Postal Products, 78788–78790

**Postal Service****NOTICES**

Product Changes:

First-Class Package Service Negotiated Service  
Agreement, 78790

**Reclamation Bureau****NOTICES**

Change in Discount Rate for Water Resources Planning,  
78763

**Securities and Exchange Commission****NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals, 78802–78803, 78810–  
78811

Self-Regulatory Organizations; Proposed Rule Changes:

BATS Exchange, Inc., 78800–78802

BATS Y-Exchange, Inc., 78804–78806

C2 Options Exchange, Inc., 78793–78794  
 Chicago Board Options Exchange, Inc., 78794–78797,  
 78799–78800, 78803–78804  
 NASDAQ OMX PHLX, LLC, 78797–78799  
 NYSE Arca, Inc., 78791–78793, 78806–78810

### Social Security Administration

#### NOTICES

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals, 78811–78812

### State Department

#### PROPOSED RULES

Privacy Act; Exemptions, 78704–78705

#### NOTICES

Privacy Act; Systems of Records, 78812–78814

### Surface Mining Reclamation and Enforcement Office

#### RULES

Regulatory Program:  
 Missouri, 78657–78664

### Surface Transportation Board

#### NOTICES

Temporary Trackage Rights Exemptions:  
 BNSF Railway Co.; Union Pacific Railroad Co., 78819

### Susquehanna River Basin Commission

#### NOTICES

Projects Approved for Consumptive Uses of Water, 78814–  
 78815

### Transportation Department

See Federal Aviation Administration  
 See Federal Highway Administration  
 See National Highway Traffic Safety Administration  
 See Surface Transportation Board

### RULES

Uniform Administrative Requirements, Cost Principles, and  
 Audit Requirements for Federal Awards, 78649

### Treasury Department

See Comptroller of the Currency  
 See Financial Crimes Enforcement Network  
 See Internal Revenue Service

### Veterans Affairs Department

#### NOTICES

Agency Information Collection Activities; Proposals,  
 Submissions, and Approvals:  
 Application for VA Education Benefits, Application for  
 Family Member to Use Transferred Benefits, etc.,  
 78820–78821

---

### Separate Parts In This Issue

#### Part II

Commodity Futures Trading Commission, 78824–78948

#### Part III

Interior Department, Fish and Wildlife Service, 78950–  
 78956

---

### Reader Aids

Consult the Reader Aids section at the end of this issue for  
 phone numbers, online resources, finding aids, and notice  
 of recently enacted public laws.

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**CFR PARTS AFFECTED IN THIS ISSUE**

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

**2 CFR**

1201 .....78649

**7 CFR****Proposed Rules:**

930 .....78677

**12 CFR**

603 .....78649

652 .....78650

747 .....78650

**Proposed Rules:**

30 .....78681

995 .....78689

1201 .....78689

1268 .....78689

**14 CFR**

21 .....78650

45 .....78650

**Proposed Rules:**

39 (2 documents) .....78699,

78702

**15 CFR**

762 .....78651

772 .....78651

**16 CFR**

1251 .....78651

**17 CFR****Proposed Rules:**

1 .....78824

38 .....78824

40 .....78824

170 .....78824

**21 CFR**

1308 .....78657

**22 CFR****Proposed Rules:**

171 .....78704

**30 CFR**

925 .....78657

**40 CFR****Proposed Rules:**

82 .....78705

**49 CFR**

18 .....78649

19 .....78649

571 .....78664

**50 CFR**

622 .....78670

679 .....78675

**Proposed Rules:**

92 .....78950

679 .....78705

# Rules and Regulations

Federal Register

Vol. 80, No. 242

Thursday, December 17, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 2 CFR Part 1201

#### 49 CFR Parts 18 and 19

[Docket No. OMB–2014–0006]

RIN 2105–AE33

### Department of Transportation Regulatory Implementation of Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** On December 19, 2014, the U.S. Department of Transportation, with other Federal agencies, published a joint interim final rule implementing the guidance titled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” that the Office of Management and Budget (OMB) published on December 26, 2013. While the Department received two comments on related implementation guidance, to which we respond, the Department did not receive any comments on the final rule implementing the OMB guidance. Therefore, this rule confirms that the changes that the Department published in the interim final rule on December 19, 2014, are final.

**DATES:** Effective December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Smith, Office of the General Counsel (C–10), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–2917, [michael.a.smith@dot.gov](mailto:michael.a.smith@dot.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) published guidance titled “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” in 2 CFR part 200 on December 26, 2013 (78 FR 78589), to improve the efficiency and effectiveness of Federal financial assistance. That guidance followed an advance notice of proposed guidance (77 FR 11778) and a notice of proposed guidance (78 FR 7282). The guidance required that Federal agencies promulgate a regulation implementing its policies and procedures. On December 19, 2014, the Department and other agencies published a joint interim final rule to implement the guidance (79 FR 75871).

In the joint interim final rule, the Department implemented the guidance through regulations at 2 CFR part 1201 and removed its previous regulations on Federal awards at 49 CFR parts 18 and 19. The OMB and the Department received comments in response to the joint interim final rule, but none of those comments were about the final rule itself, 2 CFR part 1201, or 49 CFR part 18 or 19. Thus, the Department confirms that the changes to 2 CFR part 1201 and 49 CFR parts 18 and 19 that it published in the joint interim final rule are final.

Although the Department did not receive any comments regarding the substance of the joint interim final rule, there were two comments submitted related to implementation guidance that the Federal Highway Administration (FHWA) issued on December 4, 2014. First, we received a comment from the Maryland State Highway Administration (SHA) seeking clarification of how FHWA expected State departments of transportation, as “pass-through entities,” to monitor and negotiate subrecipients’ indirect costs. Section D.1.b of Appendix VII to part 200 states that “[w]here a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient’s indirect costs.” The FHWA’s implementation guidance supports this requirement and does not add any additional oversight responsibilities for the SHA in negotiating or monitoring the subrecipient’s indirect costs.

Second, we received a comment from the Missouri Department of

Transportation (MoDOT). The FHWA implementation guidance had stated that 2 CFR 200.309 was “a significant change to the Federal-aid highway program because it will impose a period when project costs can be incurred, which includes a project agreement start and end date. . . . The new provision will require an end date to be included in the agreement after which no additional costs may be incurred and are not eligible for reimbursement.” The MoDOT commented that the “requirement to monitor and track project end dates duplicates the efforts being performed to monitor and track inactive projects.” The FHWA does not view the requirement in 2 CFR 200.210(a)(5) and 200.309 that Federal awards have end dates as duplicative of other requirements on MoDOT. Instead, the requirement is an additional internal control that complements existing stewardship and oversight responsibilities held by State departments of transportation. The FHWA anticipates issuing additional guidance about using project agreement end dates to improve funds management.

Regulatory analyses and notices for this final rule were published with the joint interim final rule.

For the reasons stated in the preamble, the Department of Transportation adopts without change the addition of 2 CFR part 1201 and the removal and reservation of 49 CFR parts 18 and 19 that were published in the joint interim final rule at 79 FR 75871 on December 19, 2014.

Issued in Washington, DC, on November 30, 2015.

**Anthony R. Foxx,**  
*Secretary of Transportation.*

[FR Doc. 2015–31076 Filed 12–16–15; 8:45 am]

**BILLING CODE 4910–9X–P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 603

#### Privacy Act Regulations

*CFR Correction*

In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2015, on page 17, in § 603.350, remove the term “Section



552a (j)(3)” and add “Section 552a (i)(3)” in its place.

[FR Doc. 2015–31731 Filed 12–16–15; 8:45 am]

BILLING CODE 1505–01–D

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 652

#### Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs

##### CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2015, on page 344, in appendix A to subpart B to part 652, in the table of contents, add “1.0 Introduction.”.

[FR Doc. 2015–31730 Filed 12–16–15; 8:45 am]

BILLING CODE 1505–01–D

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 747

#### Administrative Actions, Adjudicative Hearings, Rules of Practice and Procedure, and Investigations

##### CFR Correction

In Title 12 of the Code of Federal Regulations, Parts 600 to 899, revised as of January 1, 2015, on page 918, in § 747.616, remove the term “Office of the Controller” and add the term “Office of Chief Financial Officer” in its place.

[FR Doc. 2015–31732 Filed 12–16–15; 8:45 am]

BILLING CODE 1505–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 21 and 45

[Docket No. FAA–2013–0933; Amdt. Nos. 21–98A, 45–29A]

RIN 2120–AK20

#### Changes to Production Certificates and Approvals; Correction

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Aviation Administration (FAA) is correcting a final rule published on October 1, 2015. In that rule, the FAA amended its certification procedures and marking requirements for aeronautical products and articles. This action corrects the effective date of the final rule to permit

an earlier implementation of the rule’s provisions that allow production approval holders to issue authorized release documents for aircraft engines, propellers, and articles. It also permits an earlier implementation date for production certificate holders to manufacture and install interface components, and provides earlier relief from the current requirement that fixed-pitch wooden propellers be marked using an approved fireproof method.

**DATES:** The final rule published October 1, 2015 (80 FR 59021), is effective March 29, 2016, except for §§ 21.1(b)(1), 21.1(b)(5) through (9), 21.137(o), 21.142, 21.147, and 45.11(c), which are effective January 4, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Priscilla Steward or Robert Cook, Aircraft Certification Service, Production Certification Section, AIR–112, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1656; email: [priscilla.steward@faa.gov](mailto:priscilla.steward@faa.gov) or telephone: (202) 267–1590; email: [robert.cook@faa.gov](mailto:robert.cook@faa.gov).

##### SUPPLEMENTARY INFORMATION:

##### Background

On October 1, 2015, the final rule, “Changes to Production Certificates and Approvals,” 80 FR 59021, was published in the **Federal Register**. In that final rule the FAA revised the regulations pertaining to certification requirements for products and articles in part 21 of title 14 of the Code of Federal Regulations (14 CFR) and removed certain marking requirements in 14 CFR part 45 applicable to fixed-pitch wooden propellers. The final rule afforded production approval holders (PAHs) a number of privileges not currently permitted under current regulations.

To provide PAHs privileges similar to those afforded European and Canadian approved manufacturers, § 21.137(o) of the final rule permits a PAH to issue authorized release documents for new aircraft engines, propellers, and articles that it produces, and also for used aircraft engines, propellers, and articles it rebuilds or alters in accordance with § 43.3(j), provided it establishes an FAA-approved process in its quality system for issuing those documents. Authorized release documents would typically be issued using FAA Form 8130–3, Airworthiness Release Certificate, Airworthiness Approval Tag.

The final rule also allows a PAH that meets the requirements of § 21.147(c) to apply for an amendment to its

production certificate for the purpose of manufacturing and installing interface components. The term “interface component” is also specifically defined in § 21.1(a)(5).

Additionally, the final rule amends part 45 to exclude fixed-pitch wooden propellers from the requirement that a propeller, propeller blade, or propeller hub be marked using an approved fireproof method. This exclusion allows manufacturers to mark their products in a practical manner that takes into account the inherent nature of wooden propellers.

Finally, the rule revises the definition of “airworthiness approval,” in § 21.1(b)(1), by expanding it to account for the issuance of an airworthiness approval in instances where an aircraft, aircraft engine, propeller, or article does not conform to its approved design or may not be in a condition for safe operation at the time the airworthiness approval is generated and that nonconformity or condition is specified on the airworthiness approval document.

The FAA issued the final rule with an effective date of 180 days after its publication in the **Federal Register** to allow sufficient time for industry compliance with new requirements contained in the rule. This effective date, however, also delayed the implementation date of certain provisions that removed regulatory burdens that were no longer necessary or appropriate in the current global manufacturing environment. Accordingly, the FAA is amending the effective date of the final rule to January 4, 2016 for the following sections:

- § 21.1(b)(1) which revises the definition of airworthiness approval
- § 21.1(b)(5), which defines interface component
- § 21.137(o), which establishes provisions for the issuance of authorized release documents by PAHs
- § 21.142, which codifies provisions for the inclusion of interface components in a production limitation record
- § 21.147, which specifies the requirements that must be met to amend a production certificate to include interface components
- § 45.11(c), which excludes fixed-pitch wooden propellers from the requirement that they be marked using an approved fireproof method.

The FAA also notes that Change 5 to the Maintenance Annex Guidance (MAG), which implements certain provisions of the Aviation Safety Agreement between the United States and the European Union requires that FAA Form 8130–3 be issued by a U.S.

PAH for new parts that will be installed in articles for which a dual airworthiness release is to be issued. In order to serve European customers many U.S. repair stations will be required to possess parts documentation that U.S. PAHs cannot currently issue and which can only be obtained from the FAA or its designees.

Although the FAA and EASA have agreed to delay the implementation of Change 5 to the MAG until March 29, 2016, correcting the effective date of § 21.137(o) will provide PAHs with the ability to establish a system for the issuance of authorized release documents to meet EASA requirements without increasing staff in the form of Organization Designation Authority (ODA) unit members or Designated Manufacturing Inspection Representatives (DMIRs), or incurring the cost of hiring additional Designated Airworthiness Representatives (DARs).

Additionally, correcting the effective date of §§ 21.142, 21.147, and 45.11(c) will alleviate the current need for PAHs to request new exemptions or renew current exemptions to manufacture and install interface components and appropriately mark wooden propellers.

The remaining sections of the final rule become effective on March 29, 2016, its originally published effective date.

#### Correction

In FR Doc. 2015–24950, beginning on page 59021 in the **Federal Register** of October 1, 2015, in the second column, correct the **DATES** section to read as follows:

**DATES:** This final rule is effective March 29, 2016, except for §§ 21.1(b)(1), 21.1(b)(5) through (9), 21.137(o), 21.142, 21.147 and 45.11(c), which are effective on January 4, 2016.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on December 11, 2015.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2015–31639 Filed 12–16–15; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 762

#### Recordkeeping

##### *CFR Correction*

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2015, on pages 657 and

658, in § 762.1, in paragraph (b), remove “§ 762.7” and add “§ 762.2” in its place, and remove “§ 762.6” and add “§ 762.7” in its place.

[FR Doc. 2015–31733 Filed 12–16–15; 8:45 am]

**BILLING CODE 1505–01–D**

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Part 772

#### Definitions of Terms

##### *CFR Correction*

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2015, on pages 723, 727, and 733, in § 772.1, remove the definitions of “fault tolerance”, “laser duration” and “positioning accuracy”.

[FR Doc. 2015–31737 Filed 12–16–15; 8:45 am]

**BILLING CODE 1505–01–D**

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## CONSUMER PRODUCT SAFETY COMMISSION

#### 16 CFR Part 1251

[Docket No. CPSC–2011–0081]

#### Toys: Determination Regarding Heavy Elements Limits for Unfinished and Untreated Wood

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission (“Commission,” or “CPSC”) is issuing a final rule determining that unfinished and untreated trunk wood does not contain heavy elements that would exceed the limits specified in the Commission’s toy standard, ASTM F963–11. Based on this determination, unfinished and untreated trunk wood in toys does not require third party testing for the heavy element limits in ASTM F963.

**DATES:** The rule is effective on January 19, 2016.

**FOR FURTHER INFORMATION CONTACT:** John W. Boja, Lead Compliance Officer, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Hwy., Room 610M, Bethesda, MD 20814; 301–504–7300; email: [jboja@cpsc.gov](mailto:jboja@cpsc.gov).

**SUPPLEMENTARY INFORMATION:**

#### A. Background

##### 1. Third Party Testing and Burden Reduction

Section 14(a) of the Consumer Product Safety Act, (“CPSA”), as amended by the Consumer Product Safety Improvement Act of 2008 (“CPSIA”), requires that manufacturers of products subject to a consumer product safety rule or similar rule, ban, standard or regulation enforced by the CPSC, must certify that the product complies with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). For children’s products, certification must be based on testing conducted by a CPSC-accepted third party conformity assessment body. *Id.* Public Law 112–28 (August 12, 2011) directed the CPSC to seek comment on “opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation.” Public Law 112–28 also authorized the Commission to issue new or revised third party testing regulations if the Commission determines “that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.” *Id.* 2063(d)(3)(B).

##### 2. CPSC’s Toy Standard

Section 106 of the CPSIA states that the provisions of ASTM International (“ASTM”), *Consumer Safety Specifications for Toy Safety* (“ASTM F963,” or “toy standard”), “shall be considered to be consumer product safety standards issued by the Commission under section 9 of the CPSA (15 U.S.C. 2058).”<sup>1</sup> Thus, toys subject to ASTM F963–11, the current mandatory version of the standard, must be tested by a CPSC-accepted third party conformity assessment body and demonstrate compliance with all applicable CPSC requirements for the manufacturer to issue a Children’s Product Certificate (“CPC”) before the toys can be entered into commerce.

The toy standard has numerous requirements. Among them, section 4.3.5 requires that surface coating materials and accessible substrates of toys<sup>2</sup> that can be sucked, mouthed, or

<sup>1</sup> ASTM F963–11 is a consumer product safety standard, except for section 4.2 and Annex 4, or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute.

<sup>2</sup> ASTM F963–11 contains the following note regarding the scope of the solubility requirement:

Continued

ingested, comply with the solubility limits on eight heavy elements. (We refer to these elements as the “ASTM heavy elements.”) One of the eight ASTM heavy elements is lead. The Commission previously determined that certain materials do not exceed the lead content limit, and therefore, those materials do not require third party testing when used in children’s products (including toys). 16 CFR 1500.91. Thus, CPSC staff focused its work on the remaining seven ASTM heavy elements. The eight ASTM heavy elements and their solubility limits are shown below.

TABLE 1—MAXIMUM SOLUBLE MIGRATED ELEMENT IN PARTS-PER-MILLION FOR SURFACE COATINGS AND SUBSTRATES INCLUDED AS PART OF A TOY

Element	Solubility limit, parts per million, (“ppm”) <sup>3</sup>
Antimony, (“Sb”) .....	60
Arsenic, (“As”) .....	25
Barium, (“Ba”) .....	1000
Cadmium, (“Cd”) .....	75
Chromium, (“Cr”) .....	60
Lead, (“Pb”) .....	90
Mercury, (“Hg”) .....	60
Selenium, (“Se”) .....	500

3. Possible Determinations Regarding the ASTM Heavy Elements

For some materials, the concentrations of all the listed heavy elements might always be below their respective solubility limits due to biological, manufacturing, or other constraints. For example, one of the specified elements may be sequestered in a portion of a plant, such as the roots, that is not used in subsequent manufacturing. Additionally, a manufacturing process step may remove a specified element, if the element is present, from the material being processed. For these materials, compliance with the limits stated in

NOTE 3—For the purposes of this requirement, the following criteria are considered reasonably appropriate for the classification of toys or parts likely to be sucked, mouthed or ingested: (1) All toy parts intended to be mouthed or contact food or drink, components of toys which are cosmetics, and components of writing instruments categorized as toys; (2) Toys intended for children less than 6 years of age, that is, all accessible parts and components where there is a probability that those parts and components may come into contact with the mouth.

<sup>3</sup> The method to assess the solubility of a listed element is detailed in section 8.3.2, *Method to Dissolve Soluble Matter for Surface Coatings*, of ASTM F963–11. Modeling clays included as part of a toy have different solubility limits for several of the elements.

section 4.3.5 of ASTM F963–11 is assured without requiring third party testing because the material is intrinsically compliant.

The third party testing burden could only be reduced if all heavy elements listed in section 4.3.5 have concentrations below their solubility limits. Because third party conformity assessment bodies typically run one test for all of the ASTM heavy elements, no testing burden reduction would be achieved if any one of the heavy elements requires testing.

As discussed further in this preamble, if the Commission determines that, due to the nature of a particular material, children’s products made of that material will comply with CPSC’s requirements with a high degree of assurance, manufacturers do not need to have those materials tested by a third party conformity assessment body.

4. Direct Final Rule and Notice of Proposed Rulemaking

On July 17, 2015, the Commission published a direct final rule (“DFR”) and a companion notice of proposed rulemaking (“NPR”) for the ASTM wood determination that is the subject of this final rule in the same issue of the **Federal Register**. (DFR, 80 FR 42376; NPR, 80 FR 42438). Because the Commission received significant adverse comment to the DFR, the Commission withdrew the DFR and is proceeding with the rulemaking under the NPR that was published simultaneously with the DFR. 80 FR 54417 (Sept. 10, 2015). The comments to the DFR/NPR are addressed in section C of this preamble.

B. Contractor’s Research

1. Overview

CPSC hired a contractor to conduct a literature search to assess whether the Commission potentially could determine that wood and other natural materials do not contain any of the seven specified heavy elements in concentrations above the ASTM F963–11 maximum solubility limits (excluding the eighth element, lead which is already subject to a determination). The contractor researched the following materials:

- Unfinished and untreated wood (ash, beech, birch, cherry, maple, oak, pine, poplar, and walnut);
- Bamboo;
- Beeswax;
- Undyed and untreated fibers and textiles (cotton, wool, linen, and silk); and
- Uncoated or coated paper (wood or other cellulosic fiber). Staff chose these

materials for research because they met two criteria:

- Materials the Commission previously determined not to contain lead in concentrations above 100 ppm; and
- Materials more likely to be used in toys subject to the ASTM F963–11 solubility limits.

The contractor’s report is available on the Commission’s Web site at: <http://www.cpsc.gov/Global/Research-and-Statistics/Technical-Reports/Toys/TERAReportASTMElements.pdf>. CPSC staff reviewed the contractor’s report and prepared a briefing package providing recommendations to the Commission. The staff’s briefing package is also available on the Commission’s Web site: <http://www.cpsc.gov/Global/Newsroom/FOIA/CommissionBriefingPackages/2015/DFRandNPRDeterminationsontheASTMElementsUnfinishedWoods%20June302015.pdf>.

In conducting this research, the contractor considered the following factors:

- The concentrations of the seven heavy elements in the material under study;
- The presence and concentrations of the elements in the environmental media (e.g., soil, water, air), and in the base materials for the textiles and paper;
- Whether processing has the potential to introduce any of the seven heavy elements into the material under study; and
- The potential for contamination after production, such as through packaging.

The contractor examined secondary sources and reviewed articles to identify the available data regarding the elements’ concentrations in the materials listed above. The contractor summarized the relevant data on bioavailability and presence/ concentrations in environmental media (i.e., soil, air, and water) from the most recent Agency for Toxic Substances and Disease Registry (“ATSDR”) <sup>4</sup> toxicological profile, supplemented with more recent authoritative reviews. The contractor conducted a literature search for data on concentrations of the chemical elements in each of the specific materials. Potentially relevant papers for information on concentrations of chemical elements in each product were identified and reviewed. The contractor used the references from reviewed articles to

<sup>4</sup> The congressionally mandated Agency for Toxic Substances and Disease Registry produces toxicological profiles for hazardous substances found at National Priorities List sites.

identify other articles to examine and used the references in those articles to find other sources recursively, to uncover relevant cited references.<sup>5</sup> The literature screening was to examine whether there is a potential for an ASTM heavy element to be present in the natural material at levels above its solubility limit. When the contractor determined there was sufficient information to indicate the potential for an ASTM heavy element to be present, the contractor stopped that particular line of inquiry and reported the results.

As discussed in the staff's briefing package, the contractor's report does not support a Commission determination for any material other than unfinished and untreated trunk wood. The literature reviewed by the contractor did not provide sufficient information to determine that any of the reviewed materials, other than unfinished and untreated trunk wood, do not contain the heavy elements in concentrations above the limits stated in the toy standard.

## 2. Findings Regarding Wood

Of the materials reviewed, the contractor identified the most studies for wood. Although the contractor could not examine every study concerning wood, the contractor reported that the studies examined constitute a representative sample of the population studies. The contractor studied measurements taken from trees in natural settings, samples from trees grown on contaminated soils, hydroponically grown<sup>6</sup> seedlings, experimental studies with seedlings grown in pots in which the soil had some of the elements intentionally added, and seedlings soaked in solutions containing one or more of the ASTM heavy elements.

The contractor examined measurements on roots, shoots, bark, trunks, branches, and leaves (or needles, for evergreens). Not every study conducted measurements on each part of the tree. Many studies showed concentrations of the ASTM heavy elements at levels below their solubility limits.

**Antimony.** For antimony, the studies examined showed that roots, shoots, branches, and leaves contained antimony in concentrations greater than the ASTM solubility limit of 60 ppm. No tree trunks showed antimony concentrations above the ASTM solubility limit. One study's

measurements of tree trunks showed that the trunks were nearly free of antimony.

**Arsenic.** For arsenic, trunks, roots, shoots, leaves, stems, bark, and branches of trees were characterized. An experimental study showed roots with more than 25 ppm arsenic. A study at a contaminated mining site showed roots, branches, leaves/needles, and shoots with arsenic concentrations above the ASTM solubility limit. However, no tree trunk measurement showed arsenic in concentrations above 25 ppm. In the two tested cases, tree trunks contained only trace levels of arsenic (levels well below the solubility limit).

One study measured levels of arsenic in sawdust sampled from 15 sawmill locations in the Sapele metropolis (a port city in Nigeria). The highest arsenic concentration measured was 93.0 ppm. The study's authors did not specify what types of trees or wood were processed at the sawmills. However, the authors noted that a major industry in the study area is Africa Timber Plywood Industry and mentioned that arsenic and chromium are used as wood preservatives. Plywood is a manufactured wood and could contain materials not found in natural wood. The authors did not report what woods these sawmills were processing. Therefore, we cannot draw any conclusions from this study.

**Barium.** For barium, measurements of leaves, leaf litter, wood, and sawdust all showed barium concentrations below the ASTM solubility limit of 1,000 ppm.

**Cadmium.** For cadmium, the studies examined showed cadmium in tree core samples and wood at levels below the ASTM solubility limit of 75 ppm. Studies that measured cadmium in hydroponic samples showed cadmium levels in root, stem bark, stem wood, and leaf parts above 75 ppm. In a similar manner, shoots grown in pots containing varying amounts of cadmium added, showed cadmium concentrations above the ASTM solubility limit in leaves, stems, and roots.

**Chromium.** For chromium, one study at a chromate-contaminated site found chromium concentrations above the ASTM solubility limit of 60 ppm in roots, but measurements were below the detection limit for leaves, wood, and bark. Hydroponic studies by the same researcher showed that tree roots can concentrate chromium, but translocation (the movement of a material from one place to another) of chromium from the roots to other parts of the tree, is very low.

**Mercury.** For mercury, the contractor reviewed studies that measured mercury

uptake in the roots, shoots, leaves, bark, trunks, limbs, fruits, branches, stems, and nuts of trees. The studies included both experimental tests and trees sampled from natural areas. Only an experimental study with seedlings grown in pots, to which either mercuric nitrate, methyl mercury chloride, or both, had been added, showed mercury in concentrations above the ASTM solubility limit in shoots and leaves of sycamore seedlings. The other studies did not show mercury levels above the ASTM solubility limit of 60 ppm in samples, even at contaminated sites.

**Selenium.** For selenium, one study showed measured concentrations of 1.4 ppm selenium in tree rings growing in contaminated soil. Other studies showed selenium at concentrations of 10 ppm or less, well below the ASTM solubility limit of 500 ppm. Only an experimental study with tree cuttings grown hydroponically in either sodium selenate or sodium selenite for 6 days, showed root concentrations above the ASTM solubility limit. All other parts of the cuttings had selenium levels below the ASTM solubility limit.

**Conclusions.** The contractor's report provides sufficient information for the Commission to determine that unfinished and untreated wood from tree trunks does not contain the ASTM heavy elements in concentrations above their respective solubility limits, and are, therefore, not required to be third party tested to assure compliance with the ASTM F963-11 solubility requirements. The studies examined multiple species of trees grown on several continents. No study examined by the contractor found any of the ASTM heavy elements in tree trunks at concentrations beyond the element's solubility limit.

The contractor's report indicates that heavy elements could be present in wood from other portions of the tree: The roots, bark, leaves, or fruit. The studies examined by the contractor showed high levels of one or more of the ASTM heavy elements in portions of trees other than trunks. However, commercial timber harvesting involves the process of "delimiting" the tree to create logs that can be transported and cut at a sawmill or lumberyard.<sup>7</sup> Often, the sawmill creates uniform-length planks from the delivered logs. These

<sup>7</sup> A succinct description of timber logging can be found at <http://en.wikipedia.org/w/index.php?title=Logging&redirect=no>. A more comprehensive review of timber harvesting can be found at [http://www.amazon.com/Tree-Harvesting-Techniques-Forestry-Sciences/dp/9048182824/ref=sr\\_1\\_1?s=books&ie=UTF8&qid=1433193105&sr=1-1&keywords=tree+harvesting+techniques%2C+wiksten](http://www.amazon.com/Tree-Harvesting-Techniques-Forestry-Sciences/dp/9048182824/ref=sr_1_1?s=books&ie=UTF8&qid=1433193105&sr=1-1&keywords=tree+harvesting+techniques%2C+wiksten).

<sup>5</sup> This method is often referred to as "tree searching."

<sup>6</sup> Hydroponics is a subset of hydroculture and is a method of growing plants using mineral nutrient solutions, in water, without soil.

planks are sold to wood wholesalers or retailers, and are bought by wooden toy and other manufacturers. Because commercial practice creates logs from only the trunks of harvested trees, the wood available for use in toys and other wooden objects is sourced from these logs, or trunks of trees, and not the other parts of trees that could contain the ASTM elements above the limits in the toy standard.<sup>8</sup>

### C. Discussion of Comments to the DFR/ NPR

The CPSC received six comments in response to the DFR and NPR published in the **Federal Register** on July 17, 2015 (80 FR 42376). Summaries of each comment and our responses are provided below.

Three comments express support for the proposed determination that unfinished and untreated wood from tree trunks does not require testing for the ASTM elements. Two comments raise questions and requested clarification about the rule. One comment expresses opposition to exempting wood toys from testing.

*Comment 1:* One commenter asks what safety measures would be implemented to prevent manufacturers from using treated wood instead of untreated wood in toys, and asks what would be classified as untreated wood. For example, the commenter asks if a clear sealant could be used to protect the wood from water and saliva and still be considered untreated wood.

The commenter also asks what penalties would be incurred if treated wood was used in children's toys.

*Response 1:* The proposed rule does not prohibit the use of wood finishes or treatments in children's products. There is no penalty for using treated woods in children's toys as long as the treatment does not violate an applicable children's product safety rule. The purpose of the rule is for the Commission to determine that unfinished and untreated wood does not contain the chemical elements that are restricted in toys under the mandatory toy standard, and thus unfinished and untreated wood does not require third party testing to ensure compliance to the toy standard's chemical solubility requirement. The effect of the rule would be to relieve manufacturers and importers of the third party testing requirement for

children's products for unfinished and untreated wood toys or wood component parts of toys.

A surface coating, such as a clear sealant applied to unfinished wood, is subject to the requirements of 16 CFR part 1303 and the toy standard's chemical solubility requirement. The manufacturer would need to third party test the finished product or could use component part testing to test only the surface coating pursuant to 16 CFR part 1109.

*Comment 2:* A commenter asserts that testing still should be required for untreated wood because "so many toys are filled with other chemicals which will be inserted into the mouths of millions of children." The commenter asserts that much of the wood from outside the United States could be contaminated by heavy metals during processing or before shipping. This commenter also states that the required testing is a simple step to ensure the safety of toys.

*Response 2:* The commenter does not provide any data or specific information about toys "filled with other chemicals" that would support a testing requirement for unfinished and untreated wood subject to the ASTM elements restrictions. Nor does the commenter dispute the data and information relied upon by the Commission. The determination for unfinished and untreated wood is based on data and information about the chemical content of wood from all over the world that demonstrated that unfinished and untreated wood does not contain the chemical elements that are restricted in toys under the toy standard. We note that the only chemicals specifically prohibited in toys by ASTM F963 are lead and the seven other ASTM elements; in addition, the CPSIA prohibited specified phthalates.

Although the commenter refers to the "simple step" of testing, mandatory third party testing can be costly, especially for small or low-volume suppliers. The determination responds to the statutory requirement to consider new or revised third party testing requirements that will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

*Comment 3:* A commenter states that his or her understanding of the proposed rule is that "any untreated wooden toy [could] be tested at any 3rd party lab, not [only those] accredited by the CPSC." Based on this commenter's understanding of the rule, the commenter asks whether other required ASTM F963 tests on natural wood toys,

such as for accessible edges and small parts, could be performed at any third party laboratory, not just laboratories accredited by the CPSC.

*Response 3:* The rule affects only the testing requirement for compliance to the ASTM F963 chemical solubility limits. If a toy is subject to other ASTM F963 requirements, such as the mechanical requirements, compliance with those requirements still must be demonstrated through testing by a CPSC-accepted conformity assessment body for the manufacturer to issue a children's product certificate.

*Comment 4:* A commenter asserts that the testing requirements are "overwhelming," and are a factor in reducing the number of specialty "single store, independent 'mom and pop' stores."

The commenter urges passing a law that would establish that federal requirements would preempt state requirements that add to the burden for small companies, and further asserts that only the largest companies are able to meet the requirements.

*Response 4:* The comment is beyond the scope of the current rulemaking. The proposed rule does not address state requirements or testing issues other than the determination for unfinished and untreated wood.

*Comment 5:* One commenter, representing several consumer organizations, expresses support for the CPSC's detailed research and study on this issue and agrees that unfinished and untreated trunk wood can be exempted from compliance testing for the heavy elements of the toy standard without any impact on safety. This commenter also expresses support for the Commission's decision not to include in the proposed rule bamboo, beeswax, cotton, wool, linen, and silk, and states that not enough evidence has been presented for a determination on these materials.

*Response 5:* The rule is based on data and information on the presence of the ASTM elements in unfinished and untreated wood and other natural materials. The information on bamboo, beeswax, linen, and silk was insufficient to make a Commission determination on these materials.

*Comment 6:* A commenter states that the rule would provide limited relief to toy manufacturers because very few toy manufacturers are making products using wood, and wood toys constitute only a small percentage of the toys in the marketplace.

The commenter urges the Commission to continue to find ways to provide meaningful third party testing burden reduction for companies and for

<sup>8</sup> Often, the sawmill creates uniform-length planks from the delivered logs. These planks are sold to wood wholesalers or retailers, and are bought by wooden toy and other manufacturers. Two references to the woods used in toys are: [http://www.ehow.com/list\\_6896897\\_kinds-wood-toys-made-from\\_.html](http://www.ehow.com/list_6896897_kinds-wood-toys-made-from_.html), and <http://www.woodtoyz.com/WTCat/LearnMaterials.html>.

products most impacted by the testing requirements. The commenter suggests that one way for the Commission to do this is by reconsidering the parameters used to exclude materials from testing. The commenter states that the Commission's current standard for finding materials that could be exempt from testing is "unreasonably high." In addition, the commenter claims Congress's intent was not for the CPSC to apply a "near zero-risk-tolerance approach." The commenter references other Commission actions that "allow for some level of risk tolerance," such as the component part testing rule at 16 CFR 1109.5(b), which the commenter claims addresses the exercise of due care, and does not require certainty. Additionally, the commenter mentions the lead determination rule at 16 CFR 1500.91(b), pointing to text indicating that the rule is based on a finding that the material or product "does not exceed" the lead limits, not on a more onerous standard of "will never exceed."

The commenter also points to the test procedures of the toy standard (*i.e.*, testing is not conducted if only a small amount of material is present on the product), and urges the Commission to consider this *de minimus* approach, and approaches like it, to provide meaningful third party testing burden relief.

*Response 6:* Public Law 112–28 requires that actions to reduce the costs associated with third party testing must be consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. This requirement establishes the standard for Commission decisions for implementing any actions to reduce the cost associated with third party testing.

The rule on determinations for the ASTM elements in wood for products subject to the toy safety standard represents only one of several completed and ongoing Commission activities to implement, research, and pursue opportunities to reduce the cost of third party testing requirements.

The commenter's recommendation to consider *de minimus* and other approaches to reduce third party testing costs are beyond the scope of this rulemaking.

#### **D. Determination for Unfinished and Untreated Wood for ASTM F963 Limits for Heavy Elements**

##### *1. Legal Requirements for a Determination*

As noted above, section 14(a)(2) of the CPSA requires third party testing for children's products that are subject to a

children's product safety rule. 15 U.S.C. 2063(a)(2). Toys must comply with the toy standard, including the specified limits on heavy elements. 15 U.S.C. 2056b. In response to statutory direction, the Commission has investigated approaches that would reduce the burden of third party testing while also assuring compliance with CPSC requirements. As part of that endeavor, the Commission has considered whether certain materials used in toys would not require third party testing.

To issue a determination that a material does not require third party testing, the Commission must have sufficient evidence to conclude that the material would consistently comply with the CPSC requirement that the material is subject to so that third party testing is unnecessary to provide a high degree of assurance of compliance. 16 CFR part 1107. Section 1107.2, defines "a high degree of assurance" as "an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture."

For a material determination, a high degree of assurance of compliance means that the material will comply with the specified chemical limits due to the nature of the material, or due to a processing technique (*e.g.*, harvesting, smelting, cleaning, filtering, sorting) that reduces the chemical concentration below its limit. For materials determined to comply with a chemical limit, the material must continue to comply with that limit if it is used in a children's product subject to that requirement. A material on which a determination has been made cannot be altered or adulterated to render it noncompliant and then used in a children's product.

Based on the information discussed in section B of this preamble, the Commission determines that unfinished and untreated trunk wood complies with the solubility requirements for the heavy elements in section 4.3.5 of ASTM F963–11 with a high degree of assurance. This determination means that third party testing for compliance to the solubility requirements is not required for certification purposes for unfinished and untreated trunk wood. The Commission makes this determination to reduce the third party testing burden on children's product certifiers while continuing to ensure compliance.

##### *2. Potential for Third Party Testing Burden Reduction*

CPSC staff assessed the burden reduction that could result from a determination that unfinished and untreated trunk wood does not require third party testing for compliance with the limits on heavy elements in the toy standards. Testing the soluble concentration of the ASTM heavy elements requires placing the toy (or component part of the toy) in a solution of hydrochloric acid for 2 hours. After 2 hours, the solids are separated from the solution, and the solution is analyzed for the presence of any of the ASTM F963–11 heavy elements using atomic spectroscopy. The cost of this testing can vary by factors such as geography and the volume of testing that a manufacturer obtains from a conformity assessment body. Based on published invoices and price lists, the cost of a third party test for the ASTM heavy elements ranges from around \$60 in China, up to around \$190 in the United States.

Staff cannot estimate with any certainty what the total potential burden reduction would be from a determination that unfinished and untreated wood will not contain concentrations of antimony, arsenic, barium, cadmium, mercury, and selenium in excess of the limits in ASTM F963–11. Most of the approximately 80,000 kinds of toys on the market<sup>9</sup> probably do not contain any wood components. If we assume that 10 percent of the approximately 80,000 different kinds of toys on the market have at least one wood component that requires third party testing, and we also assume that the average cost of a third party test is about \$125 (representing the approximate midpoint of the range for the test's cost), then the potential total burden reduction from a determination for unfinished and untreated wood from tree trunks would be about \$1 million annually. This estimate assumes that only one type of wood was used in a product so that the manufacturer would not have to test each individual unfinished and untreated wood component part in a product, as allowed by the component part testing rule (16 CFR part 1109). The estimated benefits

<sup>9</sup> The estimate that there are 80,000 different kinds of toys is based on the number of toys listed on the Amazon.com Web site on June 2, 2015, for which Amazon.com was listed as the seller and recommended for children 13 years old or younger. Examples of toys that might include wood components include building blocks, various wood pull toys, some toy cars and trucks, train sets, some games and puzzles, some toy figures, and some toys for toddlers and infants.

could be lower if some manufacturers certify that their wood components comply with the ASTM F963–11 heavy elements requirements, based on third party tests of their raw materials instead of the finished product, as allowed by the component part testing rule. Moreover, the assumption that 10 percent of the toys have wood components is intended only to illustrate the potential benefits; the assumption is not based on any formal study of the toy market.

### 3. Statutory Authority

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. Public Law 110–314, sec. 3, Aug. 14, 2008. As noted previously, section 14 of the CPSIA, which was amended by the CPSIA, requires third party testing for children’s products that are subject to a children’s product safety rule. 15 U.S.C. 2063(a)(2). Section 14(d)(3)(B) of the CPSIA, as amended by Public Law 112–28, gives the Commission the authority to “prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.” *Id.* 2063(d)(3)(B). These statutory provisions authorize the Commission to issue this rule determining that unfinished and untreated trunk wood will not exceed the limits for heavy elements stated in the toy standard, and therefore, unfinished and untreated trunk wood does not require third party conformity assessment body testing to assure compliance with the heavy elements limits stated in the toy standard.

This determination relieves unfinished and untreated trunk wood from the third party testing requirement of section 14 of the CPSIA for purposes of supporting the required certification. However, if the unfinished and untreated wood is altered so that the material could exceed the heavy elements limits of ASTM F963, the determination is not applicable to that material. The changed or altered material or product must then be tested and meet the heavy element requirements of ASTM F963.

The determination only lifts the obligation to have unfinished and untreated trunk wood tested by a third party conformity assessment body. The underlying requirement that products subject to the toy standard must comply with the toy standard’s limits on heavy elements remains in place.

### 4. Description of the Rule

This rule creates a new Part 1251 for “Toys: Determination Regarding Heavy Elements Limits for Unfinished and Untreated Wood.” Section 1251.1 of the rule explains the statutorily-created requirements for toys under ASTM F963 and the third party testing requirements for children’s products.

Section 1251.2(a) of the rule establishes the Commission’s determination that unfinished and untreated trunk wood does not exceed the limits for the heavy elements established in section 4.3.5 of the toy standard with a high degree of assurance as that term is defined in 16 CFR part 1107. The determination only applies if the material has not been treated or adulterated with the addition of any materials that could result in the addition of any of the heavy elements listed in the toy standard at levels above their respective solubility limits. In § 1251.2(b) of the rule, unfinished and untreated trunk wood means wood harvested from trees with no added surface coatings (*e.g.*, varnish, paint, shellac, polyurethane) and no materials added to the wood substrate (*e.g.*, stains, dyes, preservatives, antifungals, insecticides). Because commercial practice creates wood from only the trunks of harvested trees, unfinished and untreated wood as used in the rule means wood that is generally commercially available. Unfinished and untreated wood does not include manufactured or engineered woods such as pressed wood, plywood, particle board, or fiberboard.

### E. Effective Date

The APA generally requires that a substantive rule must be published not less than 30 days before its effective date. 5 U.S.C. 553(d)(1). Because the final rule provides relief from existing testing requirements under the CPSIA, the effective date is January 19, 2016.

### F. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”) generally requires that agencies review proposed and final rules for the rules’ potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The Commission certified that this rule will not have a significant impact on a substantial number of small entities pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b) in the DFR. 80 FR 42376, 42380. The Commission did not receive any comments that questioned or challenged this certification, nor has CPSC staff received any other

information that would require a change or revision to the Commission’s previous analysis of the impact of the rule on small entities. Therefore, the certification of no significant impact on a substantial number of small entities is still appropriate.

### G. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for Commission rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required. The Commission’s regulations state that safety standards for products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(1). Nothing in this rule alters that expectation.

### List of Subjects in 16 CFR Part 1251

Business and industry, Consumer protection, Imports, Infants and children, Product testing and certification, Toys.

Accordingly, 16 CFR part 1251 is added to read as follows:

### PART 1251—TOYS: DETERMINATIONS REGARDING HEAVY ELEMENTS LIMITS FOR CERTAIN MATERIALS

#### Sec.

- 1251.1 The toy standard and testing requirements.  
1251.2 Wood.

**Authority:** Sec. 3, Pub. L. 110–314, 122 Stat. 3016; 15 U.S.C. 2063(d)(3)(B).

#### § 1251.1 The toy standard and testing requirements.

The Consumer Product Safety Improvement Act of 2008 (“CPSIA”) made provisions of ASTM F963, Consumer Product Safety Specifications for Toy Safety (“toy standard”), a mandatory consumer product safety standard. 15 U.S.C. 2056b. The toy standard requires that surface coating materials and accessible substrates of toys that can be sucked, mouthed, or ingested, must comply with solubility limits that the toy standard establishes for eight heavy elements. Materials used in toys subject to the heavy elements limits in the toy standard must comply with the third party testing requirements of section 14(a)(2) of the Consumer Product Safety Act (“CPSA”), unless listed in § 1251.2.

**§ 1251.2 Wood.**

(a) Unfinished and untreated wood does not exceed the limits for the heavy elements established in the toy standard with a high degree of assurance as that term is defined in 16 CFR part 1107, provided that the material has been neither treated nor adulterated with materials that could result in the addition of any of the heavy elements listed in the toy standard at levels above their respective solubility limits.

(b) For purposes of this section, unfinished and untreated wood means wood harvested from the trunks of trees with no added surface coatings (such as, varnish, paint, shellac, or polyurethane) and no materials added to the wood substrate (such as, stains, dyes, preservatives, antifungals, or insecticides). Unfinished and untreated wood does not include manufactured or engineered woods (such as pressed wood, plywood, particle board, or fiberboard).

Dated: December 9, 2015.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2015-31723 Filed 12-16-15; 8:45 am]

BILLING CODE 6355-01-P

**DEPARTMENT OF JUSTICE****Drug Enforcement Administration****21 CFR Part 1308**

[Docket No. DEA-419F]

**Schedules of Controlled Substances: Placement of Eluxadoline Into Schedule IV; Correction**

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** Final rule; correction.

**SUMMARY:** The Drug Enforcement Administration (DEA) is correcting a final rule that appeared in the **Federal Register** of November 12, 2015 (80 FR 69861). The document issued an action placing the substance 5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid (eluxadoline), including its salts, isomers, and salts of isomers, into schedule IV of the Controlled Substances Act. This document inadvertently included a paragraph in the regulatory text that was not intended for publication, and was unable to be removed before being placed on public inspection. This

document corrects the final rule by removing this paragraph.

**DATES:** Effective December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:** John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 598-6812.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2015-28718 appearing on page 69864 in the **Federal Register** of Thursday, November 12, 2015, the following correction is made:

*Administrative Procedure Act [Corrected]*

1. On page 69864, in the preamble, at the bottom of the first and top of the second columns, the section titled *Administrative Procedure Act* is removed entirely.

Dated: December 11, 2015.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2015-31843 Filed 12-16-15; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 925**

[SATS No. MO-041-FOR; Docket ID: OSM-2013-0008; S1D1S SS08011000 SX064A000 167S180110; S2D2S SS08011000 SX064A000 16XS501520]

**Missouri Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.  
**ACTION:** Final rule; approval of amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Missouri proposed revisions to its regulations concerning several topics regarding: Valid Existing Rights; Protection of Hydrologic Balance; Post-mining Land Use; Permit Applications; and Air Resource Protection. Missouri intends to revise its program to be no less effective than the Federal regulations, to clarify ambiguities, and to improve operational efficiency.

**DATES:** *Effective Date:* December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:** Len Meier, Director Alton Field Division,

Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, IL 62002, Telephone: (618) 463-6460, Email: [Lmeier@osmre.gov](mailto:Lmeier@osmre.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background on the Missouri Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Procedural Determinations

**I. Background on the Missouri Program**

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . . ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

**II. Submission of the Amendment**

By letter dated August 12, 2013 (Administrative Record No. MO-678), Missouri sent us an amendment to its Program under SMCRA (30 U.S.C. 1201 *et seq.*). Missouri sent the amendment in response to a January 31, 2008, letter (Administrative Record No. MO-669) we sent to Missouri in accordance with 30 CFR 732.17(c) concerning changes to valid existing rights requirements. Missouri also made changes to eliminate required program amendments recorded at 30 CFR 925.16(p)(4), (p)(20) and (v); and program disapprovals at 30 CFR 925.12(d). Missouri revised other sections of its regulations at its own initiative. Missouri proposed revisions to title 10 of its Code of State Regulations (CSR) under Division 40 Land Reclamation Commission. The specific sections of 10 CSR 40 in Missouri's amendment are discussed in Part III OSMRE's Findings. Missouri intends to revise its program to be no less effective than the Federal regulations, to clarify ambiguities, and improve operational efficiency.



We announced receipt of the proposed amendment in the October 25, 2013, **Federal Register** (78 FR 63909). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment

period ended November 24, 2013. We did not receive any public comments.

**III. OSMRE's Findings**

We are approving the amendment as described below. The following are the findings we made concerning Missouri's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do

not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at [www.regulations.gov](http://www.regulations.gov).

1. Missouri proposed to revise the sections listed below to make numerous non-substantive edits for clarity and update its rules to current editions of the Missouri Statutes:

**MINOR REFERENCE CHANGE TABLE**

10 CSR	Title
40-3.040	Requirements for Protection of the Hydrologic Balance.
40-3.060	Requirements for the Disposal of Excess Spoil.
40-3.170	Signs and Markers for Underground Operations.
40-3.180	Casing and Sealing of Exposed Underground Openings.
40-3.200	Requirements for the Protection of the Hydrologic Balance for Underground Operations.
40-3.210	Requirements for the Use of Explosives for Underground Operations.
40-3.220	Disposal of Underground Development Waste and Excess Spoil.
40-3.230	Requirements for the Disposal of Coal Processing Waste for Underground Operations.
40-3.240	Air Resource Protection.
40-3.260	Requirements for Backfilling and Grading for Underground Operations.
40-3.300	Postmining Land Use Requirements for Underground Operations.
40-5.010	Prohibitions and Limitations on Mining in Certain Areas.
40-5.020	State Designation of Areas as Unsuitable for Mining.
40-6.020	General Requirement for Coal Exploration, Permits.
40-6.030	Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.
40-6.040	Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.
40-6.050	Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan.
40-6.060	Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations.
40-6.070	Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions.
40-6.100	Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.
40-6.110	Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources.
40-6.120	Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan.
40-7.050	Requirements, Conditions and Terms of Liability Insurance.
40-8.010	Definitions.
40-8.020	Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction.
40-8.070	Applicability and General Requirements.

We find that Missouri's proposed revisions will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revisions.

2. *10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance (6)(A)1., (6)(R), and (6)(U) Siltation Structures and 10 CSR 40-3.200 Underground Mining (6)(A)1., (6)(R), and (6)(U) Siltation Structures*

Missouri proposed to replace the word "pond" with "structure" at 10 CSR 40-3.040 (6)(A)1., (6)(R), and (6)(U) Siltation Structures and at 10 CSR 40-3.200 (6)(A)1., (6)(R), and (6)(U) Siltation Structures. The corresponding Federal Regulations at 30 CFR 816.46 and 817.46 uses the same term. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

3. *10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance*

*(10)(B)5. and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (6)(T) and (10)(B)5. Permanent and Temporary Impoundments*

Missouri proposed to revise these sections to clarify that requirements for impoundments that meet the size or other criteria of the MSHA, 30 CFR 77.216(a) are contained in United States Soil Conservation Service Technical Release No. 60, *Earth Dams and Reservoirs*, July 2005, incorporated by reference. Requirements for impoundments that do not meet the size or other criteria contained in 30 CFR 77.216(a) are contained in United States Natural Resources Conservation Service, Conservation Practice Standard, POND, No. CODE 378, January 2004, by reference. The corresponding Federal Regulation at 30 CFR 780.25(a)(2)(i) provides similar requirements. We find that Missouri's proposed revision will

make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

4. *10 CSR 40-3.040 Requirements for Protection of the Hydrologic Balance (10)(O)3.C. and 10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (10)(O)3.C. Permanent and Temporary Impoundments and Spillways*

Missouri removes these design requirements in response to the disapproval recorded at 30 CFR 925.12(d) in order to be no less effective than the counterpart Federal regulations for surface mining at 30 CFR 780.25(c) and for underground mining at 30 CFR 784.16(c). Therefore, we are approving Missouri's revision and removing the disapproval at 30 CFR 925.12(d).

5. *10 CSR 40-3.060 Requirements for the Disposal of Excess Spoil (1)(K)2. Fill Inspection and 10 CSR 40-3.220*

*Disposal of Underground Development Waste and Excess Spoil (1)(L) Certified Report*

Missouri proposed to revise these sections to require a registered professional engineer or other qualified professional specialist under the direction of a registered professional engineer to provide the director with a certified report stating that the fill has been constructed as specified in the design approved in the permit and plan. The corresponding Federal Regulation at 30 CFR 816.71(i)(2) contains a similar requirement. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

6. *10 CSR 40-3.180 Casing and Sealing of Exposed Underground Openings (3) Permanent Casing and Sealing of Underground Openings*

Missouri proposed to revise this section to correct various regulatory citations and to include a reference to the Wellhead Protection Section, Division of Geology and Land Survey at 10 CSR 23 Chapter 6 for approval of water well transfers. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations.

However, OSMRE received a letter from the Mining Safety and Health Administration (MSHA) on October 25, 2013 (Missouri Administrative Record No. 678.09), which noted that the MSHA citation referenced (30 CFR 75.1771) was incorrect. The correct MSHA regulation is 30 CFR 75.1711. We are approving the amendment with the condition that Missouri correct this typographical error through their State administrative process.

7. *10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (12)(A)1.(A) Groundwater Monitoring*

Missouri proposed to revise this section to correct the references for remedial measures taken by the operator when analysis of any groundwater sample indicates noncompliance with the permit conditions to 10 CSR 40-6.070(14) and 10 CSR 40-6.120(5). The corresponding Federal Regulation at 30 CFR 816.41 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

8. *10 CSR 40-3.200 Requirements for Protection of the Hydrologic Balance for Underground Operations (17)(B) Stream Buffer Zones*

Missouri proposed to revise this section to correct the references for the marking of stream buffer zones that are not to be disturbed to meet the regulatory requirements at 10 CSR 40-3.170(6). The corresponding Federal Regulation at 30 CFR 817.11 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

9. *10 CSR 40-3.220 Disposal of Underground Development Waste and Excess Spoil (1)(K) and (L) General Requirements*

Missouri proposed to revise these sections to clarify at (K) that fill be inspected by or under the direction of a professional engineer and at (L) only the registered engineer shall provide the certified report by removing the “. . . or other qualified professional specialist . . .” verbiage from their rule. The corresponding Federal Regulation at 30 CFR 817.71(h)(2) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

10. *10 CSR 40-3.230 Requirements for the Disposal of Coal Processing Waste for Underground Operations (1)(A) General Requirements*

Missouri proposed to revise this section to state that all coal processing waste disposed of in an area other than the mine workings or excavations shall be hauled or conveyed and placed for final placement in new or existing disposal areas approved in the permit and plan for this purpose. The corresponding Federal Regulation at 30 CFR 817.81(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

11. *10 CSR 40-3.230 Requirements for the Disposal of Coal Processing Waste for Underground Operations (3)(D) Water Control Measures*

Missouri proposed to revise this section to correct the references to regulatory requirements that discharges of all water from a coal processing waste bank shall comply with 10 CSR 40-3.200(15). The corresponding Federal Regulation at 30 CFR 817.41(h) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

12. *10 CSR 40-3.240 Air Resource Protection (1)*

On May 8, 1984, OSMRE notified Missouri in the **Federal Register** (49 FR 19476 as amended at 64 FR 57981) and recorded at 30 CFR 925.16(p)(4) that this requirement must be revised to provide performance standards that address air quality in a manner no less effective than the Federal regulations at 30 CFR 817.95(a). Missouri proposed to revise this section to require that all exposed surface areas be protected and stabilized to effectively control erosion and air pollution attendant to erosion according to 10 CSR 40-3.200(5)(A). The corresponding Federal Regulation at 30 CFR 817.95(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision and removing the required program amendment at 30 CFR 925.16(p)(4).

13. *10 CSR 40-3.260 Requirements for Backfilling and Grading for Underground Operations (4) Regrading or Stabilizing Rills and Gullies*

Missouri proposed to revise this section to replace the existing requirements with more specific guidelines, including time frames, for regrading or stabilizing rills and gullies. Missouri proposed to add a section on regrading or stabilizing rills and gullies on areas that have been previously mined. The corresponding Federal Regulation at 30 CFR 816.95(b) provides similar, but less specific requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

14. *10 CSR 40-3.300 Postmining Land Use Requirements for Underground Operations*

Missouri proposed to revise subsection (3) of this section to correct the references to regulatory requirements at this section to require that prior to the release of lands from the permit area in accordance with 10 CSR 40-7.021(2)(C), the permit area shall be restored, in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Although there is no Federal Equivalent under the requirements for postmining land use, the corresponding Federal regulation for bond release at 30 CFR 800.40(c) provides similar requirements

to the Missouri citation. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

15. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (1)(A) Definition of Valid Existing Rights*

Missouri proposed to revise this section to replace the definition of Valid Existing Rights with language that is consistent with the corresponding Federal regulation at 30 CFR 761.5. We find that Missouri's proposed revision will make its regulations substantively the same as the Federal regulations. Therefore, we are approving Missouri's revision.

16. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (2) Areas Where Mining is Prohibited or Limited*

Missouri proposed to revise this section to require that surface coal mining operations may not be conducted on the following lands, unless the permit applicant either has valid existing rights as determined under section (7) or qualifies for the exception for existing operations under section (3). Missouri also revises this section at 10 CSR 40–5.010 (2)(E)2. to state that concerning the prohibition within 300 feet measured horizontally from an occupied dwelling, the prohibition does not apply when the part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

The corresponding Federal regulation at 30 CFR 761.11 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

17. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (3) Exception for Existing Operations*

Missouri proposed to revise this section to require that the prohibitions and limitations of section (2) do not apply to surface coal mining operations for which a valid permit, issued under 10 CSR 40–6, exists when the land within the permit area comes under the protection of section 444.890.4, Revised Statute of Missouri (RSMo), or this rule. The corresponding Federal regulation at 30 CFR 761.12 provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the

Federal regulations. Therefore, we are approving Missouri's revision.

18. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (4) Procedures for Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests*

Missouri proposed to revise this section at (4)(A) to correct references to the Federal regulations at 30 CFR 761.13 concerning Federal lands in a national forest. Missouri added language at (4)(B) that the applicant may submit a request to the regional director of OSMRE for a determination before preparing and submitting an application for a permit or boundary revision. Additionally, the applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining operations" in subsection (1)(B) and must include a map and sufficient information about the nature of the proposed operation for the Secretary of the Interior to make adequately documented findings. Missouri proposed to revise section (4)(C) to require that when a proposed surface coal mining operation or proposed boundary revision for an existing surface coal mining operation includes Federal lands within a national forest, the commission or director may not issue the permit or approve the boundary revision before the Secretary of the Interior makes the findings required by subsection (2)(B).

The corresponding Federal regulation at 30 CFR 761.13, provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

19. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (5) Procedures for Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road*

Missouri proposed to revise this section at (5)(A) to emphasize that the requirements of this section do not apply to lands for which a person has valid existing rights, that are within the scope of existing operations as defined in Section (3), or roads that join an existing public road.

Missouri proposed to revise the section at (5)(B)(3) to provide a public comment period if a mining operation may affect a right-of-way or public road.

The corresponding Federal regulation at 30 CFR 761.14 provides similar

requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

20. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (6) Procedures for Waiving the Prohibition on Surface Coal Mining Operations within the Buffer Zone of an Occupied Dwelling*

Missouri proposed to revise this section to identify three situations where this section does not apply, and to require waivers to clarify who has a legal right to deny mining and knowingly waived that right. The waiver will act as consent for the mining. Missouri adds language similar to the requirements in the corresponding Federal regulation at 30 CFR 761.15. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

21. *10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (7) Submission and Processing of Requests for Valid Existing Rights Determinations*

Missouri proposed to revise this section to require that an applicant must request a valid existing rights determination from OSMRE for Federal lands and for those features on Federal lands protected under subsections (2)(C) through (G). An applicant must request a valid existing rights determination for non-Federal lands and for those features on non-Federal lands protected under subsections (2)(C) through (G) from the regulatory authority. The regulatory authority must use the Federal definition of valid existing rights at 30 CFR 761.5 when making a determination for non-Federal lands and the definition of valid existing rights at subsection (1)(A) when making a determination for those features protected under subsections (2)(C) through (G).

At (7)(B), Missouri requires that an applicant must request a valid existing rights determination from the appropriate agency under subsection (7)(A) if the applicant intends to conduct surface coal mining operations on the basis of valid existing rights under section (2) or wishes to confirm the right to do so. The applicant may submit this request before preparing and submitting an application for a permit or boundary revision for the land. If OSMRE is the appropriate agency, the applicant must request the determination in accordance with the requirements of the Federal regulations

at 30 CFR 761.16. If the regulatory authority is the appropriate agency, the applicant must request the determination in accordance with the requirements of 10 CSR 40–5.010.

The corresponding Federal regulation at 30 CFR 761.16, provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**22. 10 CSR 40–5.010 Prohibitions and Limitations on Mining in Certain Areas (8) Regulatory Authority Obligations at Time of Permit Application Review**

Missouri proposed to revise this section at (8)(A) to require that the commission or director review the application to determine whether the proposed surface coal mining operation would be located on any lands protected under section 444.890.4, RSMo., or Missouri regulations.

At (8)(B), Missouri requires that the commission or director reject any portion of the application that would locate surface coal mining operations on land protected under section 444.890.4, RSMo., or Missouri regulation, unless: the site qualifies for the exception for existing operations under section (3); a person has valid existing rights; the applicant obtains a waiver or exception from the prohibitions of section 444.890.4, RSMo., or Missouri regulation; and for lands protected by subsection (2)(C), both the commission or director and the agency with jurisdiction over the park or place jointly approve the proposed operation in accordance with subsection (8)(D).

At (8)(C), Missouri added language to this section that if the commission or director has difficulty determining whether an application includes land within an area specified in subsection (2)(A), the commission or director shall request that the Federal, state, or local governmental agency verify the location.

At (8)(D), if the commission or director determines that the proposed surface coal mining operation will adversely affect any publicly-owned park or any place included in the National Register of Historic Places, the director shall request that the Federal, state, or local agency with jurisdiction over the park or place either approve or object to the proposed operation. The regulations contain requirements on how this request will be submitted and processed.

The corresponding Federal regulation at 30 CFR 761.17 provides similar requirements. We find that Missouri's proposed revision will make its

regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**23. 10 CSR 40–5.020 State Designation of Areas as Unsuitable for Mining (3) Applicability to Lands Designated as Unsuitable by Congress; and (4) Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations**

Missouri proposed new language at section (3) Applicability to Lands Designated as Unsuitable by Congress; pursuant to appropriate petitions, lands listed under 10 CSR 40–5.010(2) are subject to designation as unsuitable for all or certain types of surface coal mining operations under this rule. Missouri's proposed new language is consistent with the corresponding Federal regulation at 30 CFR 762.14. Therefore, we find that Missouri's new language is no less effective than the Federal regulation. Therefore, we are approving Missouri's new language.

Additionally, Missouri proposed to revise section (4) by adding a new title: Exploration on Land Designated as Unsuitable for Surface Coal Mining Operations and added the word "unsuitable" in this section. Missouri's proposed revisions are consistent with corresponding Federal regulation at 30 CFR 762.15. We find that Missouri's revisions are no less effective than the corresponding the Federal regulation. Therefore, we are approving Missouri's revisions.

**24. 10 CSR 40–6.020 General Requirements for Coal Exploration Permits (3)(B)14. Permit requirements for explorations removing more than two hundred fifty tons of coal or where explorations will substantially disturb the natural land surface**

Missouri proposed to revise this section to require that for any lands listed in 10 CSR 40–5.010(2), a demonstration that the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations. The corresponding Federal regulation at 30 CFR 772.12(b)(14) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**25. 10 CSR 40–6.020 General Requirements for Coal Exploration Permits (3)(D) Decisions on Applications for Exploration Removing More Than Two Hundred Fifty Tons of Coal**

Missouri proposed to add paragraph 2.D. to this section requiring minimal interference, to the extent possible, with the values for which those lands were designated as unsuitable for surface coal mining with exploration activities. This section also requires reasonable opportunity for comment by the owner or agency with primary jurisdiction over the feature causing the land to come under the protection of 10 CSR 40–5.010(2) on whether the finding by the commission under (3)(D)1 and 2 is appropriate.

The corresponding Federal regulation at 30 CFR 772.12(d)(2)(iv), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**26. 10 CSR 40–6.030 Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information (4)(C) Relationship to Areas Designated Unsuitable for Mining**

Missouri proposed to revise this subsection to require that if an applicant proposed to conduct surface mining activities within one hundred feet (100') of the outside right-of-way of a public road or within three hundred feet (300') of an occupied dwelling, the application shall meet the requirements of 10 CSR 40–5.010(5) or (6), respectively. The corresponding Federal regulation at 30 CFR 778.16(c), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**27. 10 CSR 40–6.050 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan (14)(B) Protection of Public Parks and Historic Places**

Missouri proposed to revise this section to correct the references to regulatory requirements to make it similar to the provisions of the corresponding Federal regulation at 30 CFR 780.31(a). We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**28. 10 CSR 40–6.050 Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan (15) Relocation or Use of Public Roads**

Missouri proposed to revise this section to correct the references to regulatory requirements to make it similar to the provisions of the

corresponding Federal regulation at 30 CFR 780.33. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**29. 10 CSR 40–6.060 Requirements for Permits for Special Categories of Surface Coal Mining and Reclamation Operations**

Missouri proposed to revise this section to correct the address of the Land Reclamation Program at (4)(C)1.A. and references to regulatory requirements to make it similar to the provisions of the corresponding Federal regulation at 30 CFR 785.17(e)(2). We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**30. 10 CSR 40–6.070 Review, Public Participation and Approval of Permit Applications and Permit Terms and Conditions (2)(A)5. Public Notices of Filing of Permit Applications**

Missouri proposed to revise this subsection to require that if an applicant seeks a permit to mine within one hundred feet (100') of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the mine-related activities must be submitted. The corresponding Federal regulation at 30 CFR 773.6(a)(1)(v) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

Additionally, Missouri proposed to revise this section to add "mine-related activities" to the concise statement requirement if an applicant seeks a permit under this section of the rule. The corresponding Federal regulation at 30 CFR 773.15(c)(2), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**31. 10 CSR 40–6.100 Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information (1)(C) and (D) Identification of Interests**

Missouri proposed to revise this section to clarify that required information concerning an applicant's ownership or control as defined in 10 CSR 40–6.010(2)(C) must be contained in each application. The corresponding Federal regulations at 30 CFR 778.11

and 778.12 provide similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**32. 10 CSR 40–6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan (5)(C) Reclamation Plan—Protection of Hydrologic Balance**

Missouri proposed to revise subparagraph (C) to clarify that the supplemental information required by this section shall include the plans listed at (C)1. through (C)3. The corresponding Federal regulation at 30 CFR 784.14(g), provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**33. 10 CSR 40–6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan (7)(A)1.A. Reclamation Plan-Ponds, Impoundments, Banks, Dams, and Embankments**

Missouri proposed to revise this section to clarify that the general plan shall be prepared by or under the direction of and certified by only a qualified registered professional engineer by removing the ". . . or by a professional geologist. . ." verbiage from their rule. The corresponding Federal regulation at 30 CFR 784.16(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**34. 10 CSR 40–6.120 Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operations Plan (9)(A) Relocation or Use of Public Roads**

Missouri proposed to revise this section to change from "underground mining activities" to "surface coal mining operations." The corresponding Federal regulation at 30 CFR 784.18(a) provides similar requirements. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**35. 10 CSR 40–8.010 Definitions**

Missouri proposed to revise the definition of several terms to provide similar definitions to the corresponding Federal regulation at 30 CFR 701.5, including adding a definition for

"Replacement of water supply." We find that Missouri's proposed revisions will make its regulations substantively the same as the corresponding Federal regulations.

However, we noted in the definition at 89 Significant, imminent environmental harm to land, air or water resources, the reference needs to be changed from 444.855.2, RSMo to the valid reference 444.885.2, RSMo. Missouri needs to correct this citation in a future program amendment. We are approving the amendment with the condition that Missouri prepare a required program amendment at 30 CFR 925.16 to correct the regulation citation.

**36. 10 CSR 40–8.020 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction (2)(C) Definitions**

Missouri proposed to revise this definition to be substantively the same as the corresponding Federal regulation at 30 CFR 707.5. Therefore, we are approving Missouri's revision.

**37. 10 CSR 40–8.070 Applicability and General Requirements (2)(C)1.A.(II)**

Missouri proposed to correct the reporting dates at (a) and (b) of this subparagraph. These dates were corrected to clearly require separate cumulative coal production and revenue data from mining prior to October 1, 1992, and after October 1, 1992. This action corrects the disapproval of the Missouri regulations recorded at 30 CFR 925.12(f). The corresponding Federal regulation at 30 CFR 702.5(a)(2) provides a similar requirement. We find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision and removing the disapproval at 30 CFR 925.12(f) and the required program amendment at 30 CFR 925.16(p)(20).

**38. 10 CSR 40–8.070 Applicability and General Requirements (2)(C)8.B**

Missouri removes this subparagraph as redundant to the previously approved subparagraph at (2)(C)8.A. Since this action merely removes redundant language from a previously approved requirement, we find that Missouri's proposed revision will make its regulations no less effective than the Federal regulations. Therefore, we are approving Missouri's revision.

**IV. Summary and Disposition of Comments**

*Public Comments*

We asked for public comments on the amendment, but did not receive any.

*Federal Agency Comments*

On August 23, 2013, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record Nos. MO-678.03 through MO-678.08). We received one comment from MSHA (Administrative Record No. MO-678.09). MSHA pointed out that at 10 CSR 40-3.180(3), Missouri had incorrectly cited the MSHA regulation as 30 CFR 75.1771, when the correct MSHA regulation is 30 CFR 75.1711. Missouri was notified of this typographical error and will make this correction through its State administrative process.

*Environmental Protection Agency (EPA) Concurrence and Comments*

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on August 23, 2013, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. MO-678.04). The EPA did not respond to our request.

*State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 23, 2013, we requested comments on Missouri's amendment (Administrative Record No. MO-678.06 and MO-678.07), but neither the SHPO nor ACHP responded to our request.

**V. OSMRE's Decision**

Based on the above findings, we approve the amendment Missouri sent us on August 12, 2013.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program to include the original amendment submission date and the date of final publication for this rulemaking.

**VI. Procedural Determinations***Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. Because each program is drafted and promulgated by a specific State, not by OSMRE, these standards are not applicable to the actual language of State regulatory programs and program amendments. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on federally recognized Indian tribes. We have

determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination was reached because the Missouri program does not regulate coal exploration and surface coal mining or reclamation operations on Indian lands. Therefore, the Missouri program has no effect on federally recognized Indian tribes.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211, which requires agencies to prepare a Statement of Energy Effects for a rule that is, (1) considered significant under Executive Order 12866 and (2) likely to have a significant adverse effect on the supply, distribution or use of energy. A Statement of Energy Effects is not required because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution or use of energy.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because Section 702(d) of SMCRA (30 U.S.C. 1292(d)) states that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied

upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is founded upon the State submittal, which is the subject of this rule. The State submittal is based upon counterpart Federal regulations, for which an analysis was prepared, and a

determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, tribal governments or the private sector of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations, for which an analysis was prepared, and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 925**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 2015.

**Len Meier,**

*Acting Regional Director, Mid-Continent Region.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on December 11, 2015.

For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

**PART 925—MISSOURI**

■ 1. The authority citation for part 925 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

■ 2. Section 925.15 is amended in the table by adding an entry in chronological order by “Date of final publication” to read as follows:

**§ 925.15 Approval of Missouri regulatory program amendments.**

\* \* \* \* \*

Original amendment submission date	Date of final publication	Citation/description
August 12, 2013	December 17, 2015	10 CSR 40–3.040(6)(A)1., (6)(R), (6)(U), (10)(B)5., and (10)(O)3.C.; 10 CSR 40–3.060(1)(K)2.; 10 CSR 40–3.180(3); 10 CSR 40–3.200(6)(A)1., (6)(R), (6)(U), (6)(T), (10)(B)5., (10)(O)3.C., (12)(A)1.(A), and (17)(B); 10 CSR 40–3.220(1)(K) and (L); 10 CSR 40–3.230(1)(A) and (3)(D); 10 CSR 40–3.240(1); 10 CSR 40–3.260(4); 10 CSR 40–3.300; 10 CSR 40–5.010(1)(A), (2), (3), (4), (5), (6), (7), and (8); 10 CSR 40–5.020(3) and (4); 10 CSR 40–6.020(3)(B)14., and (3)(D); 10 CSR 40–6.030(4)(C); 10 CSR 40–6.050(14)(B) and (15); 10 CSR 40–6.060; 10 CSR 40–6.070(2)(A)5.; 10 CSR 40–6.100(1)(C) and (D); 10 CSR 40–6.120(5)(C), (7)(A)1.A., and (9)(A); 10 CSR 40–8.010; 10 CSR 40 8.020(2)(C); 10 CSR 40–8.070(2)(C)1.A.(II) and (2)(C)8.B.

**§ 925.16 [Amended]**

■ 3. Section 925.16 is amended by removing and reserving paragraphs (p)(4) and (20) and removing paragraph (v).

[FR Doc. 2015–31674 Filed 12–16–15; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR PART 571**

[Docket No. NHTSA–2015–0057]

RIN 2127–AL41

**Federal Motor Vehicle Safety Standard Lamps, Reflective Devices, and Associated Equipment**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the rear license plate holder requirements contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 108; “Lamps, reflective devices, and associated equipment.” The final rule expands upon the proposal in the NPRM and allows license plates on all motor vehicles to be mounted on a plane up to 30 degrees upward from vertical if the upper edge of the license plate is not more than 1.2 meters (47.25 inches) from the ground. Previously, the maximum allowable upward mounting angle was 15 degrees beyond vertical. This final rule increases harmonization with existing requirements in European regulations. Additionally, this final rule increases a manufacturer’s design flexibility while providing opportunity to decrease cost without compromising safety.

**DATES:** Effective June 14, 2016, with optional early compliance as discussed below.

*Petitions for Reconsideration:*  
Petitions for reconsideration of this final

rule must be received not later than February 1, 2016.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Mr. David Beck, Office of Crash Avoidance Standards, Telephone: 202–366–6813, Facsimile: 202–366–7002.

For legal issues: Mr. John Piazza, Office of the Chief Counsel, Telephone: 202–366–2992, Facsimile: 202–366–3820.

The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background

- II. Summary of the Notice of Proposed Rulemaking (NPRM)
- III. Summary of Public Comments and NHTSA's Response
- IV. Final Rule
- V. Effective Date
- VI. Regulatory Analyses and Notices

## I. Background

The agency reorganized FMVSS No. 108, "Lamps, reflective devices, and associated equipment," in a 2007 final rule by streamlining the regulatory text and clarifying the standard's requirements.<sup>1</sup> The final rule, among other things, incorporated important agency interpretations and reduced reliance on third-party documents incorporated by reference. Regulated parties provided feedback to the agency that documents, incorporated by reference before the 2007 reorganization, made it difficult to determine all of the applicable requirements. For example, the standard incorporated some older versions of SAE standards, not the most current versions; not only were the older SAE standards sometimes difficult to obtain, but some regulated parties may have mistakenly believed that FMVSS No. 108 incorporated the most recent SAE standards. The reorganization was intended to fix these problems. The agency stated in the final rule that the reorganization of FMVSS No. 108 was administrative and not intended to change the standard's substantive requirements.

SAE<sup>2</sup> International Recommended Practice, SAE J587 OCT81, License Plate Lamps (Rear Registration Plate Lamps) was one of the third-party documents whose requirements were transferred to the regulatory text of the standard. Among other requirements derived from SAE J587 OCT81, S6.6.3 of the final rule required that the rear license plate holder be mounted within an angle  $\pm 15$  degrees of a plane perpendicular to that on which the vehicle stands. This requirement was not expressly stated in the text of the standard previously. Instead, FMVSS No. 108 contained two tables indicating the lighting requirements for different types of vehicles, and these tables indicated that "SAE J587, October 1981" was an "Applicable SAE standard" for a "license plate lamp."<sup>3</sup> Even though the

2007 final rule explicitly stated the SAE J587 requirements for the first time, these requirements were not new, since FMVSS No. 108 had previously incorporated them by reference.

In response to the December 2007 final rule, the agency received petitions for reconsideration from Harley-Davidson Motor Company<sup>4</sup> (Harley-Davidson) and Ford Motor Company (Ford).<sup>5</sup> Ford requested that the agency delete S6.6.3 because, Ford concluded, NHTSA had stated that not all requirements of referenced SAE standards were intended to be incorporated into FMVSS No. 108. Harley-Davidson petitioned NHTSA to either withdraw or amend the license plate mounting angle requirements because, Harley-Davidson stated, FMVSS No. 108 regulated license plate lamps, not holders. After the 2007 final rule was published, the Motorcycle Industry Council (MIC) submitted a petition for reconsideration requesting that the agency amend the license plate angle mounting requirement for motorcycles.<sup>6</sup> Because the petition for reconsideration was received on March 19, 2009, well after the allowed time for such petitions, NHTSA treated it as a petition for rulemaking.<sup>7</sup>

In two separate notices, both issued on April 26, 2011, NHTSA granted MIC's petition for rulemaking<sup>8</sup> and denied, in part, the petitions for reconsideration of the 2007 final rule on the same issue.<sup>9</sup> Because of confusion among regulated entities over whether the license plate mounting angle requirements in SAE J587 OCT81 were incorporated into FMVSS No. 108, the agency announced that it would not enforce the 15 degree mounting angle requirement while it is completing the rulemaking that was the subject of the petition.<sup>10</sup> That enforcement policy will end as of the effective date of this final rule.

Passenger Vehicles, Trucks, Buses and Trailers of Less than 80 Inches in Overall Width).

<sup>4</sup> Docket No. NHTSA 2011-0052.

<sup>5</sup> Docket No. NHTSA 2007-28322.

<sup>6</sup> MIC had also submitted a petition for rulemaking before the 2007 final rule (on March 14, 2005) requesting that the agency modify the license mounting angle requirement to allow license plates to be mounted between 30 degrees upward and 15 degrees downward of a plane perpendicular to that on which the vehicle stands. NHTSA did not grant this request before or during the administrative rewrite of FMVSS No. 108 because the agency's intent was to streamline and clarify the standard, not to make substantive changes.

<sup>7</sup> See 49 CFR 553.35.

<sup>8</sup> See 76 FR 23254, Apr. 26, 2011 (granting petition for rulemaking).

<sup>9</sup> See 76 FR 23255, Apr. 26, 2011 (denying, in part, petitions for reconsideration).

<sup>10</sup> See *id.* at 23256.

## II. Summary of the Notice of Proposed Rulemaking (NPRM)

On September 3, 2013, the agency published an NPRM proposing to amend FMVSS No. 108 to allow manufacturers greater flexibility in the design of the license plate mounting surface on motorcycles.<sup>11</sup> The proposal stated that the maximum downward angle at which a motorcycle license plate could be mounted (*i.e.*, the plate faces below the horizon) would remain 15 degrees, as would the maximum upward angle for license plates on motorcycles on which the upper edge of the license plate is more than 1.2 m (47.25 inches) from the ground. If the upper edge of the license plate is not more than 1.2 m (47.25 inches) above the ground, however, NHTSA proposed to amend the motorcycle license plate mounting angle requirements to allow mounting angles of up to 30 degrees upward from the vertical (*i.e.*, the plate faces above the horizon).

NHTSA anticipated that this change would reduce costs for manufacturers by allowing them to use the same mounting hardware for the license plate in both the U.S. and Europe. The agency also stated that it did not believe that the proposal would compromise safety because the proposed changes to the license plate mounting angle requirement would not affect the ability of law enforcement personnel or the general public to view the license plate. The NPRM also requested comment on the following issues: Amending the license plate mounting angle requirements to allow the license plate to be mounted at an angle of 30 degrees upward of vertical on all vehicles, or, alternatively, on vehicles with a gross vehicle weight rating of 10,000 pounds and less; adopting the maximum height requirement of 1.5 m specified in the analogous European Economic Community (EEC) regulations; and whether the proposed amendments would negatively affect the ability of license plate recognition technology to read license plate characters.<sup>12</sup>

## III. Summary of Public Comments and NHTSA's Response

In response to the NPRM, the agency received comments from trade associations, a non-profit association, manufacturers, and an individual. The trade associations that submitted comments were the Alliance of Automobile Manufacturers (the Alliance) and MIC. The voluntary non-profit association of state and provincial motor vehicle administrations—the

<sup>11</sup> 78 FR 54210, Sept. 3, 2013.

<sup>12</sup> *Id.*

<sup>1</sup> 72 FR 68234, Dec. 4, 2007.

<sup>2</sup> Previously named Society of Automotive Engineers.

<sup>3</sup> See 49 CFR 571.108, Table I (Required Motor Vehicle Lighting Equipment Other Than Headlamps, Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or More Inches in Overall Width) (2006); see also Table III (Required Motor Vehicle Lighting Equipment, Passenger Cars and Motorcycles, and Multipurpose



American Association of Motor Vehicle Administrators (AAMVA)—submitted a comment. Volkswagen Group of America (Volkswagen) and Harley-Davidson Motor Company (Harley-Davidson) also submitted comments. The agency also received a comment from an individual commenter. Comments are summarized below by topic, along with the agency's responses.

#### *Harmonization and Cost Saving Benefits of the Proposal*

##### Comments

MIC and Harley-Davidson supported the proposal to increase the maximum mounting angle to 30 degrees beyond vertical if the upper edge of the license plate is not more than 1.2 m (47.25 inches) above the ground. (MIC and Harley-Davidson also suggested, as discussed below, adopting the EEC height requirement.) Each commented that the proposal would align FMVSS No. 108 more closely with the EEC mounting angle requirements.<sup>13</sup> Each also stated that this change would increase manufacturer design flexibility and decrease manufacturers' costs without decreasing safety.

##### Agency Response

The agency agrees with MIC's and Harley-Davidson's comments supporting the agency's proposal. Regarding MIC's comment that the proposal would align FMVSS No. 108 more closely with the EEC license plate mounting angle requirement, the agency verified that today's final rule is generally consistent with the inclination provisions of EEC Council Directive 2009/62/EC.<sup>14</sup>

##### *Legibility*

##### Comments

MIC agreed with the agency's tentative conclusion that the proposed maximum mounting angle would not adversely affect the ability of license plate recognition technology to read license plates. MIC also stated that optics and software could be readily modified, and that the technology is

more sensitive to downward than upward angles. A former law enforcement officer stated that license plates mounted at an angle are often more difficult to read in low light. He stated that the proposed rule would interfere with the ability of witnesses, police officers, and the public to identify vehicles.

##### Agency Response

In response to the commenter that expressed concern that the proposed rule would decrease the legibility of the license plate in low light conditions, the agency considered the potential impact of increasing the allowable mounting plate angle in the context of the totality of factors that influence the legibility of the plate in low light conditions. FMVSS No. 108 contains various photometric and geometric requirements aimed at assuring legibility of the license plate. While this final rule expands the allowable license plate mounting plane angle, other lamp photometric requirements and geometric requirements remain unchanged. The plate illumination restriction continues to require that the test station targets be illuminated at a value of no less than 8 lux by the license plate lamp. Additionally, the highest to lowest illumination ratio requirements, which protect against shadowing across the plate, remain unchanged. Also unchanged is a requirement that the incident light from the license plate lamp never be less than 8 degrees. These factors all influence the legibility of the license plate in low light conditions more than the mounting angle within the range of allowable angles and heights of this final rule.

Finally, the final rule's adoption of the proposed maximum plate height for which this expanded angle range applies of 1.2 m (measured from the top of the plate) limits the range of likely vertical viewing angles. Considering the sales-weighted average driver's eye height for a car is 1.1 m and 1.42 m for light trucks and vans, the agency anticipates that occurrences of an observer reading plate at large vertical visual angles will remain rare.<sup>15</sup> A driver, whose eye height is at the sales-weighted average height in a sedan, will view the center of a license plate (approximately 1.15 m to 1.125 m from the ground), if mounted at the maximum height of 1.2 m (at the top of the plate), nearly parallel to the horizon. This means that the maximum vertical

viewing angle for a license plate mounted at the maximum height and at the maximum angle, when viewed by the average driver's eye height (worst-case situation) will be no greater than 30° from perpendicular to the plate. Considering all these factors, the agency concludes that the legibility of a license plate in low light situations for drivers will not be negatively impacted by today's final rule.

For automated license plate readers, the agency estimates that they are often mounted similar to, or higher than a driver's eye height. As such, the agency believes that the geometric and photometric factors outlined above apply similarly to machine license plate readers as they do to human viewers. As such, the agency agrees with MIC that today's final rule will not have a negative impact on automated plate readers.

##### *License Plate Height*

##### Comments

Harley-Davidson and MIC commented that the agency should adopt the EEC maximum height allowance of 1.5 m above the ground, as measured from the upper edge of the license plate when the vehicle is unladen. Harley-Davidson stated that this more liberal height requirement would provide greater design flexibility and potential harmonization-related cost savings. MIC stated that, in addition to benefits from harmonization, the 1.2 m and 1.5 m values are arbitrary and there is no material advantage or disadvantage to either.

##### Agency Response

The agency has decided not to adopt the EEC maximum height allowance. Neither MIC nor Harley-Davidson submitted data or specific information to support their comments. The agency disagrees with MIC that the 1.2 m maximum plate height for which the expanded angle applies is arbitrary. As outlined above, this restriction limits the vertical visual angle for which a driver is likely to view a license plate. While a 1.2 m maximum plate height, for which the plate may be angled at 30° upward, produces a maximum vertical viewing angle of 30° beyond perpendicular, a value of 1.5 m will not provide such an assurance. If the agency chose the value of 1.5 m as suggested by MIC and Harley-Davidson, and as allowed in the EEC regulation, a viewer located at the average, sales-weighted eye height would need to look up beyond horizontal for a plate mounted at the upper height limit. Such an arrangement would cause the vertical

<sup>13</sup> See EEC Council Directive 2009/62/EC, 1990 O.J. (L 198/20).

<sup>14</sup> 3. INCLINATION

3.1. The rear registration plate:

3.1.1. must be at right angles to the median longitudinal plane of the vehicle;

3.1.2. may be inclined from the vertical by not more than 30°, with the vehicle unladen, when the backing plate for the registration number faces upwards;

3.1.3. may be inclined by not more than 15° from the vertical, with the vehicle unladen, when the backing plate for the registration number faces downwards.

<sup>15</sup> UMTRI-2002-8, "The Location of Headlamps and Driver Eye Positions In Vehicles Sold In The U.S.A." (2002) Schoettle, B., Sivak, M., and Nakata, Y.

viewing angle to increase beyond 30° depending on the viewing distance. As such, we have chosen to adapt the proposed limit of 1.2 m as the maximum mounting height for a plate mounted on a plane more than 15 degrees (but less than 30 degrees) upward from vertical. The agency has chosen, however, not to adopt the ECE maximum height of 1.5 m because we are concerned that higher mounting locations could create a situation where the legibility of the plate becomes compromised.

#### *Vehicles to Which the Proposed Changes Should Apply*

##### Comments

In the NPRM, the agency solicited comment on amending the mounting angle requirement not just for motorcycles but for other types of vehicles as well. We stated that after receiving public comment the agency may decide to allow license plates to be mounted at an angle of up to 30 degrees upward of vertical on all vehicles, or on all vehicles with a gross vehicle weight rating of 10,000 pounds and less.

The agency received two comments regarding the issue of what vehicles to which the proposed rule should apply. Both Volkswagen and the Alliance stated that the proposed change in mounting angle should apply not just to motorcycles but to all classes of vehicles. Volkswagen and the Alliance stated that making the rule generally applicable would harmonize the FMVSS No. 108 provision with the comparable ECE regulations and, (as Volkswagen stated) with SAEJ587, both of which apply the maximum 30 degree upward mounting angle to all classes of vehicles.<sup>16</sup> The Alliance also indicated that the permissible upward mounting angle should not depend on vehicle weight because license plate visibility and legibility do not depend on vehicle weight.

##### Agency Response

The agency anticipates that this final rule can yield design and manufacturing benefits to all motor vehicles, not just motorcycles, without compromising safety. As such, the agency has applied this final rule to all motor vehicles regardless of vehicle type or weight. In

<sup>16</sup> SAE J587 SEP2003, 6.5.2. "The design shall be such that, when the plate is mounted on a vehicle as intended and the upper edge of the license plate is more than 1.2 m from the ground, the angle between the plane of the license plate and a vertical plane perpendicular to the plane of the ground on which the vehicle stands shall be ±15 degrees. If the upper edge of the license plate is not more than 1.2 m from the ground, the plate surface bearing the license numbers shall face between 30 degrees upward and 15 degrees downward from the vertical plane."

the NPRM, the agency considered applying the relaxed requirement to vehicles that are rated at 10,000 pound or less vehicles. After considering the Alliance's comment, the agency agrees that there is no logical connection between the weight rating of the vehicle and the legibility of the plate based on the mounting angle considering the size of the plate and other photometric and geometric requirement are the same for heavy and light vehicles. Applying this final rule to all motor vehicles will allow manufacturers of these additional vehicle types the flexibility to use an expanded mounting angle without compromising safety.

#### *Orientation of the License Plate as Either Vertical or Horizontal*

##### Comments

The AAMVA commented that the proposed rule would continue to allow license plates to be mounted vertically (*i.e.*, displayed so that the characters on the plate are read from top to bottom rather than left to right). AAMVA stated that vertically-mounted plates are difficult to read and that it "supports the horizontal display of a front and rear plate and the uniform manufacture and design of plates, to increase the effective and efficient identification of license plates. The use of common characteristics and predictable designs on license plates will enhance readability, usability, and a connection to vehicle registration records."

##### Agency Response

While the agency appreciates AAMVA's comment, this rulemaking is limited to the mounting angle of the plate and does not address whether the license plate is horizontally or vertically displayed. Accordingly, the AAMVA's proposed requirement is outside the scope of this rulemaking.

#### **IV. Final Rule**

The agency is amending FMVSS No. 108 to allow license plate mounting angles of up to 30 degrees upward from vertical (an installed plate will face above the horizon) if the upper edge of the license plate is not more than 1.2 m (47.25 inches) from the ground. The agency is also expanding the application of this change beyond that proposed in the NPRM (motorcycles) to include all motor vehicles. The maximum downward angle (an installed plate will face below the horizon) at which a license plate can be mounted remains 15 degrees, as does the maximum upward angle on vehicles for which the upper edge of the license plate is more than 1.2 m (47.25 inches) above the

ground. The agency believes that these changes to the license plate mounting angle requirements will reduce costs for manufacturers by allowing them to use the same mounting hardware for the license plate in both the United States and Europe without compromising safety because, as described above, we do not believe that plate legibility will be compromised.

As of the effective date of the final rule we are terminating the policy, in effect since our denial of the petitions for reconsideration of the 2007 final rule, of not enforcing the license plate holder mounting requirement.

#### **V. Effective Date**

In the NPRM we proposed an effective date of 60 days after publication of the final rule. Under the Safety Act, a FMVSS typically is not effective before the 180th day after the standard is published.<sup>17</sup> We did not receive any comments concerning the proposed effective date. In keeping with typical practice, this final rule will be effective June 14, 2016, with optional early compliance. We believe that specifying a later effective date for this final rule will not have any adverse effects or prejudice any regulated parties. This final rule expands the range of compliance options available to manufacturers; it does not enact any new duties or restrictions. Moreover, providing for optional early compliance will allow manufacturers to immediately benefit from the flexibility afforded by the expanded mounting angle requirements the same as if the effective date were earlier.

#### **VI. Regulatory Notices and Analyses**

*A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This final rule does not result in any increased costs or significant benefits. Therefore, it is not considered to be significant under E.O. 12866 or the Department's regulatory policies and procedures. The Office of Management and Budget has designated this rule as non-significant.

*B. Executive Order 13609: Promoting International Regulatory Cooperation*

The policy statement in section 1 of Executive Order 13609 provides, in part:

<sup>17</sup> See 49 U.S.C. 30111(d).

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

This rule more closely aligns the U.S. regulatory requirements for mounting motor vehicle license plates with those of European countries. Permitting an upward mounting angle of up to 30 degrees for all vehicles harmonizes with the ECE Council Directive 2009/62/EC, 1990 O.J. (L 198/20). These changes will increase manufacturer design flexibility without decreasing safety. The agency has chosen, however, not to adopt the ECE maximum height of 1.5 m because we are concerned that the higher mounting locations could create a situation where the legibility of the plate becomes compromised.

#### C. National Environmental Policy Act

We have reviewed this final rule for the purposes of the National Environmental Policy Act and determined that it would not have a significant impact on the quality of the human environment.

#### D. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States."<sup>18</sup> No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule expands the range of permissible mounting angles for license plates on motor vehicles. We do not anticipate that there will be any increased costs as a result of this rulemaking action. Accordingly, we do not anticipate that this rule will have a significant economic impact on a substantial number of small entities.

#### E. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132<sup>19</sup> and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.<sup>20</sup> It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which "[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law."<sup>21</sup> Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has

recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted.<sup>22</sup>

Pursuant to Executive Order 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today's rule and finds that the rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this final rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's proposed rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard established here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### F. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform,"<sup>23</sup> NHTSA has considered whether this rule would have any retroactive effect. This rule does not have any retroactive effect.

<sup>18</sup> 64 FR 43255, Aug. 10, 1999.

<sup>19</sup> 49 U.S.C. 30103(b)(1).

<sup>20</sup> 49 U.S.C. 30103(e).

<sup>22</sup> See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

<sup>23</sup> 61 FR 4729, Feb. 7, 1996.

<sup>18</sup> 13 CFR 121.105(a).

### G. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with a base year of 1995).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopts the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This rule, by harmonizing this provision of FMVSS No. 108 with the comparable EEC standard will likely reduce the manufacturing and design costs of manufacturers by allowing a greater degree of commonality between vehicles manufactured for sale in the United States and for sale in Europe, and possibly other markets. The rule is not anticipated to result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector in excess, of \$100 million annually. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandate Reform Act.

### H. *Paperwork Reduction Act*

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not contain any collection of information requirements requiring review under the PRA.

### I. *Executive Order 13045*

Executive Order 13045<sup>24</sup> applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have

a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

Today's rule does not pose such a risk for children. The primary effect of this rule is to amend the license plate mounting angle for motor vehicles.

### J. *National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

While SAE J587 SEP 2003, License Plate Lamps (Rear Registration Plate Lamps) contains a mounting angle requirement for motor vehicles similar to the agency's proposal, the agency did not believe that it would be appropriate to adopt J587 SEP 2003 in its entirety. FMVSS No. 108 currently requires that when a single lamp is used to illuminate the plate, the lamp and license plate holder must bear such relation to each other that at no point on the plate must the incident light make an angle of less than 8 degrees to the plane of the plate.<sup>25</sup> SAE J587 SEP 2003 does not contain this requirement. While the

agency considered incorporating SAE J587 SEP 2003 in its entirety, we concluded that the deletion of the test requirement to maintain an 8 degree relationship between the lamp and the license plate holder might negatively impact the direction toward which the plate reflects the light provided by the license plate lamp. For this reason the agency has decided not to use a voluntary consensus standard in its entirety in this regulatory activity.

### K. *Executive Order 13211*

Executive Order 13211<sup>26</sup> applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the rule and explain why it is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

This rule amends the license plate mounting angle for motor vehicles. Therefore, this rule will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

### L. *Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

### Regulatory Text

#### List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA is amending 49 CFR part 571 as set forth below.

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.95.

<sup>24</sup> 62 FR 19885, Apr. 23, 1997.

<sup>25</sup> FMVSS 108, S7.7.15.4.

<sup>26</sup> 66 FR 28355, May 18, 2001.

■ 2. Amend § 571.108 by revising paragraph S6.6.3 to read as follows:

**§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.**

\* \* \* \* \*

S6.6.3 *License plate holder.* Each rear license plate holder must be designed and constructed to provide a substantial plane surface on which to mount the plate.

S6.6.3.1 For motor vehicles on which the license plate is designed to be mounted on the vehicle such that the upper edge of the license plate is 1.2 m or less from the ground, the plane of the license plate mounting surface and the plane on which the vehicle stands must be perpendicular within 30° upward (an installed plate will face above the horizon) and 15° downward (an installed plate will face below the horizon).

S6.6.3.2 For motor vehicles on which the license plate is designed to be mounted on the vehicle such that the upper edge of the license plate is more than 1.2m from the ground, the plane of the license plate mounting surface and the plane on which the vehicle stands must be perpendicular within ± 15°.

\* \* \* \* \*

Issued on: December 8, 2015.

**Mark R. Rosekind,**

*Administrator.*

[FR Doc. 2015-31353 Filed 12-16-15; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 150603502-5999-02]

RIN 0648-BF14

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 3**

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

**ACTION:** Final rule.

**SUMMARY:** In this final rule, NMFS implements management measures described in Framework Amendment 3 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources (CMP) in the exclusive economic zone (EEZ) of the Gulf of

Mexico and Atlantic Region (Framework Amendment 3), as prepared and submitted by the Gulf of Mexico Fishery Management Council (Council). This final rule modifies the trip limit, accountability measures (AMs), dealer reporting requirements, and gillnet permit requirements for commercial king mackerel landed by run-around gillnet fishing gear in the Gulf of Mexico (Gulf). The purpose of this final rule is to increase the efficiency, stability, and accountability, and to reduce the potential for regulatory discards of king mackerel in the commercial gillnet component of the CMP fishery in the Gulf.

**DATES:** This final rule is effective January 19, 2016.

**ADDRESSES:** Electronic copies of Framework Amendment 3, 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\\_sa/cmp/2015/framework\\_am3/index.html](http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/2015/framework_am3/index.html).

Comments regarding the burden-hour estimates, clarity of the instructions, or other aspects of the collection-of-information requirements contained in this final rule (see the Classification section of the preamble) may be submitted in writing to Adam Bailey, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; or the Office of Management and Budget (OMB), by email at [OIRASubmission@omb.eop.gov](mailto:OIRASubmission@omb.eop.gov), or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:**

Susan Gerhart, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [susan.gerhart@noaa.gov](mailto:susan.gerhart@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The CMP fishery in the Gulf and Atlantic is managed under the FMP. The FMP was prepared by the Gulf and South Atlantic Fishery Management Councils 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 October 7, 2015, NMFS published a proposed rule for Framework Amendment 3 and requested public comment (80 FR 60605). The proposed rule and Framework Amendment 3 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Current Federal regulations allow for run-around gillnets to be used to commercially harvest king mackerel

only in the Florida west coast southern subzone of the Gulf. This subzone includes the Federal waters off Collier County, Florida, year-round, and off Monroe County, Florida, from November 1 to March 30. To use gillnets to commercially harvest king mackerel, vessels must have on board a Federal commercial king mackerel permit and a Federal king mackerel gillnet permit. A vessel with a gillnet permit is prohibited from fishing for king mackerel with hook-and-line gear. This rule modifies management of the king mackerel gillnet component of the commercial sector of the CMP fishery by increasing the commercial trip limit, revising AMs, modifying dealer reporting requirements, and requiring a documented landing history for a king mackerel gillnet permit to be renewed.

**Management Measures Contained in This Final Rule**

*Commercial Trip Limit*

This final rule increases the commercial trip limit for vessels harvesting king mackerel by gillnets from 25,000 lb (11,340 kg) to 45,000 lb (20,411 kg). The size of a school of king mackerel can be difficult to estimate precisely and king mackerel landed in gillnets experience very high discard mortality, which makes releasing fish in excess of the trip limit wasteful and impractical. Fishermen can cut the net and leave the section with fish in excess of the trip limit in the water and another vessel may be able to retrieve the partial net, but this process damages gear, which takes time and money to repair. Fishermen have indicated that more than 90 percent of successful gillnet gear deployments yield less than 45,000 lb (20,411 kg) of fish. Therefore, increasing the current trip limit should reduce the number of trips that result in king mackerel landings in excess of the commercial trip limit and the associated discard mortality.

*Accountability Measures*

The commercial AM for the king mackerel gillnet component of the fishery is an in-season closure when the annual catch limit for the commercial sector's gillnet component (gillnet ACL), which is equivalent to the commercial gillnet quota, is reached or is projected to be reached. This final rule adds a provision by which any gillnet ACL overage in one fishing year will be deducted from the gillnet ACL in the following fishing year. If the gillnet ACL is not exceeded in that following fishing year, then in the subsequent fishing year the gillnet ACL will return to the original gillnet ACL level as specified in

§ 622.388(a)(1)(ii). However, if the adjusted gillnet ACL is exceeded in the following fishing year, then the adjusted gillnet ACL will be reduced again in the subsequent fishing year by the amount of the most recent gillnet ACL overage. Because the trip limit increase in this final rule could increase the chance of exceeding the gillnet ACL, a payback provision will help ensure that any ACL overage is mitigated in the following year.

#### *Dealer Reporting Requirements*

This final rule modifies the reporting requirements for federally permitted dealers purchasing commercial king mackerel harvested by gillnets. Previously, such dealers were required to submit an electronic form daily to NMFS by 6 a.m. during the gillnet fishing season for purposes of monitoring the gillnet ACL. However, because some vessels land their catch after midnight and may have long offloading times, some gillnet landings were not reported until the following day. Further, the electronic monitoring system involves processing and quality control time before the data can be passed to NMFS fishery managers. This resulted in some landings information not reaching NMFS until nearly 2 days after the fish were harvested.

This final rule changes the daily electronic reporting requirement to daily reporting by some other means determined by NMFS, such as using port agent reports or some more direct method of reporting to NMFS fishery managers (*e.g.*, by telephone or internet). NMFS will work with dealers to establish a landings reporting system that minimizes the burden to the dealers as well as the time for landings to reach NMFS fishery managers. NMFS will provide written notice to the king mackerel gillnet dealers of the requirements of the reporting system, and will also post this information on the NMFS Southeast Regional Office Web site. Prior to the beginning of each subsequent commercial king mackerel gillnet season, NMFS will provide written notice to king mackerel gillnet dealers if the reporting methods and deadline change from the previous year, and will also post this information on the NMFS Southeast Regional Office Web site. Dealers must also report gillnet-caught king mackerel in their regular weekly electronic report of all species purchased to ensure king mackerel landings are included in the Commercial Landings Monitoring database maintained by the Southeast Fisheries Science Center.

#### *Renewal Requirements for King Mackerel Gillnet Permits*

This final rule changes the renewal requirements for a king mackerel gillnet permit. A king mackerel gillnet permit is renewable only if the vessel associated with the permit landed greater than 1 lb (0.45 kg) of king mackerel during any one year between 2006 and 2015. Currently, there are 21 vessels with valid or renewable Federal gillnet permits; 4 of these vessels have had no landings since 2001 and the permits associated with those vessels will no longer be renewable. Some active gillnet fishermen are concerned that permit holders who have not been fishing may begin participating in the gillnet component of the fishery, which could result in increased effort in a component of the commercial sector that already has a limited season. For example, the 2014/2015 gillnet season, which closed on February 20, 2015, was 32 days long and included 5 days of active fishing. Requiring a landings history of king mackerel in any one of the last 10 years to renew a gillnet permit will help ensure the continued participation of only those permit holders who actively fish or have done so in the more recent past.

NMFS will notify each king mackerel gillnet permittee to advise them whether their gillnet permit is eligible for renewal based upon NMFS' initial determination of eligibility. The proposed rule provided NMFS 7 days after the date of publication of the final rule to notify permittees, and provided permittees who do not receive a notice the concurrent time period to contact NMFS to clarify their gillnet permit renewal status. However, this could create an undue burden on permittees who might not know if they need to contact NMFS for clarification until the end of the NMFS time period, or the seventh day after the date of publication of the final rule. Therefore, this final rule includes a change to the regulatory text of the proposed rule clarifying that permittees have 14 days after the date of publication of the final rule to contact NMFS. The change ensures that permittees will have 7 days beyond the NMFS deadline to seek clarification of their gillnet permit renewal status. This clarifying change will not result in any impact on regulated parties. If NMFS advises a permittee that the permit is not renewable and they do not agree, a permittee may appeal that initial determination.

NMFS has an appeals process to provide a procedure for resolving disputes regarding eligibility to renew the king mackerel gillnet permit. The

NMFS National Appeals Office will process any appeals, which will be governed by the regulations and policy of the National Appeals Office at 15 CFR part 906. Appeals must be submitted to the National Appeals Office no later than 90 days after the date the initial determination by NMFS is issued. Determinations of appeals will be based on NMFS' logbook records, submitted on or before February 16, 2015. If NMFS' logbooks are not available, state landings records that were submitted in compliance with applicable Federal and state regulations on or before February 16, 2016 may be used.

#### *Other Changes to the Codified Text*

In addition to the measures described for Framework Amendment 3, this final rule corrects an error in the recreational regulations for king mackerel, Spanish mackerel, and cobia. The regulatory text in § 622.388(a)(2), (c)(1), and (e)(1)(i) included the statement that "the bag and possession limit would also apply in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.*, in state or Federal waters." This was included in the final rule for Amendment 18 to the FMP (76 FR 82058, December 29, 2011), but the Council did not approve this provision for CMP species. This final rule removes that text.

#### **Comments and Responses**

No comments were received on either Framework Amendment 3 or the proposed rule.

#### **Classification**

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with Framework Amendment 3, the FMP, the Magnuson-Stevens Act, and other applicable laws.

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 final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

The description of the action, why it is being considered, and the legal basis for the rule are contained in the Framework Amendment and in the preamble of this final rule.

In compliance with section 604 of the RFA, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant economic

issues raised by public comment, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

No public comments specific to the IRFA were received, and therefore, no public comments are addressed in this FRFA. No changes in the final rule were made in response to public comments.

In general, this final rule is not expected to change current reporting, recordkeeping, and other compliance requirements on vessel owners. However, this final rule will replace the dealer daily electronic reporting requirement with daily reporting by some other means as determined by NMFS. This will involve reporting to a port agent, as used in the past, or some more direct method of reporting to managers (*e.g.*, by telephone or internet). NMFS will work with dealers to establish a system that will minimize the burden to the dealers as well as the time for landings to reach the managers. Dealers will still have to report king mackerel gillnet landings through the electronic monitoring system weekly, when they report all species purchased. The weekly reporting will ensure any king mackerel landings are included in the Commercial Landings Monitoring database maintained by the Southeast Fisheries Science Center.

This final rule is expected to directly affect commercial fishermen with valid or renewable Federal Gulf king mackerel gillnet permits and dealers purchasing king mackerel from vessels with king mackerel gillnet permits. The Small Business Administration established size criteria for all major industry sectors in the U.S. including commercial finfish harvesters (NAICS code 114111), seafood dealers/wholesalers (NAICS code 424460), and seafood processors (NAICS code 311710). A business primarily involved in finfish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$20.5 million for all its affiliated operations worldwide. A business involved in seafood purchasing and processing is classified as a small business based on either employment standards or revenue thresholds. A business primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment not in excess of 500 employees for all its affiliated operations worldwide. For

seafood dealers/wholesalers, the other qualifiers apply and the employment threshold is 100 employees. The revenue threshold for seafood dealers/wholesalers/processors is \$7.5 million.

The Federal commercial king mackerel permit is a limited access permit, which can be transferred or sold, subject to certain conditions. From 2008 through 2014, the number of commercial king mackerel permits decreased from 1,619 in 2008 to 1,478 in 2014, with an average of 1,534 during this period. As of April 30, 2015, there were 1,342 valid or renewable commercial king mackerel permits. The king mackerel gillnet permit, which acts as an endorsement to a commercial king mackerel permit, is also a limited access permit. Its transferability is more restrictive than that for the commercial king mackerel permit. Specifically, it may be transferred only to another vessel owned by the same entity or to an immediate family member. From 2008 through 2014, there were an average of 23 king mackerel gillnet permits. As of November 6, 2015, there were 21 valid or renewable king mackerel gillnet permits. Beginning in 2014, a Federal dealer permit has been required to purchase king mackerel (among other species) harvested in the Gulf or South Atlantic. This dealer permit is an open access permit, and as of May 4, 2015, there were 325 such dealer permits.

Of the 21 vessels with king mackerel gillnet permits, 11 to 15 vessels landed king mackerel each year from 2006–2014, or an average of 13 vessels landed king mackerel. These vessels generated a combined average of \$544,981 in total ex-vessel revenues. These vessels, together with those that did not catch king mackerel, generated average revenues of \$427,258 from other species during 2006–2014. Averaging total revenues across all 21 vessels, the average total revenue per vessel was \$46,297 annually.

From 2008 through 2015, the number of dealers that purchased king mackerel from gillnet fishermen ranged from 4 to 6, with an average of 5. On average (2008–2015), these dealers purchased approximately \$570,105 (2014 dollars) worth of king mackerel from gillnet fishermen, or an average of \$114,021 per dealer. These dealers also purchased other species from Gulf and South Atlantic commercial fishermen, but the total amount cannot be estimated due to the absence of adequate information. The estimated average annual revenue from seafood purchases for dealers with a Gulf and South Atlantic Federal dealer permit is approximately \$546,000.

Based on the revenue figures above and for the purpose of this analysis, all federally permitted vessels and dealers expected to be directly affected by this final rule are assumed to be small business entities.

Because all entities expected to be affected by this rule are assumed to be small entities, NMFS has determined that this final rule will affect a substantial number of small entities. However, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Increasing the commercial trip limit is expected to result in greater king mackerel harvests per vessel per trip. This will directly translate into increased ex-vessel revenues from king mackerel per trip and possibly profits, assuming relatively stable operating costs per trip. However, trip limit increases will be expected to decrease the already limited number of fishing days currently needed to harvest the gillnet ACL. Relative to status quo, fewer fishing days will concentrate the same amount of king mackerel over a smaller time interval, possibly depressing the ex-vessel price for king mackerel and canceling out some of the revenue increases expected to result from higher trip limits. Whether the reduction in revenues due to price depression will offset revenue increases from a higher trip limit cannot be determined with available information.

In the last nine fishing years (2006/2007–2014/2015), the king mackerel gillnet ACL was exceeded four times although this has not occurred in the last three fishing years. Under the new commercial trip limit, however, there is some possibility that the commercial gillnet ACL will be exceeded, and thus the overage provision (payback) will apply with the following year's gillnet ACL being reduced by the full amount of the overage. The amount of the gillnet ACL overage will partly depend on how effectively the landings could be monitored. Regardless of the amount of overage and reduction in the following year's commercial gillnet ACL, the net economic effects of the overage provision could be negative, neutral, or positive, at least over a 2-year period. Revenues and profits could be relatively higher in the year an ACL overage occurred but the following year's revenues and profits could be lower with a reduced gillnet ACL. It cannot be ascertained which of the three net economic effects will occur.

Replacing the requirement for daily electronic reporting by dealers purchasing gillnet-caught king mackerel with an alternative form of daily reporting will not impose an additional

reporting burden on dealers. The replacement reporting requirement will be similar to what had been done in previous years or it will be more efficient in monitoring the amount of landings without changing the burden compared with the daily electronic reporting requirement. NMFS will work with the dealers in developing such a reporting system to ensure timely reporting of landings at no greater burden to the dealers.

Establishing new renewal requirements for commercial king mackerel gillnet permits based on a landings threshold of 1 lb (0.45 kg) is not expected to result in economic effects other than the potential loss of opportunities to excluded permit holders, should they want to re-enter the gillnet component of the fishery to harvest king mackerel in the future. Of the 21 vessels with valid or renewable gillnet permits, 4 vessels will not meet the renewal requirement. These 4 vessels have not landed any king mackerel using gillnets from 2001 through 2015, and thus have not generated any revenues from such activity. Not allowing these 4 vessels to renew their gillnet permits will have no short-term effects on their revenues and profits. It may also be expected that the remaining vessels in the gillnet component of the fishery will not experience revenue increases as a result of eliminating 4 vessels. Despite not having used gillnets to harvest king mackerel, those 4 permit owners have continued to renew their gillnet permits. To an extent, their decision not to exercise their option to re-enter the gillnet component of the fishery in the last 15 years may indicate that they have not undertaken substantial investments, *e.g.*, in boats and gear, in preparation for harvesting king mackerel. The gillnet permit cost they have spent, which is currently \$10 annually per gillnet permit, is relatively small. There is a good possibility that if they are not able to renew their permits to re-enter the king mackerel gillnet component of the CMP fishery they will not lose any significant investments. They still will stand to forgo future revenues from using gillnets in fishing for king mackerel. Those remaining in the fishery will not face the possibility of additional competition from those ineligible vessels.

The following discussion describes the alternatives that were not selected as preferred by the Council.

Four alternatives, including the preferred alternative, were considered for modifying the commercial trip limit for gillnet-caught king mackerel. The first alternative, the no action

alternative, would retain the 25,000 lb (11,340 kg) trip limit. This alternative would maintain the same economic benefits per trip but at levels lower than those afforded by the preferred alternative. The second alternative, which would increase the trip limit to 35,000 lb (15,876 kg), would yield lower economic benefits per trip than the preferred alternative. The third alternative would remove the trip limit, and thus would be expected to yield higher economic benefits per trip than the preferred alternative. However, it cannot be determined whether the benefits per trip would translate into total benefits because prices, and thus revenues, would tend to be affected by the amount of landings over a certain time period. This price effect would tend to offset any revenue effects from trip limit changes. That is, larger landings over a shorter period, as in the preferred or no trip limit alternatives, would tend to be associated with lower prices, just as smaller landings over a longer period, as in the no action alternative, would tend to be associated with higher prices. The net economic effects of all these alternatives for increasing the trip limit cannot be determined.

Three alternatives, including the preferred alternative, were considered for modifying the AM for the gillnet component of the king mackerel fishery. The first alternative, the no action alternative, would retain the in-season AM, which would close king mackerel gillnet fishing in the Florida west coast southern subzone when the gillnet ACL is met or is projected to be met. This alternative would not alter the level of economic benefits from the harvest of king mackerel by commercial gillnet fishermen. The second alternative would establish an annual catch target (ACT), which would be a quota set at a level below the commercial ACL, with various options. The first three options would establish a gillnet ACT equal to 95 percent, 90 percent, or 80 percent of the gillnet ACL; the fourth option would set the ACT according to the Gulf Council's ACL/ACT control rule (currently equal to 95 percent of the ACL); and the fifth option, which applies only if an ACT is established, would allow the amount of landings under the gillnet quota to be added to the following year's quota but the total gillnet quota could not exceed the gillnet ACL. The first four options would result in lower short-term revenues and profits than the preferred alternative by restricting the amount of harvest to less than the gillnet ACL. The fifth option has the potential to yield

higher revenues than the preferred alternative, because any unused gillnet quota would generate additional revenues in the following year. The absence of a gillnet ACL overage provision, however, could have adverse consequences on the status of the king mackerel stock and eventually on vessel revenues and profits. The third alternative, with two options, would establish a payback provision. The first option is the preferred alternative, which would establish a payback provision regardless of the stock status, while the second option would establish a payback provision only if the Gulf migratory group king mackerel stock is overfished. Because the Gulf migratory group king mackerel stock is not overfished, the second option would yield the same economic results as the no action alternative but possibly lower adverse economic impacts than the preferred alternative in the short term should an overage occur. However, the second option would provide less protection to the king mackerel stock before the stock becomes overfished.

Three alternatives, including the preferred alternative, were considered for modifying the electronic reporting requirements for dealers first receiving king mackerel harvested by gillnets. The first alternative, the no action alternative, would retain the daily electronic reporting requirements. This alternative would not provide timely reporting of landings because some landings reports could not be processed until the next day. The second alternative would remove the daily electronic reporting requirement but would require a weekly electronic reporting instead. While this would be less burdensome to dealers, it would not allow timely reporting of landings, which is necessary to monitor a season that generally lasts for only a few days.

Five alternatives, including the preferred alternative, were considered for renewal requirements for Federal king mackerel gillnet permits. The first alternative, the no action alternative, would maintain all current requirements for renewing king mackerel gillnet permits. This alternative would allow all 21 gillnet permit holders to renew their gillnet permits. The second alternative, with three options, would allow renewal of king mackerel gillnet permits if average landings during 2006–2015 exceed 1 lb (0.45 kg), 10,000 lb (4,536 kg), or 25,000 lb (11,340 kg). The third alternative, with three options, would allow renewal of king mackerel gillnet permits if landings for a single year during 2006–2015 exceed 1 lb (0.45 kg), 10,000 lb (4,536 kg), or 25,000 lb (11,340 kg).



This alternative with a landings threshold of greater than 1 lb (0.45 kg) for a single year is the preferred alternative. The fourth alternative, with three options, would allow renewal of king mackerel gillnet permits if average landings during 2011–2015 exceed 1 lb (0.45 kg), 10,000 lb (4,536 kg), or 25,000 lb (11,340 kg). The fifth alternative, with three options, would allow renewal of king mackerel gillnet permits if landings for a single year during 2011–2015 exceed 1 lb (0.45 kg), 10,000 lb (4,536 kg), or 25,000 lb (11,340 kg). All these other alternatives, except the no action alternative, would eliminate the same or greater number of vessels than the preferred alternative.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by OMB under control number 0648–0013. NMFS estimates that no change to the overall reporting burden will result from modifying the previously required daily reporting method for dealers that purchase king mackerel caught by gillnets during the fishing season. Instead of submitting an electronic form daily, NMFS will require daily reporting by some other means as developed by NMFS. Other means could involve reporting to the NMFS port agents or some other more direct method of reporting to managers, such as by email or phone. Dealers will report any purchase of king mackerel landed by the gillnet component of the fishery with the current and approved requirement for dealers to report fish purchases on a weekly basis, as specified in 50 CFR 622.5(c). NMFS estimates that this requirement will not change the reporting burden of 10 minutes per response for dealers purchasing king mackerel caught by gillnets. This estimate of the public reporting burden includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

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 PRA, unless that collection-of-information displays a currently valid OMB control number.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance

guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

**List of Subjects in 50 CFR Part 622**

Accountability measure, Annual catch limit, Fisheries, Fishing, Gulf of Mexico, King mackerel, Permits, Run-around gillnet.

Dated: December 10, 2015.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 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 § 622.5, revise paragraph (c)(1)(i) to read as follows:

**§ 622.5 Recordkeeping and reporting—general.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) A person issued a Gulf and South Atlantic dealer permit must submit a detailed electronic report of all fish first received for a commercial purpose within the time period specified in this paragraph via the dealer electronic trip ticket reporting system. These electronic reports must be submitted at weekly intervals via the dealer electronic trip ticket reporting system by 11:59 p.m., local time, the Tuesday following a reporting week. If no fish were received during a reporting week, an electronic report so stating must be submitted for that reporting week. In addition, during the open season, dealers must submit daily reports for Gulf migratory group king mackerel harvested by the run-around gillnet component in the Florida west coast southern subzone via the port agents, telephone, internet, or other similar means determined by NMFS. From the beginning of the open season until the commercial ACL (commercial quota) for the run-around gillnet sector for Gulf migratory group king mackerel is reached, dealers must submit a daily report if no king mackerel were received during the previous day. NMFS will provide written notice to dealers that first receive Gulf king mackerel harvested by the run-around gillnet

component prior to the beginning of each fishing year if the reporting methods or deadline change from the previous year.

\* \* \* \* \*

■ 3. In § 622.371, revise paragraph (a) to read as follows:

**§ 622.371 Limited access system for commercial vessel permits for king mackerel.**

(a) No applications for additional commercial vessel permits for king mackerel will be accepted. Existing vessel permits may be renewed, are subject to the restrictions on transfer or change in paragraph (b) of this section, and are subject to the requirement for timely renewal in paragraph (c) of this section.

\* \* \* \* \*

■ 4. In § 622.372, add paragraph (d) to read as follows:

**§ 622.372 Limited access system for king mackerel gillnet permits applicable in the southern Florida west coast subzone.**

\* \* \* \* \*

(d) *Renewal criteria for a king mackerel gillnet permit.* A king mackerel gillnet permit may be renewed only if NMFS determines at least 1 year of landings from 2006 to 2015 associated with that permit was greater than 1 lb (0.45 kg), round or gutted weight.

(1) *Initial determination.* On or about December 24, 2015, the RA will mail each king mackerel gillnet permittee a letter via certified mail, return receipt requested, to the permittee’s address of record as listed in NMFS’ permit files, advising the permittee whether the permit is eligible for renewal. A permittee who does not receive a letter from the RA, must contact the RA no later than December 31, 2015, to clarify the renewal status of the permit. A permittee who is advised that the permit is not renewable based on the RA’s determination of eligibility and who disagrees with that determination may appeal that determination.

(2) *Procedure for appealing landings information.* The only item subject to appeal is the landings used to determine whether the permit is eligible for renewal. Appeals based on hardship factors will not be considered. Any appeal under this regulation will be processed by the NMFS National Appeals Office. Appeals will be governed by the regulations and policy of the National Appeals Office at 15 CFR part 906. Appeals must be submitted to the National Appeals Office no later than 90 days after the date the initial determination is issued. Determinations of appeals regarding landings data for

2006 to 2015 will be based on NMFS' logbook records, submitted on or before February 16, 2016. If NMFS' logbooks are not available, state landings records or data for 2006 to 2015 that were submitted in compliance with applicable Federal and state regulations on or before February 16, 2015, may be used.

■ 5. In § 622.385, revise paragraph (a)(2)(ii)(A)(1) to read as follows:

**§ 622.385 Commercial trip limits.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*
- (ii) \* \* \*
- (A) \* \* \*

(1) In the Florida west coast southern subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial vessel permit for king mackerel and a king mackerel gillnet permit have been issued, as required under § 622.370(a)(2), in amounts not exceeding 45,000 lb (20,411 kg) per day, provided the gillnet component for Gulf migratory group king mackerel is not closed under § 622.378(a) or § 622.8(b).

\* \* \* \* \*

■ 6. In § 622.388:

- a. Add paragraph (a)(1)(iii); and
- b. Revise paragraphs (a)(2), (c)(1), and (e)(1)(i) to read as follows:

**§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).**

\* \* \* \* \*

- (a) \* \* \*
- (1) \* \* \*

(iii) If commercial landings for Gulf migratory group king mackerel caught by run-around gillnet in the Florida west coast southern subzone, as estimated by the SRD, exceed the commercial ACL, the AA will file a notification with the Office of the Federal Register to reduce the commercial ACL for king mackerel harvested by run-around gillnet in the Florida west coast southern subzone in the following fishing year by the amount of the commercial ACL overage in the prior fishing year.

(2) *Recreational sector.* If recreational landings, as estimated by the SRD, reach or are projected to reach the recreational ACL of 8.092 million lb (3.670 million kg), the AA will file a notification with the Office of the Federal Register to implement a bag and possession limit for Gulf migratory group king mackerel of zero, unless the best scientific information available determines that a bag limit reduction is unnecessary.

\* \* \* \* \*

(c) \* \* \*

(1) If the sum of the commercial and recreational landings, as estimated by the SRD, reaches or is projected to reach the stock ACL, as specified in paragraph (c)(3) of this section, the AA will file a notification with the Office of the Federal Register to close the commercial and recreational sectors for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group Spanish mackerel is prohibited and the harvest and possession limit of this species in or from the Gulf EEZ is zero.

\* \* \* \* \*

- (e) \* \* \*
- (1) \* \* \*

(i) If the sum of all cobia landings, as estimated by the SRD, reaches or is projected to reach the stock quota (stock ACT), specified in § 622.384(d)(1), the AA will file a notification with the Office of the Federal Register to prohibit the harvest of Gulf migratory group cobia in the Gulf zone for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia in the Gulf zone is prohibited and the possession limit of this species in or from the Gulf EEZ is zero.

\* \* \* \* \*

[FR Doc. 2015-31708 Filed 12-16-15; 8:45 am]  
BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 140918791-4999-02]

RIN 0648-XE358

**Fisheries of the Exclusive Economic Zone Off Alaska; Other Hook-and-Line Fishery by Catcher Vessels in the Gulf of Alaska**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish, by catcher vessels (C/Vs) using hook-and-line gear in the Gulf of Alaska (GOA). This action is necessary because the Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA has been reached.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), December 15, 2015, until 2400 hours A.l.t., December 31, 2015.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

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

The Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA is 145 metric tons as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015).

In accordance with § 679.21(d)(6)(ii), the Administrator, Alaska Region, NMFS, has determined that the Pacific halibut bycatch allowance specified for the other hook-and-line fishery by C/Vs in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for groundfish, other than demersal shelf rockfish, by C/Vs using hook-and-line gear in the GOA.

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

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closure of other hook-and-line fishery by C/Vs in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 11, 2015.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon

the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: December 14, 2015.

**Galen R. Tromble,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2015-31759 Filed 12-14-15; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 80, No. 242

Thursday, December 17, 2015

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS-FV-15-0063; FV16-930-1 PR]

#### Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2015-16 Crop Year for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2015-16 crop year under the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the marketing order and is comprised of producers and handlers of tart cherries operating within the production area. This action would establish the proportion of tart cherries from the 2015 crop which may be handled in commercial outlets at 80 percent free and 20 percent restricted. In addition, this proposal would increase the carry-out volume of fruit to 55 million pounds for this season. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

**DATES:** Comments must be received by January 19, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the

document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or Email: [Jennie.Varela@ams.usda.gov](mailto:Jennie.Varela@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This proposed rule would establish free and restricted percentages for tart cherries for the 2015-16 crop year, beginning July 1, 2015, through June 30, 2016.

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

This proposed rule invites comments on the establishment of free and restricted percentages for the 2015-16 crop year. This proposal would establish the proportion of tart cherries from the 2015 crop which may be handled in commercial outlets at 80 percent free and 20 percent restricted. In addition, this proposal would increase the carry-out volume of fruit to 55 million pounds for calculation purposes for this season. This proposal should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposed carry-out and the final percentages were recommended by the Board at a meeting on September 10, 2015.

Section 930.51(a) of the order provides authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162 of the regulations. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. For cherries

held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only those districts with an annual average production of at least six million pounds are subject to regulation and any district producing a crop which is less than 50 percent of its annual average is exempt. The regulated districts for the 2015–2016 crop year would be: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 4—New York; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 5 and 6 (Oregon and Pennsylvania, respectively) would not be regulated for the 2015–16 season.

Demand for tart cherries and tart cherry products tend to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price. However, prices are very sensitive to changes in supply. As such, an oversupply of cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control provisions in the order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50 of the order, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update their calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus, and if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry

to be carried into the succeeding crop year to meet market demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. Section 930.50(a) specifies that desirable carry-out can range from zero to a maximum of 20 million pounds, but also authorizes the Board to establish an alternative carry-out figure with the approval of the Secretary.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g) of the order, which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and market growth factor, it must examine the current year's available volume to determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on June 25, 2015, and computed an optimum supply of 208 million pounds for the 2015–16 crop year using the average of free sales for the three previous seasons and a desirable carry-out of 20 million pounds. The Board then subtracted the estimated carry-in of 104 million pounds from the optimum supply to calculate the production needed from the 2015–16 crop to meet optimum supply. This number, 104 million pounds, was subtracted from the Board's estimated 2015–16 production of 233 million pounds to calculate a surplus of 129 million pounds of tart cherries. The surplus minus the market growth factor was then divided by the expected production in the regulated districts (228 million pounds) to reach a preliminary restricted percentage of 48 percent for the 2015–16 crop year.

In discussing the calculations, industry participants commented that a carry-out of 20 million pounds would not meet their needs at the end of the season before the new crop is available. To address that concern, the Board recommended increasing the desirable carry-out to 55 million pounds for the 2015–2016 season. This change increased the optimum supply to 243 million pounds, reducing the surplus to 94 million pounds.

The Board also discussed whether the substantial reduction of supply in 2012 due to weather was still a factor that needed to be considered in determining optimum supply. Because of the crop loss, sales in 2012–13 reached only 123 million pounds, nearly 100 million pounds less than 2013–14 sales. In the previous two seasons when considering volume regulation, the Board recommended economic adjustments to account for the substantial decline in 2012. The Board again determined that the market required additional tonnage to continue recovering sales and voted to make an economic adjustment of 43 million pounds to increase the available supply of tart cherries. The Board also complied with the market growth factor requirement by adding 19 million pounds (188 million times 10 percent, rounded) to the free supply.

The economic adjustment and market growth factor further reduced the preliminary surplus to 32 million pounds. After these adjustments, the preliminary restricted percentage was recalculated as 14 percent (32 million pounds divided by 228 million pounds).

The Board met again on September 10, 2015, to consider establishing final volume regulation percentages for the 2015–16 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September. The total production for the 2015–16 season was 249 million pounds, 25 million pounds above the Board's June estimate. In addition, growers diverted 1 million pounds in the orchard, leaving 248 million pounds available to market. Using the actual production numbers, and accounting for the recommended increase in desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 104 million pounds from the optimum supply of 243 million pounds to determine 139 million pounds of 2015–16 production would be necessary to reach optimum supply. The Board subtracted the 139 million pounds from the actual production of 248 million pounds,

resulting in a surplus of 109 million pounds of tart cherries. The surplus was then reduced by subtracting the economic adjustment of 43 million pounds and the market growth factor of

19 million pounds, resulting in an adjusted surplus of 47 million pounds. The Board then divided this final surplus by the actual production in the regulated districts (240 million pounds)

to calculate a restricted percentage of 20 percent with a corresponding free percentage of 80 percent for the 2015–16 crop year, as outlined in the following table:

	Millions of pounds
<b>Final Calculations:</b>	
(1) Average sales of the prior three years .....	188
(2) Plus desirable carry-out .....	55
(3) Optimum supply calculated by the Board .....	243
(4) Carry-in as of July 1, 2015 .....	104
(5) Adjusted optimum supply (item 3 minus item 4) .....	139
(6) Board reported production .....	248
(7) Surplus (item 6 minus item 5) .....	109
(8) Total economic adjustments .....	43
(9) Market growth factor .....	19
(10) Adjusted Surplus (item 7 minus items 8 and 9) .....	47
(11) Production from regulated districts .....	240
<b>Final Percentages:</b>	
	Percent
Restricted (item 10 divided by item 11 × 100) .....	20
Free (100 minus restricted percentage) .....	80

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the order. The Board believes the available information indicates that a restricted percentage should be established for the 2015–16 crop year to avoid oversupplying the market with tart cherries. Consequently, based on its discussion of this issue and the result of the above calculations, the Board recommended final percentages of 80 percent free and 20 percent restricted by a vote of 16 in favor and 1 against.

During the discussion of the proposed restriction, some members expressed concern regarding competition from imported tart cherry juice concentrate. In particular, some were concerned that the additional volume from imports is not accounted for in the Optimum Supply Formula, thus not capturing overall supply and demand. An economist from Michigan State University is working with the Board to assemble information on tart cherry imports. The Board also voted to establish an import committee to review the data on imports once it is available. Another member asserted that any restriction would adversely impact growers' ability to sell all of their fruit. One member also said that a 20 percent restriction seemed high given the moderate production in 2015.

One member noted setting the restriction at 20 percent would aid in maintaining price stability, with another member reminding the Board of the importance of the order and volume control in avoiding oversupplying the market with tart cherries. One other member said it was also important to maintain a reserve in case of another crop disaster. Other members stated the demand adjustment and the recommended increased carry-out would put sufficient fruit on the market in the coming year.

After reviewing the available data, and considering the concerns expressed, the Board determined that a 20 percent restriction with a carry-out volume of 55 million pounds would meet sales needs and establish some reserves without oversupplying the market. Thus, the Board recommended establishing final percentages of 80 percent free and 20 percent restricted. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

#### Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000 and small agricultural service firms have been defined as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries during the 2014–15 season was \$0.35 per pound, and total utilization was around 300 million pounds. Therefore, average receipts for tart cherry producers were around \$175,800, well below the SBA threshold for small producers. In 2014, The Food Institute estimated an f.o.b. price of \$0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Using this data, average annual handler receipts were about \$6.9 million, which is also below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide annual

fluctuations in production. According to NASS, tart cherry production in 2012 was 85 million pounds, 294 million pounds in 2013, and in 2014, production was 304 million pounds. Because of these fluctuations, the supply and demand for tart cherries are rarely equal.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply, with prices ranging from a low of 7.3 cents per pound in 1987 to a high of 59.4 cents per pound in 2012.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control authority in the order in an effort to balance supply and demand in order to stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted or used for exempted purposes.

This proposal would establish free and restricted percentages using an increased carry-out volume of 55 million pounds for the 2015–16 crop year under the order for tart cherries. This proposal would control the supply of tart cherries by establishing percentages of 80 percent free and 20 percent restricted for the 2015–16 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposal would regulate tart cherries handled in Michigan, New York, Utah, Washington, and Wisconsin. The authority for this action is provided for in §§ 930.51(a) and 930.52 of the order. The Board recommended this action at a meeting on September 10, 2015.

This proposal would result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The

quantity that would be available under this proposal is greater than 110 percent of the average quantity shipped in the prior three years.

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2014–15, these activities accounted for 21 million pounds in sales, nearly 14 million of which were exports.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although the industry must bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to maintain and supply markets in years where production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

In addition, the Board recommended an increased carry-out of 55 million pounds and made a demand adjustment of 43 million pounds in order to make the regulation less restrictive. Even with the recommended restriction, over 300 million pounds of fruit would be available to the domestic market. Consequently, it is not anticipated that this proposal would unduly burden growers or handlers.

While this proposal could result in some additional costs to the industry, these costs are more than outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower grower prices.

The three districts in Michigan, along with the districts in New York, Utah, Washington, and Wisconsin are the restricted areas for this crop year with a combined total production of 240 million pounds. A 20 percent restriction means 192 million pounds would be available to be shipped to primary markets from these five states. The 192 million pounds from the restricted

districts, nearly 9 million pounds from the unrestricted districts (Oregon and Pennsylvania), and the 104 million pound carry-in inventory would make a total of 305 million pounds available as free tonnage for the primary markets. This is similar to the 300 million pounds of total utilization in 2014–2015 and less restrictive than the 12 percent restriction in 2011–2012 which made just under 262 million pounds available. Further, the Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Prior to the implementation of the order, grower prices often did not come close to covering the cost of production. The most recent costs of production determined by representatives of Michigan State University are an estimated \$0.33 per pound. To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately \$0.03 per pound higher than without restrictions.

In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carry-in inventories, a decrease in grower prices of \$0.0042 per pound occurs.

Retail demand is assumed to be highly inelastic, which indicates that changes in price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this proposal should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this proposal would provide the market with optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this proposal would benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the

revenues their tart cherries would generate. Growers and handlers, regardless of size, would benefit from the stabilizing effects of this restriction. In addition, the increased carry-out should provide processors enough supply to meet market needs going into the next season.

The Board considered some alternatives in its preliminary restriction discussions that affected this recommended action. The first alternative concerned the average sales in estimating demand for the coming season, and the second alternative regarded the recommended carry-out figure.

Regarding demand, the Board began with the actual sales average of 188 million pounds. There was concern, however that this value, which incorporated the weather-related crop failure of 2012, would result in an over-restrictive calculation. After considering options in the range of 40 to 62 million pounds, the Board determined that an adjustment of 43 million pounds, would best meet the industry's sales needs. Thus the other alternatives were rejected and the Board recommended the 43 million pound economic adjustment.

Regarding the carry-out value, the Board previously considered a one-year increase above the 20 million pounds specified in the order to 50 million pounds. However, this season, Board members indicated the carry-out should be even higher to facilitate processing at the end of the crop year. Board members suggested a series of options from 35 million to 60 million pounds of carry-out. Some feel the additional fruit is necessary while others were more cautious about having additional fruit on the market at the time of harvest, which may put downward pressure on prices. In conjunction with the demand adjustment, the Board reached a consensus and recommended the Secretary increase the maximum carry-out to 55 million pounds for the 2015–2016 season.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of MI, NY, PA, OR, UT, WA, and WI. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposal would not impose any additional reporting or recordkeeping requirements on either small or large

tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 25, 2015, and September 10, 2015, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this proposal on small businesses.

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

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this proposed rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2015–16 crop. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 930.151 to read as follows:

#### **§ 930.151 Desirable carry-out inventory.**

For the crop year beginning on July 1, 2015, the desirable carry-out inventory, for the purposes of determining an optimum supply volume, will be 55 million pounds.

■ 3. Revise § 930.256 to read as follows:

#### **§ 930.256 Free and restricted percentages for the 2015–16 crop year.**

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2015, which shall be free and restricted, respectively, are designated as follows: Free percentage, 80 percent and restricted percentage, 20 percent.

Dated: December 14, 2015.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2015–31777 Filed 12–16–15; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF THE TREASURY**

### **Office of the Comptroller of the Currency**

#### **12 CFR Part 30**

[Docket ID OCC–2015–0017]

RIN 1557–AD96

#### **Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Proposed guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is requesting comment on proposed enforceable guidelines establishing standards for recovery planning by insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks with average total consolidated assets of \$50 billion or more (Guidelines). The OCC would issue the Guidelines as an appendix to its safety and soundness standards regulations, and the Guidelines would be enforceable by the terms of the Federal statute that authorizes the OCC to prescribe operational and managerial standards for national banks and Federal savings associations.

**DATES:** Comments must be submitted by February 16, 2016.



**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title “Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches” 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–2015–0017” 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](mailto: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–2015–0017” in your comment.

In general, the 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, 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:

- **Viewing Comments Electronically:** Go to <http://www.regulations.gov>. Enter “Docket ID OCC–2015–0017” in the Search box and click “Search”. Comments can be filtered by agency name 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 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 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.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning the Guidelines, contact Lori Bittner, Large Bank Supervision—Resolution and Recovery, (202) 649–6093; Stuart Feldstein, Director, Andra Shuster, Senior Counsel, or Karen McSweeney, Counsel, Legislative & Regulatory Activities Division, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597; or Valerie Song, Assistant Director, Bank Activities and Structure Division, (202) 649–5500, 400 7th Street SW., Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### Background

The recent financial crisis demonstrated the destabilizing effect that severe stress at large, complex, interconnected financial companies can have on the national economy, capital markets, and the overall financial stability of the banking system. Following the crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); among other purposes, the Dodd-Frank Act was intended to strengthen the framework for the supervision and regulation of large U.S. financial companies in order to address the significant impact that these institutions can have on capital markets and the economy.

One lesson learned from the crisis is the importance—especially in large or complex financial institutions—of strong risk management and corporate governance practices. In 2014, the OCC adopted heightened standards guidelines that address the risk management and corporate governance

of large or complex banks.<sup>1</sup> These guidelines establish minimum standards for the design and implementation of a corporate governance framework and for a bank’s board of directors in overseeing the framework’s design and implementation. The OCC believes that these heightened standards further the goals of the Dodd-Frank Act by clarifying the OCC’s expectation that banks have robust practices in areas where the crisis revealed substantial weaknesses.

Another important component of an institution’s risk management and corporate governance practices is how an institution plans to respond to severe stress in a manner that preserves its financial and operational strength and viability. In the aftermath of the crisis, it became clear that many financial institutions had insufficient plans for identifying and responding rapidly to significant stress events. As a result, many institutions were forced to take significant actions quickly without the benefit of a well-developed plan. In addition, recent large-scale operational events, such as destructive cyber attacks, demonstrate the need for institutions to plan how to respond to such occurrences.

The OCC believes that large, complex institutions should have a recovery plan that describes options for responding to stress events. Accordingly, the OCC is proposing to establish standards for recovery planning that would apply to insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks (together, banks and each, a bank) with average total consolidated assets of \$50 billion or more (together, covered banks and each, a covered bank).<sup>2</sup> An institution’s recovery planning should be a dynamic, ongoing process. This process should complement the institution’s risk management and corporate governance functions and support its safe and sound operation. The process of developing and maintaining a recovery plan also should cause covered banks’ management and boards of directors to enhance their focus on risk management and corporate governance with a view toward lessening the financial or operational impact of future unforeseen events.

The OCC recognizes that many covered banks already engage in

<sup>1</sup> 79 FR 54518 (Sept. 11, 2014) (OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches; Integration of Regulations).

<sup>2</sup> While the Dodd-Frank Act addresses resolution planning, it does not specifically address recovery planning.

significant planning to respond to events such as cyber attacks, business interruptions, and leadership vacancies. They undertake strategic, operational, contingency, capital (including stress testing), liquidity, and resolution planning. We do not intend for the recovery planning required by these Guidelines to duplicate these efforts, and we encourage covered banks to leverage their existing planning. Rather, the purpose of the Guidelines is to provide a comprehensive framework for evaluating how severe stress may affect the covered bank as a whole and the options that will allow it to remain viable even under severe stress.

As described below, a covered bank should develop and maintain a recovery plan that identifies triggers based on severe stress scenarios. These scenarios should range from those that cause significant financial and operational hardship to those that bring the covered bank close to default, but no further; scenarios should not go so far as to push the covered bank into resolution. The plan should identify the credible options a covered bank could take to restore financial and operational strength and viability in a timely manner, while maintaining market confidence. Neither the plan nor the options may assume or rely on any extraordinary government support.

As part of the OCC's regular supervisory activities, OCC examiners will assess the appropriateness and adequacy of the covered bank's recovery planning process and the integration of that process into the covered bank's overall risk management and corporate governance functions. Examiners will also assess the quality and reasonableness of a covered bank's recovery plan, including its triggers and the stress scenarios upon which the triggers are based, recovery options, impact assessments, and execution strategies, as well as the covered bank's management and board responsibilities.

#### Enforcement of the Guidelines

The OCC is proposing these Guidelines pursuant to section 39 of the Federal Deposit Insurance Act (FDIA).<sup>3</sup> Section 39 authorizes the OCC to prescribe safety and soundness standards in the form of a regulation or guidelines. The OCC currently has four sets of these guidelines, issued as appendices to part 30 of the OCC's regulations. Appendix A contains operational and managerial standards

that relate to internal controls, information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, asset quality, earnings, compensation, fees, and benefits. Appendix B contains standards on information security, and Appendix C contains standards that address residential mortgage lending practices. Appendix D contains standards for the design and implementation of a risk governance framework.

Section 39 prescribes different consequences depending on whether the standards are issued by regulation or guidelines. Pursuant to section 39, if a national bank or Federal savings association<sup>4</sup> fails to meet a standard prescribed by regulation, the OCC must require it to submit a plan specifying the steps it will take to comply with the standard. If a national bank or Federal savings association fails to meet a standard prescribed by a guideline, the OCC has the discretion to decide whether to require the submission of a plan.<sup>5</sup> Issuing these standards as guidelines rather than as a regulation provides the OCC with the flexibility to pursue the course of action that is most appropriate given the specific circumstances of a covered bank's noncompliance with one or more standards and the covered bank's self-corrective and remedial responses.

The procedural rules implementing the supervisory and enforcement remedies prescribed by section 39 are contained in part 30 of the OCC's rules. Under these provisions, the OCC may initiate a supervisory or enforcement process when it determines, by examination or otherwise, that a national bank or Federal savings association has failed to meet the standards set forth in the Guidelines.<sup>6</sup> Upon making that determination, the OCC may request, in writing, that the national bank or Federal savings association submit a compliance plan to the OCC detailing the steps the institution will take to correct the deficiencies and the time within which it will take those steps. This request is termed a Notice of Deficiency. Upon

<sup>4</sup> Section 39 of the FDIA applies to "insured depository institutions," which includes insured Federal branches of foreign banks. While we do not specifically refer to these entities in this discussion, it should be read to include them. However, section 39 does not apply to uninsured depository institutions.

<sup>5</sup> See 12 U.S.C. 1831p-1(e)(1)(A)(i) and (ii).

<sup>6</sup> The procedures governing the determination and notification of failure to satisfy a standard prescribed pursuant to section 39, the filing and review of compliance plans, and the issuance, if necessary, of orders currently are set forth in the OCC's regulations at 12 CFR 30.3, 30.4, and 30.5.

receiving a Notice of Deficiency from the OCC, the national bank or Federal savings association must submit a compliance plan to the OCC for approval within 30 days.

If a national bank or Federal savings association fails to submit an acceptable compliance plan or fails in any material respect to implement a compliance plan approved by the OCC, the OCC may issue a Notice of Intent to Issue an Order pursuant to section 39 (Notice of Intent). The bank or savings association then has 14 days to respond to the Notice of Intent. After considering the bank's or savings association's response, the OCC may issue the order, decide not to issue the order, or seek additional information from the bank or savings association before making a final decision. Alternatively, the OCC may issue an order without providing the bank or savings association with a Notice of Intent. In such a case, the bank or savings association may appeal after-the-fact to the OCC, and the OCC has 60 days to consider the appeal. Upon the issuance of an order, a bank or savings association is deemed to be in noncompliance with part 30. Orders are formal, public documents, and they may be enforced by the OCC in district court. The OCC may also assess a civil money penalty, pursuant to 12 U.S.C. 1818, against any bank or savings association that violates or otherwise fails to comply with any final order and against any institution-affiliated party who participates in such violation or noncompliance.

#### Description of the OCC's Guidelines for Recovery Planning

The proposed Guidelines consist of three sections. Section I provides an introduction to the Guidelines, explains the scope of the Guidelines, and defines key terms. Section II sets forth the standards for the design and execution of a covered bank's recovery plan. Section III provides the standards for management's and the board of directors' responsibilities in connection with the recovery plan.

##### Section I: Introduction

*Scope.* The Guidelines would apply to a bank with average total consolidated assets equal to or greater than \$50 billion as of the effective date of the Guidelines (calculated by averaging the covered bank's total consolidated assets, as reported on the bank's Consolidated Reports of Condition and Income (Call Reports), for the four most recent consecutive quarters). This threshold is consistent with the scope of the regulations of the Federal Deposit Insurance Corporation (FDIC) and Board

<sup>3</sup> 12 U.S.C. 1831p-1. Section 39 was enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, section 132(a), 105 Stat. 2236, 2267-70 (Dec. 19, 1991).

of Governors of the Federal Reserve System (Board) that require certain entities to prepare resolution plans.<sup>7</sup> For those banks that have average total consolidated assets less than \$50 billion as of the effective date of the Guidelines, but subsequently have average total consolidated assets of \$50 billion or greater, the date on which the Guidelines would apply is the as-of date of the most recent Call Report used in the calculation of the average.<sup>8</sup> Once a bank becomes subject to the Guidelines because its average total consolidated assets reach or exceed the \$50 billion threshold, it would be required to continue to comply with the Guidelines, unless the OCC specifically determines that compliance is not required.

In order to maintain supervisory flexibility, the proposed Guidelines would reserve the OCC's authority to apply the Guidelines to a bank whose average total consolidated assets are less than \$50 billion if the OCC determines such entity's operations are highly complex or otherwise present a heightened risk that warrants application of the Guidelines. The OCC expects to use this authority infrequently; it does not intend to apply the Guidelines to community banks.

In determining whether a bank's operations are highly complex or present a heightened risk, the OCC will consider the bank's risk profile, size, activities, and complexity, including the complexity of its organizational and legal entity structure. Additionally, as noted above, the OCC may determine that a covered bank is no longer required to comply with the Guidelines. The OCC would generally make this determination if a covered bank's operations are no longer highly complex or no longer present a heightened risk.

When exercising any of these reservations of authority, the OCC would apply notice and response procedures consistent with those set out in 12 CFR 3.404. In accordance with these procedures, the OCC would provide a bank or covered bank, as appropriate, with written notice of its proposed determination under this paragraph of the Guidelines, and the bank or covered bank would have 30 days to respond in writing. The OCC would consider failure to respond within this time frame a waiver of any

<sup>7</sup> See 12 CFR 381.2(f) and 243.2(f), respectively. See also 12 CFR 360.10.

<sup>8</sup> While the Guidelines would apply as of the date of the most recent Call Report used in the calculation of the average total consolidated assets of the covered bank, we understand that a newly covered bank will need time to formulate a recovery plan and expect the bank to work with its OCC examiners during this period.

objections. At the conclusion of the 30 days, the OCC would issue a written notice of its final determination.

As discussed above, the Guidelines would be enforceable pursuant to section 39 of the FDIA and part 30 of the OCC's rules. Section I of the Guidelines provides that nothing in section 39 or the Guidelines in any way limits the authority of the OCC to address unsafe or unsound practices or conditions or other violations of law.<sup>9</sup>

*Definitions.* Paragraph D of Section I defines certain terms used throughout the Guidelines, including "average total consolidated assets," "bank," "covered bank," "recovery," "recovery plan," and "trigger." The term "recovery" means timely and appropriate action that a covered bank takes to remain a going concern when it is experiencing or is likely to experience considerable financial or operational distress. A covered bank in recovery has not yet deteriorated to the point where liquidation or resolution is imminent. A "recovery plan" is a plan that identifies triggers and options for responding to a wide range of severe internal and external stress scenarios and for restoring a covered bank to financial and operational strength and viability in a timely manner, while maintaining the confidence of market participants. Neither the plan nor the options may assume or rely on any extraordinary government support. "Trigger" means a quantitative or qualitative indicator of the risk or existence of severe stress that should always be escalated to management or the board of directors, as appropriate, for purposes of initiating a response. The breach of any trigger should result in timely notice accompanied by sufficient information to enable management of the covered bank to take corrective action.

#### Section II: Recovery Plan

Each covered bank should develop and maintain a recovery plan appropriate for its individual risk profile, size, activities, and complexity, including the complexity of its organizational and legal entity structure. Section II sets forth the elements that the covered bank should include in a recovery plan.<sup>10</sup>

1. *Overview of covered bank.* It is important that a recovery plan provide a detailed description of the covered bank's overall organizational and legal

<sup>9</sup> Section 39 preserves all authority otherwise available to the OCC, stating, "The authority granted by this section is in addition to any other authority of the Federal banking agencies." See 12 U.S.C. 1831p-1(g).

<sup>10</sup> A covered bank can use information included in its resolution plan to prepare its recovery plan.

structure, including its material entities, critical operations, core business lines, and core management information systems. The description should explain interconnections and interdependencies<sup>11</sup> (i) across business lines within the covered bank, (ii) with affiliates in a bank holding company structure, (iii) between a covered bank and its foreign subsidiaries, and (iv) with critical third parties. The description should address whether a disruption of these interconnections or interdependencies would materially affect the funding or operations of the covered bank and, if so, how. Examples include relationships with respect to credit exposures, investments, or funding commitments; guarantees including an acceptance, endorsement, or letter of credit issued for the benefit of an affiliate during normal periods, as opposed to during a crisis; and payment services, treasury operations, collateral management, information technology (IT), human resources (HR), or other operational functions. This overview is an essential part of the recovery plan.

2. *Triggers.* As defined above, a trigger is a quantitative or qualitative indicator of the risk or existence of severe stress that should always be escalated to management or the board of directors, as appropriate, for purposes of initiating a response. In order to identify triggers that appropriately reflect the particular vulnerabilities of each covered bank, the bank should begin by designing severe stress scenarios that would threaten the covered bank's critical operations or cause it to fail if one or more recovery options were not implemented in a timely manner. Because a recovery plan should demonstrate the ability of the covered bank to restore its financial and operational strength and viability, these scenarios should range from those that cause significant financial and operational hardship to those that bring the covered bank close to default, but not into resolution.<sup>12</sup>

The covered bank should consider a range of bank-specific and market-wide stress scenarios, individually and in the aggregate, that are immediate and prolonged. The stress scenarios should be designed to result in capital shortfalls, liquidity pressures, or other significant financial losses. Examples of

<sup>11</sup> We are using the terms "interconnections" and "interdependencies" in a manner consistent with FDIC and Board resolution plan regulations. See *supra* note 7.

<sup>12</sup> Separate from these Guidelines, covered banks are required to conduct supervisory stress tests. While the scenarios used to conduct those tests may be appropriate for purposes of identifying triggers under these Guidelines, a covered bank should evaluate the appropriateness of those scenarios on a case-by-case basis.

bank-specific stress scenarios include fraud; portfolio shocks; a significant cyber attack<sup>13</sup> or other wide-scale operational event; accounting and tax issues; events that cause a reputational crisis that degrades customer or market confidence; and other key stresses that management identifies. Examples of market-wide stress scenarios include the disruption of domestic or global financial markets; the failure or impairment of systemically important financial industry participants, critical financial market infrastructure firms, and critical third-party relationships; significant changes in debt or equity valuations, currency rates, or interest rates; the widespread interruption of critical infrastructure that may degrade operational capability;<sup>14</sup> and general economic conditions.

As provided in the definition of “trigger,” the breach of a trigger should always be escalated to management or the board of directors, as appropriate, for its consideration of an appropriate response. The breach of any trigger should result in timely notice accompanied by sufficient information to enable management of the covered bank to take corrective action. A covered bank should select triggers that address a continuum of increasingly severe stress, ranging from those that provide a warning of the likely occurrence of severe stress to those that indicate the actual existence of severe stress. The number and nature of triggers should be appropriate for the covered bank’s business and risk profile.

The nature of the trigger informs the nature of the response. For example, in some situations, the appropriate response to the breach of a trigger may be enhanced monitoring; in other situations, the breach of a trigger should result in activating a specific recovery

option set forth in the plan or taking other corrective action. It should be noted, however, that the breach of a particular trigger does not necessarily correspond to a single recovery option; instead, more than one option may be appropriate when a particular trigger is breached.

A recovery plan should include both quantitative and qualitative triggers. Quantitative triggers include changes in covered bank-specific indicators that reflect the covered bank’s capital or liquidity position. While capital or liquidity triggers may be the most critical, a covered bank should also consider other quantitative triggers that may have an impact on its condition, such as a rating downgrade; access to credit and borrowing lines; equity ratios; profitability; asset quality; or other macroeconomic indicators. Of course, a covered bank should be prepared to act to preserve the financial and operational strength and viability of the bank if it is at risk, regardless of whether a trigger has been breached or the recovery plan includes options to specifically address the problems the bank faces.

Qualitative triggers include the unexpected departure of senior leadership; the erosion of reputation or market standing; the impact of an adverse legal ruling; and a material operational event that affects the covered bank’s ability to access critical services or to deliver products or services to its customers for a material period of time. It is important to note that the covered bank should review and update both qualitative and quantitative triggers, as necessary, to take into account changes in laws and regulations and other material events. In addition, a covered bank should consider the regulatory or legal

consequences that may be associated with the breach of a particular trigger.

3. *Options for recovery.* The recovery plan should identify a wide range of credible options that a covered bank could undertake to restore financial and operational strength and viability, thereby allowing the bank to continue to operate as a going concern and to avoid liquidation or resolution. A covered bank should be able to execute the identified options within time frames that allow those options to be effective during periods of stress. Neither the plan nor the options may assume or rely on any extraordinary government support.

A recovery plan should explain how the covered bank would carry out each option. It should include a description of the decision-making process for implementing each option, including the steps to be followed and any timing considerations. It should also identify the critical parties needed to carry out each option. Options may include the conservation or restoration of liquidity and capital; the sale, transfer, or disposal of significant assets, portfolios, or business lines; the reduction of risk profile; the restructuring of liabilities; the activation of emergency protocols; and succession planning. Options may also include organizational restructuring, including divesting legal entities in order to simplify the covered bank’s structure. The recovery plan should also identify obstacles that could impede the execution of an option and set out mitigation strategies for addressing these obstacles. The recovery plan should specifically identify recovery options that require regulatory or legal approval.

Set forth below are examples of how stress scenarios, triggers, and options relate to each other:

Example of a severe stress scenario	Possible triggers	Possible options in response to triggers
<p><i>Idiosyncratic stress:</i> Trading losses caused by a rogue trader.</p> <p><i>Systemic stress:</i> Significant decline in U.S. gross domestic product, coupled with an increase in the U.S. unemployment rate and a deterioration in U.S. residential housing market.</p>	<ul style="list-style-type: none"> <li>• Tier 1 capital falls below 6% .....</li> <li>• Liquidity falls below internal bank policy requirements.</li> <li>• Short-term credit rating falls below A–3 .....</li> <li>• Nonperforming loans rise above a specified percentage.</li> <li>• Market capitalization falls below a specific limit for a certain period of time.</li> </ul>	<ul style="list-style-type: none"> <li>• Issue new capital.</li> <li>• Sell nonstrategic assets or businesses.</li> <li>• Reduce loan originations or commitments.</li> <li>• Sell strategic assets or businesses.</li> <li>• Reduce expenses (e.g., business contractions).</li> <li>• Access the Board’s Discount Window.</li> </ul>

4. *Impact assessments.* For each recovery option, a covered bank should assess and describe how the option

would affect the covered bank. This impact assessment and description should specify the procedures the

covered bank would use to maintain the financial and operational strength and viability of its material entities, critical

<sup>13</sup> An example of a significant cyber attack includes an event that has an impact on a bank’s computer network(s) or the computer network(s) of

one of its third-party providers and that undermines the covered bank’s data or processes.

<sup>14</sup> An example of this type of interruption includes a disruption to a payment, clearing, or settlement system that affects the covered bank’s ability to access that system.

operations, and core business lines for each recovery option. This assessment should include an analysis of both its internal operations (e.g., IT systems, suppliers, HR operations) and its access to market infrastructure (e.g., clearing and settlement facilities, payment systems, additional collateral requirements). A recovery plan should also specify actions a firm can take to sell entities, assets, or business lines to restore the financial condition of the covered bank. For each recovery option, a covered bank should identify any impediments or regulatory requirements that must be addressed to execute the option, including how to overcome those impediments or satisfy those requirements. Each recovery option also should address potential consequences, including the benefits and risks of that particular option. The assessment should address the impact on the covered bank's capital, liquidity, funding and profitability; and the effect on the covered bank's material entities, critical operations, and core business lines, including reputational impact.

5. *Escalation procedures.* A recovery plan should clearly outline the process for escalating decision-making to senior management or the board of directors, as appropriate, in response to the breach of a trigger. The recovery plan should also identify the departments and persons responsible for making and executing these decisions, including the process for informing necessary stakeholders (e.g., shareholders, counsel, accountants, regulators) to effect the action. At a minimum, the escalation procedures should result in the covered bank taking action before remedial supervisory action is necessary.

6. *Management reports.* A recovery plan should require reports that provide management or the board of directors with sufficient data and information to make timely decisions regarding the appropriate actions necessary to respond to the breach of a trigger. A recovery plan should identify the types of reports that the covered bank will provide to allow management or the board to monitor progress with respect to the actions taken under the recovery plan.

7. *Communication procedures.* A recovery plan should provide that the covered bank notify the OCC of any significant breach of a trigger and any action taken or to be taken in response to such breach and should explain the process for deciding when a breach of a trigger is significant. A covered bank should work closely with the OCC when executing a recovery plan.

A recovery plan also should address when and how the covered bank will

notify persons within the organization and other external parties of its actions under the recovery plan. These elements will ensure that all stakeholders are informed in a timely manner of how the covered bank responds to a breach of a trigger. In addition, the recovery plan should specifically identify how the covered bank will obtain required regulatory or legal approvals in order to ensure that the covered bank receives such approval in a timely manner.

8. *Other information.* A recovery plan should include any other information that the OCC communicates in writing directly to the covered bank regarding the covered bank's recovery plan. A well-developed recovery plan should also consider relevant information included in other written OCC or Federal Financial Institutions Examination Council material.

C. *Relationship to other processes; coordination with other plans.* The covered bank should integrate its recovery plan into its corporate governance and risk management functions. The covered bank also should coordinate its recovery plan with its strategic; operational (including business continuity); contingency; capital (including stress testing); liquidity; and resolution planning. In many cases, these plans may be interconnected and would require the covered bank to coordinate among them. In addition, to the extent possible, a covered bank should align its recovery plan with any recovery and resolution planning efforts by the covered bank's holding company so that the plans are consistent with and do not contradict each other. We recognize that some inconsistency may be unavoidable because recovery planning and resolution planning differ in that recovery planning addresses a bank's ongoing financial and operational strength and viability while resolution planning starts from the point of non-viability.

The OCC notes that covered banks are an integral part of bank holding company recovery and resolution plans. As a result, a covered bank may be able to leverage certain elements in these other plans. For example, resolution plans typically require a bank to map its critical operations. A covered bank may find this resolution planning mapping exercise to be useful in describing its interconnections and interdependencies as set out in its recovery plan overview.

### *Section III: Management's and Board of Directors' Responsibilities*

Section III of the proposed Guidelines addresses the responsibilities of both

management and the board of directors with respect to the recovery plan.

Management of the covered bank should review the recovery plan at least annually and in response to a material event. It should revise the plan as necessary to reflect material changes in the covered bank's risk profile, complexity, size, and activities, as well as changes in external threats. During this review, management should consider the ongoing relevance and applicability of the stress scenarios and triggers and revise the recovery plan as needed. This review should evaluate the covered bank's organizational structure and its effectiveness in facilitating a recovery. The assessment should consider the legal structures, number of entities, geographical footprint, booking practices (e.g., guarantees, exposures), and servicing arrangements necessary to enable flexible operations. The board and management should provide justification for the covered bank's organizational and legal structures and outline changes that would enhance the board's and management's ability to oversee the covered bank in times of stress. A more rational legal structure can provide a clearer path to recovery and the operational flexibility to implement the recovery plan.

The board is responsible for overseeing the covered bank's recovery planning process. As part of the board's oversight of a covered bank's safe and sound operations, the board also should work closely with the bank's senior management in developing and executing the recovery plan. Accordingly, the Guidelines provide that a covered bank's board of directors, or an appropriate committee of the board, should review and approve the recovery plan at least annually and as needed to address any changes made by management.

### **Request for Comments**

The OCC requests comment on all aspects of the proposed Guidelines.

### **Regulatory Analysis**

#### **Paperwork Reduction Act**

The OCC has determined that this proposal involves collections of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The OCC may not conduct or sponsor, and an organization is not required to respond to, these information collection requirements unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The OCC is seeking a control number for this

collection from OMB and has submitted this collection to OMB.

The collections of information that are subject to the PRA in this proposal are found in 12 CFR part 30, appendix E, sections II.B., II.C., and III. Section II.B. specifies the elements of the recovery plan, including an overview of the covered bank; triggers; options for recovery; impact assessments; escalation procedures; management reports; and communication procedures. Section II.C. addresses the relationship of the plan to other covered bank processes and plans, as well as those of its bank holding company. Section III outlines management's and board of directors' responsibilities.

*Title:* OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches.

*OMB Control No.:* To be assigned by OMB.

*Frequency of Response:* On occasion.

*Affected Public:* Businesses or other for-profit organizations.

*Burden Estimates:*

*Total Number of Respondents:* 23.

*Total Burden per Respondent:* 7,543 hours.

*Total Burden for Collection:* 173,489 hours.

Comments should be submitted as provided in the **ADDRESSES** section and are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the OCC's functions; including whether the information has practical utility; (2) the accuracy of the OCC's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of IT.

### Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include commercial banks and savings institutions with assets less than or equal to \$550 million and trust companies with assets less than or equal to \$38.5 million) and publishes its

certification and a short, explanatory statement in the **Federal Register** along with its proposal.

The proposed Guidelines would have no impact on any small entities. The proposed Guidelines would apply only to insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks with \$50 billion or more in average total consolidated assets. The proposed Guidelines reserve the OCC's authority to apply them to an insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank with less than \$50 billion in average total consolidated assets if the OCC determines such entity's operations are highly complex or otherwise present a heightened risk. We do not expect any small entities will be determined to have highly complex operations or present heightened risk by the OCC. Therefore, the OCC certifies that the proposed Guidelines would not, if issued, have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), requires the OCC to prepare a budgetary impact statement before promulgating a rule that 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 that this proposal will not result in expenditures by State, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

### List of Subjects in 12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Safety and soundness, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p–1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

■ 2. Add Appendix E to part 30 to read as follows:

### Appendix E to Part 30—OCC Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches

#### Table of Contents

I. Introduction	
A. Scope	
B. Reservation of Authority	
C. Preservation of Existing Authority	
D. Definitions	
II. Recovery Plan	
A. Recovery Plan	
B. Elements of Recovery Plan	
1. Overview of Covered Bank	
2. Triggers	
3. Options for Recovery	
4. Impact Assessments	
5. Escalation Procedures	
6. Management Reports	
7. Communication Procedures	
8. Other Information	
C. Relationship to Other Processes; Coordination With Other Plans	
III. Management's and Board of Directors' Responsibilities	
A. Management	
B. Board of Directors	

#### I. Introduction

A. *Scope.* This appendix applies to a covered bank, as defined in paragraph I.D.3.

B. *Reservation of authority.*

1. The OCC reserves the authority: a. To apply this appendix, in whole or in part, to a bank that has average total consolidated assets of less than \$50 billion, if the OCC determines such bank is highly complex or otherwise presents a heightened risk that warrants the application of this appendix; or b. To determine that compliance with this appendix should not be required for a covered bank. The OCC will generally make the determination under this paragraph I.B.1.b. if a covered bank's operations are no longer highly complex or no longer present a heightened risk.

2. In determining whether a covered bank is highly complex or presents a heightened risk, the OCC will consider the bank's risk profile, size, activities, and complexity, including the complexity of its organizational and legal entity structure. Before exercising the authority reserved by this paragraph I.B, the OCC will apply notice and response procedures in the same manner and to the same extent as the notice and response procedures in 12 CFR 3.404.

C. *Preservation of existing authority.*

Neither section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1) nor this appendix in any way limits the authority of the OCC to

address unsafe or unsound practices or conditions or other violations of law. The OCC may take action under section 39 and this appendix independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

#### D. Definitions.

1. *Average total consolidated assets* means the average total consolidated assets of the bank or the covered bank, as reported on the bank's or covered bank's Call Reports for the four most recent consecutive quarters.

2. *Bank* means any insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank.

3. *Covered bank* means any bank—

(a) With average total consolidated assets equal to or greater than \$50 billion; or

(b) With average total consolidated assets less than \$50 billion, if the OCC determines that such bank is highly complex or otherwise presents a heightened risk as to warrant the application of this appendix pursuant to paragraph I.B.1.a.

4. *Recovery* means timely and appropriate action that a covered bank takes to remain a going concern when it is experiencing or is likely to experience considerable financial or operational distress. A covered bank in recovery has not yet deteriorated to the point where liquidation or resolution is imminent.

5. *Recovery plan* means a plan that identifies triggers and options for responding to a wide range of severe internal and external stress scenarios and to restore a covered bank that is in recovery to financial and operational strength and viability in a timely manner. The options should maintain the confidence of market participants, and neither the plan nor the options may assume or rely on any extraordinary government support.

6. *Trigger* means a quantitative or qualitative indicator of the risk or existence of severe stress that should always be escalated to management or the board of directors, as appropriate, for purposes of initiating a response. The breach of any trigger should result in timely notice accompanied by sufficient information to enable management of the covered bank to take corrective action.

## II. Recovery Plan

A. *Recovery plan.* Each covered bank should develop and maintain a recovery plan that is appropriate for its individual risk profile, size, activities, and complexity, including the complexity of its organizational and legal entity structure.

B. *Elements of recovery plan.* A recovery plan under paragraph II.A. should include the following elements:

1. *Overview of covered bank.* A recovery plan should describe the covered bank's overall organizational and legal structure, including its material entities, critical operations, core business lines, and core management informational systems. The plan should describe interconnections and interdependencies (i) across business lines within the covered bank, (ii) with affiliates in a bank holding company structure, (iii) between a covered bank and its foreign subsidiaries, and (iv) with critical third parties.

2. *Triggers.* A recovery plan should identify triggers that appropriately reflect the covered bank's particular vulnerabilities.

3. *Options for recovery.* A recovery plan should identify a wide range of credible options that a covered bank could undertake to restore financial and operational strength and viability, thereby allowing the bank to continue to operate as a going concern and to avoid liquidation or resolution. A recovery plan should explain how the covered bank would carry out each option and describe the timing required for carrying out each option. The recovery plan should specifically identify the recovery options that require regulatory or legal approval.

4. *Impact assessments.* For each recovery option, a covered bank should assess and describe how the option would affect the covered bank. This impact assessment and description should specify the procedures the covered bank would use to maintain the financial and operational strength and viability of its material entities, critical operations, and core business lines for each recovery option. For each option, the recovery plan should address the following:

a. The effect on the covered bank's capital, liquidity, funding and profitability;

b. The effect on the covered bank's material entities, critical operations and core business lines, including reputational impact; and

c. Any legal or market impediment or regulatory requirement that must be addressed or satisfied in order to implement the option.

5. *Escalation procedures.* A recovery plan should clearly outline the process for escalating decision-making to senior management or the board of directors, as appropriate, in response to the breach of a trigger. The recovery plan should also identify the departments and persons

responsible for making and executing these decisions.

6. *Management reports.* A recovery plan should require reports that provide management or the board of directors with sufficient data and information to make timely decisions regarding the appropriate actions necessary to respond to the breach of a trigger.

7. *Communication procedures.* A recovery plan should provide that the covered bank notify the OCC of any significant breach of a trigger and any action taken or to be taken in response to such breach and should explain the process for deciding when a breach of a trigger is significant. A recovery plan also should address when and how the covered bank will notify persons within the organization and other external parties of its action under the recovery plan. The recovery plan should specifically identify how the covered bank will obtain required regulatory or legal approvals.

8. *Other information.* A recovery plan should include any other information that the OCC communicates in writing directly to the covered bank regarding the covered bank's recovery plan.

C. *Relationship to other processes; coordination with other plans.* The covered bank should integrate its recovery plan into its risk management and corporate governance functions. The covered bank also should coordinate its recovery plan with its strategic; operational (including business continuity); contingency; capital (including stress testing); liquidity; and resolution planning. To the extent possible, the covered bank also should align its recovery plan with any recovery and resolution planning efforts by the covered bank's holding company, so that the plans are consistent with and do not contradict each other.

## III. Management's and Board of Directors' Responsibilities

The recovery plan should address the following management and board responsibilities:

A. *Management.* Management should review the recovery plan at least annually and in response to a material event. It should revise the plan as necessary to reflect material changes in the covered bank's risk profile, complexity, size, and activities, as well as changes in external threats. This review should evaluate the organizational structure and its effectiveness in facilitating a recovery.

B. *Board of directors.* The board is responsible for overseeing the covered bank's recovery planning process. The board of directors or an appropriate

committee of the board of directors of a covered bank should review and approve the recovery plan at least annually and as needed to address any changes made by management.

Dated: December 10, 2015.

**Thomas J. Curry,**

*Comptroller of the Currency.*

[FR Doc. 2015-31658 Filed 12-16-15; 8:45 am]

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## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 955

### FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Parts 1201 and 1268

### RIN 2590-AA69

### Acquired Member Assets

**AGENCY:** Federal Housing Finance Board; Federal Housing Finance Agency.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is proposing amendments to the existing Acquired Member Assets (AMA) regulation, which applies to the Federal Home Loan Banks (Banks). In particular, FHFA proposes to remove from the regulation requirements based on ratings issued by a Nationally Recognized Statistical Ratings Organization (NRSRO), as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Additionally, FHFA proposes to transfer the AMA regulation from the former Federal Housing Finance Board (Finance Board) regulations to FHFA's regulations. FHFA also proposes to reorganize the current regulation and to modify and clarify a number of provisions in the regulation.

**DATES:** FHFA must receive written comments on or before April 15, 2016.

**ADDRESSES:** You may submit your comments, identified by Regulatory Information Number (RIN) 2590-AA69, by any of the following methods:

- *Agency Web site:* [www.fhfa.gov/open-for-comment-or-input](http://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](mailto:RegComments@fhfa.gov) to ensure timely receipt by the agency. Please

include Comments/RIN 2590-AA69 in the subject line of the message.

- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA69, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 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-AA69, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Christina Muradian, Principal Financial Analyst, [Christina.Muradian@fhfa.gov](mailto:Christina.Muradian@fhfa.gov), 202-649-3323, Division of Bank Regulation; or Thomas E. Joseph, Associate General Counsel, [Thomas.Joseph@fhfa.gov](mailto:Thomas.Joseph@fhfa.gov), 202-649-3076 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is 800-877-8339.

### SUPPLEMENTARY INFORMATION:

#### I. Comments

FHFA invites comments on all aspects of the proposed regulation. After considering all comments, FHFA will develop a final regulation. FHFA will post without change copies of all comments received on the FHFA Web site at <http://www.fhfa.gov>, and will include any personal information you provide, such as your name, address, email address, and telephone number. FHFA will make copies of all comments timely received available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20219. To make an appointment to inspect comments, please call the Office of General Counsel at 202-649-3804.

#### II. Background

##### A. Creation of the Federal Housing Finance Agency

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA)<sup>1</sup> created FHFA as a new independent agency of the federal government. HERA transferred to FHFA

the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises), and of the Finance Board over the Banks and the Bank System's Office of Finance. Under the legislation, the Enterprises, the Banks, and the Office of Finance continue to operate under regulations promulgated by OFHEO and the Finance Board until such regulations are superseded by regulations issued by FHFA.<sup>2</sup>

##### B. Dodd-Frank Act Provisions

Section 939A of the Dodd-Frank Act requires federal agencies to: (i) Review regulations that require the use of an assessment of the creditworthiness of a security or money market instrument; and (ii) to the extent those regulations contain any references to, or requirements regarding credit ratings, remove such references or requirements.<sup>3</sup> In place of such credit-rating based requirements, the Dodd-Frank Act instructs agencies to substitute appropriate standards for determining creditworthiness. The new law further provides that, to the extent feasible, an agency should adopt a uniform standard of creditworthiness for use in its regulations, taking into account the entities regulated by it and the purposes for which such regulated entities would rely on the creditworthiness standard.

On November 8, 2013, FHFA promulgated a final rule removing references to credit ratings in certain regulations governing the Banks; this rule became effective on May 7, 2014.<sup>4</sup> That rulemaking removed references to credit ratings in FHFA regulations related to Bank investments, standby letters of credit, and liabilities.<sup>5</sup> When those rule amendments were proposed, FHFA stated that it would undertake separate rulemakings to remove NRSRO references and requirements contained in the Banks' capital regulations and in the regulations governing the Banks' AMA programs.<sup>6</sup> In this rulemaking, FHFA is proposing to remove the references to NRSRO credit ratings in

<sup>2</sup> See 12 U.S.C. 4511, note.

<sup>3</sup> See 15 U.S.C. 78o-7 note.

<sup>4</sup> See Final Rule, Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks, 78 FR 67004 (Nov. 8, 2013).

<sup>5</sup> See 12 CFR parts 1267, 1269, and 1270.

<sup>6</sup> See Proposed Rule, Removal of References to Credit Ratings in Certain Regulations Governing the Federal Home Loan Banks, 78 FR 30784, 30786 (May 23, 2013).

<sup>1</sup> Public Law 110-289, 122 Stat. 2654



the current AMA regulation. FHFA will separately address removal of credit ratings from the capital regulation in a future rulemaking.

### C. The Bank System

The eleven Banks are wholesale financial institutions organized under the Federal Home Loan Bank Act (Bank Act).<sup>7</sup> The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank.<sup>8</sup> Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential credit through its member institutions.<sup>9</sup> Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock.<sup>10</sup> As government-sponsored enterprises, federal law grants the Banks certain privileges. In light of those privileges, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity that are narrower than those available to most other entities. The Banks pass along a portion of their funding advantage to their members and housing associates—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members. Among those financial services are the Banks' AMA programs, under which the Banks provide financing for members' housing activities by purchasing mortgage loans that meet the requirements of the AMA regulation.

### D. Acquired Member Assets

On July 17, 2000, the Finance Board adopted a final AMA regulation, which remains in effect.<sup>11</sup> Neither the Finance Board nor FHFA has amended the regulation since its adoption. The current rule authorizes the Banks to acquire certain loans (principally conforming residential mortgage loans) from their members and housing associates as a means of advancing their

housing finance mission, and prescribes the parameters within which the Banks may do so. In adopting the rule, the Finance Board noted that AMA was functionally equivalent to the business of making advances. It allowed members and housing associates to use eligible assets to access liquidity for further mission-related lending, while the member or housing associate maintained its exposure to all or a material portion of the credit risk associated with the AMA loans sold to a Bank.<sup>12</sup> The members or housing associates of a Bank, or members or housing associates of another Bank (pursuant to an arrangement between the Bank acquiring the AMA and the Bank in which the participating financial institution is a member), that are authorized to sell mortgage loans to the Bank through its AMA program generally are referred to as participating financial institutions.

The core of the current AMA rule, which remains unchanged in the proposed rule, establishes a three-part test for a loan to qualify as AMA. First, the asset requirement establishes that assets must be conforming whole mortgage loans, certain interests in such loans, whole loans secured by manufactured housing, certain state or federal housing finance agency (HFA) bonds, and certain other assets enumerated in the rule. Second, assets must meet a member-nexus requirement whereby a Bank must acquire the AMA assets from a participating financial institution or another Bank. In either case, the assets acquired by a Bank must be originated or held for a valid business purpose by a participating financial institution (or an affiliate thereof). Finally, to meet the credit risk-sharing requirement, a Bank must structure its AMA products such that a substantial portion of the associated credit risk is borne by a participating financial institution. Specifically, participating financial institutions must provide sufficient credit enhancement on the assets sold so that the AMA purchased by a Bank is equivalent to an asset rated at least investment grade by an NRSRO or such higher rating as required by the Bank.

Banks currently offer two AMA programs—Mortgage Partnership Finance (MPF) and Mortgage Purchase Program (MPP). FHFA has authorized other mortgage products outside of the AMA rule that are not subject to the requirements of the rule. These products, as structured by the Bank, generally are conduit programs that allow eligible members to access the

secondary mortgage markets but do not result in a Bank holding the mortgages on its balance sheet. Non-AMA products currently offered by some Banks are MPF Xtra and MPF Direct.

## III. The Proposed Rule

### A. Highlights of the Proposed Rule

The proposed rule would re-organize current 12 CFR part 955 and re-adopt it as part 1268 of FHFA's regulations. More significantly, as required by the Dodd-Frank Act, it would remove and replace references to, or requirements based on, ratings issued by an NRSRO. It would provide Banks greater flexibility in choosing the models they can use to estimate the credit enhancement required for AMA loans. Additionally, the proposed rule would add a provision allowing a Bank to authorize the transfer of mortgage servicing rights to any institution, including a non-member of the Bank System. The proposal would remove provisions allowing the use of private supplemental mortgage insurance (SMI) in the required member credit enhancement structure. Finally, the proposal would delete some obsolete provisions from the current rule, and clarify certain other provisions.

### B. Proposed Changes

As already noted, Section 939A of the Dodd-Frank Act requires federal agencies to review regulations that require an NRSRO assessment of the creditworthiness of a security or money market instrument, or that includes any references to or requirements related to credit ratings issued by NRSROs. The Dodd-Frank Act further requires the removal of such references or requirements. The AMA rule currently establishes a number of requirements based on NRSRO ratings, which the proposed rule would remove or amend consistent with the Dodd-Frank Act mandate. In addition to the proposed changes related to credit ratings, FHFA is proposing other changes that would re-organize, modify, and clarify certain provisions of the current regulation.

#### 1. Definitions Section Proposed § 1268.1

In the definitions section (current § 955.1 and proposed § 1268.1), FHFA proposes to modify the definition of "expected losses" to remove a reference to NRSROs. As discussed more fully below, FHFA would also make other changes to the definition of "expected losses" to account for the fact that a Bank would have more modeling options under the proposed rule for calculating the required credit enhancement. Also, as discussed more

<sup>7</sup> See 12 U.S.C. 1423, 1432(a).

<sup>8</sup> See 12 U.S.C. 1426(a)(4), 1430(a), 1430b.

<sup>9</sup> See 12 U.S.C. 1427.

<sup>10</sup> See 12 U.S.C. 1424; 12 CFR part 1263.

<sup>11</sup> See Final Rule, Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investment and Advances, 65 FR 43969 (July 17, 2000) (*hereinafter* "Final AMA Rule").

<sup>12</sup> *Id.* at 43974.

fully below, FHFA would add to the rule a definition for “investment quality” to implement changes needed to remove references in the current rule to specific NRSRO credit ratings.

FHFA proposes to add to new § 1268.1 definitions for the terms “AMA product,” “AMA program,” “participating financial institution,” and “pool.” FHFA intends for these newly defined terms to help simplify and clarify other provisions in the rule and avoid use of repetitive, descriptive language in those provisions. It also proposes to amend slightly the definition of “AMA” in § 1201.1 to mean “assets acquired in accordance with, and satisfying the applicable requirements of, part 1268 of this chapter [XII], or any successor thereto.”

## 2. Authorization for Acquired Member Assets Section Proposed § 1268.2

FHFA is proposing to amend the language in the current authorization provision (current 12 CFR 955.2) and to reorganize it into separate sections as proposed §§ 1268.2 through 1268.5.

Under the proposed rule, § 1268.2 generally would authorize a Bank to invest in AMA subject to the requirements of parts 1268 and 1272 of FHFA’s regulations. FHFA is also proposing to include in this new authorization section a “grandfather” provision that would allow a Bank to continue to hold any AMA loans that the Finance Board or FHFA previously authorized for purchase, even if the loan would not meet the requirements of the proposed rule. This proposed provision, set forth at § 1268.2(b), would cover loans that were authorized for purchase by rule, order, or other agency action such as waiver of particular requirements so a Bank to purchase the loan.<sup>13</sup> It would assure that a Bank could continue to hold any legacy loans, including those that no longer meet the credit enhancement or other requirements in the proposed rule. It would replace the current provision that allows a Bank to continue to purchase and hold loans that had been authorized under the Finance Board’s and FHFA’s former Financial Management Policy even if the credit enhancement structure

<sup>13</sup> For example, on August 5, 2011, FHFA waived the ratings requirement for SMI providers in the current regulation to allow Banks to continue to buy loans that used SMI as part of the credit enhancement structure, even though no SMI provider met the ratings requirement. This grandfather provision would allow the Banks that bought loans pursuant to that waiver to continue to hold those loans even if FHFA changes the credit enhancement provision to no longer allow SMI, as it proposed to do in this rulemaking.

did not meet the current AMA rule.<sup>14</sup> While the proposed grandfather provision would not authorize continued purchase of AMA that do not comply with the proposed rule, FHFA believes that all currently active AMA products would meet the requirements in proposed part 1268.

FHFA proposes to move the loan type, member nexus, and credit enhancement requirements found in current 12 CFR 955.2 to §§ 1268.3, 1268.4, and 1268.5. As discussed below, FHFA is also proposing to make other changes to these provisions.

## 3. Asset Requirement Section Proposed § 1268.3

### a. Renaming Section

FHFA is proposing to rename this section from the current “loan type requirement” to “asset requirement” because not all of the interests this section authorizes for purchase are technically loans. Specifically, HFA bonds and certificates representing interests in whole loans, which the current rule authorizes, are better classified as securities.

### b. Asset Types

Current 12 CFR 955.2(a) sets forth the types of assets that are permissible as AMA. Proposed § 1268.3(a)(1) and (2) are substantively unchanged from the existing rule and set forth the asset types that are eligible for purchase as AMA. The proposed rule, as does the current regulation, allows the acquisition of whole loans that are eligible to secure advances to members under FHFA’s advances regulation (part 1266). These assets include: (1) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; (2) mortgages or other loans, regardless of delinquency status, to the extent that the mortgage or loan is insured or guaranteed by the United States or any agency thereof, or otherwise is backed by the full faith and credit of the United States, and such insurance, guarantee, or other backing is for the direct benefit of the holder of the mortgage or loan; (3) other real estate-related collateral provided that such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, can be liquidated in due course, and that the Bank can perfect a security interest in such collateral; and (4) when acquired

<sup>14</sup> FHFA terminated the Financial Management Policy on June 20, 2012, when its revised investment rule (12 CFR part 1267) took effect. See Final Rule: Federal Home Loan Bank Investments, 76 FR 29147, 29151 (May 20, 2011).

from community financial institution (CFI) members or their affiliates, small business loans, small farm loans, small agri-business loans, or community development loans, in each case fully secured by collateral other than real estate, or securities representing a whole interest in such secured loans, provided that such collateral has a readily ascertainable value, can be reliably discounted to account for liquidation and other risks, and can be liquidated in due course.

### c. Restrictions on Certain Loans

FHFA is proposing to adopt as § 1268.3(a)(1) the current regulation provision that excludes from AMA those single-family mortgages where the loan amount exceeds the conforming loan limits established pursuant to 12 U.S.C. 1717(b)(2). This limit is consistent with the limits imposed on the Enterprises. As noted when the Finance Board first adopted the AMA rule, it intended this provision to prohibit purchase of jumbo loans and to create a level playing field with the Enterprises concerning the types of loans that a Bank can purchase.<sup>15</sup>

As a point of clarification, FHFA confirms that under the amended rule, loans on properties located in designated “high-cost areas,” where the conforming loan limit is adjusted in accordance with the criteria established in 12 U.S.C. 1717(b)(2), would remain eligible for purchase as AMA as long as the loan value is within the adjusted conforming loan limit. The criteria in 12 U.S.C. 1717(b)(2), as currently enacted, allows that the conforming loan limits:

may be increased by not to exceed 50 percent with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased, with respect to properties of a particular size located in any area for which 115 percent of the median house price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such limitation for such size residence or the amount that is equal to 115 percent of the median house price in such area for such size residence.

FHFA specifically requests comments as to any issues regarding a Bank’s purchase of loans as AMA in designated high-cost areas as well as any issues related to whether the rule should continue to limit AMA loans to those that meet the conforming loan limits more generally.

FHFA is proposing to add language to § 1268.3(a)(3) and (b) to restrict a Bank from purchasing as AMA any home mortgage loans made to any directors,

<sup>15</sup> See Final AMA Rule, 65 FR at 43974.

officers, employees, attorneys, or agents of a Bank or of the selling institution unless the board of directors of the Bank has specifically approved such purchase by resolution.<sup>16</sup> This restriction is statutory with regard to home mortgages used as collateral for advances.<sup>17</sup> The proposed change would extend the restriction to AMA purchases. Loans made to such persons pose the same or greater risk when purchased by a Bank as when taken as collateral for advances. The restriction would be implemented by citing to 12 CFR 1266.7(f) of the FHFA regulations, which is the provision that implements the statutory restriction with regard to advances.<sup>18</sup> FHFA does not propose to apply the restriction to HFA bonds, given that FHFA does not apply the restriction to securities allowed as collateral for advances under part 1266 of this chapter.

#### d. Manufactured Housing Loans

The current AMA regulation allows the purchase of manufactured housing loans regardless of whether such housing constitutes real property under state law, and FHFA is not proposing changes to this provision (proposed as § 1268.3(b)). FHFA recognizes that the Enterprises also may purchase manufactured housing loans that are chattel loans under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act. In addition, under its advances regulation, FHFA considers chattel loans on manufactured housing to be residential housing finance assets for purposes of the long-term advances proxy test, and allows Banks to extend long-term advances to members for the purchase or funding of such loans.<sup>19</sup>

Other FHFA regulations, however, treat chattel loans on manufactured housing differently from loans on real property. For example, in 2010, FHFA adopted a change to the definition of “mortgage” as used in the Enterprise housing goals regulations with the result that purchases of chattel loans on manufactured housing would not qualify for credit under the housing goals.<sup>20</sup> FHFA adopted the same

definition of “mortgage” in the Bank housing goals regulations so chattel loans on manufactured housing also do not qualify for credit under Bank housing goals.<sup>21</sup> In its proposed Enterprise duty to serve regulations, FHFA similarly proposed that it would consider only manufactured housing loans titled as real property toward the Enterprises’ duty to serve underserved markets.<sup>22</sup>

FHFA is also concerned that chattel loans display a higher level of default risk, and present greater credit and operational risks, than other mortgage loans authorized for purchase under the AMA regulation. Given these concerns and the differences in how some current FHFA regulations treat chattel loans, FHFA specifically requests comment as to whether it should continue to authorize the purchase of manufactured housing loans as AMA if relevant state law considers the loans as chattel loans.

#### e. Certificates Representing Interests in Whole Loans

Proposed § 1268.3(d) is a new provision. It would bring into the rule text the authority for Banks to acquire as AMA certain certificates representing interests in whole loans. When the Finance Board adopted the current AMA rule, it noted, in response to comments, that the rule allowed the Banks to buy structured products as AMA, provided the products met certain identified conditions. The proposed language would adopt in the rule text the conditions that were set forth in this discussion. Currently, this authority is set forth in a discussion in the **SUPPLEMENTARY INFORMATION** of the **Federal Register** release adopting the current regulation.<sup>23</sup> The Finance Board approved one AMA product under this authority (in December 2002), which is now inactive. By moving the preamble language to the rule text, FHFA would clarify that such programs are possible under the amended regulation and bring all relevant authority into the rule text. FHFA continues to believe that under the circumstances in proposed § 1268.3(d), the use of a third party to securitize the whole loans would merely represent a vehicle to invest in certain types of AMA under more favorable terms and should, therefore, be permitted under the rule. However, if

housing goals rule. See 12 CFR 1282.1 (definition of “mortgage”).

<sup>21</sup> See Final Rule: Federal Home Loan Bank Housing Goals, 75 FR 81096, 81100 (Dec. 27, 2010).

<sup>22</sup> See Proposed Rule: Enterprise Duty to Serve Underserved Markets, 75 FR 32099, 32101–105 (June 7, 2010). FHFA has not yet adopted this proposed rule as a final rule.

<sup>23</sup> Final AMA Rule, 65 FR at 43974, 43977.

the certificates have been created as a security initially available to investors generally, they will not be considered to qualify as AMA under § 1268.3(d).<sup>24</sup>

#### 4. Member or Housing Associate Nexus Requirement Section Proposed § 1268.4

FHFA is proposing to reorganize as § 1268.4(a) and (b) the member nexus requirements currently found at 12 CFR 955.2(b). The proposed rule would continue to impose the requirement that for a loan to be eligible for purchase as AMA, the participating financial institution would have either to originate or issue the assets or have held them for a valid business purpose. The “valid business purpose requirement” in the current regulation accounts for the fact that a member may acquire loans from a non-member during the normal course of business and then sell those loans to the Bank. It excludes any loans that merely pass from a non-member through a member to a Bank, with the intent of extending the benefits of membership to the non-member.<sup>25</sup>

The reference in the proposed rule to assets issued “through, or on behalf of the participating financial institution” also carries over from the current regulation. As under the current regulation, the provision would allow HFA bonds issued by an underwriter for the participating financial institution to qualify as AMA.<sup>26</sup>

Proposed § 1268.4(b) would adopt without substantive change current special requirements in 12 CFR 955.2(b)(2)(ii) that apply when a Bank purchases HFA bonds as AMA from a housing associate of another Bank. Under this provision, a Bank may acquire initial-offering taxable HFA bonds from out-of-district associates, provided the Bank in whose district the HFA is located (local Bank) has a right of first refusal to purchase, or negotiate the terms of, a particular bond issue. If the local Bank refuses, or does not respond within three days, the HFA may then offer the bonds to an out-of-district Bank. The Finance Board adopted this approach to preserve the integrity of the Bank Districts, while at the same time preventing any one Bank from denying an HFA in its District from financing that another Bank is willing to provide.<sup>27</sup>

<sup>24</sup> *Id.*

<sup>25</sup> See Proposed Rule: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances, 65 FR 25676, 25681 (May 3, 2000) (*hereinafter* 2000 Proposed AMA Rule).

<sup>26</sup> *Id.*

<sup>27</sup> See Final AMA Rule, 65 FR at 43975.

<sup>16</sup> This restriction would also apply with regard to an interest in whole loans under proposed § 1263.3(d), given that such interest must be in loans that otherwise meet the requirements of proposed § 1263.3(a) or (b) for the interest to qualify as AMA.

<sup>17</sup> 12 U.S.C. 1430(b).

<sup>18</sup> 12 CFR 1266.7(f).

<sup>19</sup> See 12 CFR 1266.1 and 1266.3.

<sup>20</sup> See Final Rule: Enterprise Housing Goals; Enterprise Book-entry Procedures, 75 FR 55892, 55896–895 (Sept. 14, 2010). FHFA continued this exclusion in its most recently adopted Enterprise

## 5. Credit Risk-Sharing Requirement Section Proposed § 1268.5

### a. General Requirement

FHFA is proposing to reorganize as § 1268.5 the credit risk-sharing requirements currently found at 12 CFR 955.2(c) and 955.3. FHFA proposes to re-adopt several of the credit risk-sharing provisions without substantive changes, including the requirement that all AMA loans carry a credit enhancement. Proposed § 1268.5(c) also generally would maintain the design requirement for the credit enhancement structure that helps ensure that the participating financial institution retains an economic incentive to reduce actual losses that is both material in amount and early enough in the structure to be meaningful.<sup>28</sup> Thus, the proposed rule would continue to prohibit any AMA product that removes the participating financial institution's incentive to reduce actual credit losses.

As discussed below, the proposed rule also would change some of the credit risk-sharing provisions to remove references to NRSRO ratings, as required by the Dodd-Frank Act. Proposed § 1268.5(e) would set forth the requirements for the Bank's use of a methodology and model for calculating the credit enhancement obligation that is not necessarily tied to one used by an NRSRO. Additionally, FHFA is not proposing to re-adopt current provisions that allow the use of private SMI or pool insurance as part of the credit enhancement structure. Consequently, FHFA is proposing to remove provisions from the current regulation requiring eligible SMI providers to maintain specific NRSRO ratings.

### b. Determining Credit Enhancements on AMA Pools

The proposed rule would modify 12 CFR 955.3(a) of the current regulation, and re-adopt it as proposed § 1268.5(b)(1). FHFA's proposed modification to this provision would remove current requirements based on NRSRO ratings and methodologies in accordance with the Dodd-Frank Act. Otherwise, FHFA continues to believe the credit risk-sharing approach in the current regulation is valid. The principles underlying the AMA regulation establish that risks are borne by those entities best suited to manage them. Therefore, the credit risk-sharing requirements provide that participating financial institutions selling mortgages must retain a substantial portion of the credit risk, given their expertise in underwriting mortgages. In requiring the

participating financial institution to have "skin in the game," the rule provides them an incentive to sell high-quality loans to the Banks and the opportunity to benefit financially from good underwriting practices.

To ensure that participating financial institutions bear a material portion of the credit risk, existing § 955.3(a) currently requires a participating financial institution that sells AMA loans to a Bank to enhance the pool to be equivalent to an asset rated at least the fourth highest credit grade rating from an NRSRO (*i.e.*, to be at least investment grade) or to a higher rating required by the Bank. The provision also requires the Bank to make a determination of the amount of the required credit enhancement using a methodology that is confirmed in writing by an NRSRO to be equivalent to one used by the NRSRO in rating a comparable pool of assets.

Proposed § 1268.5(a)(1) would amend the current provision to remove the requirement that AMA loans be enhanced to a specific rating that is equivalent to one issued by an NRSRO. Under the proposed amendment, a participating financial institution must credit enhance AMA loans to at least "investment quality."

FHFA proposes to define the term "investment quality" in the AMA regulation by reference to the definition of that term adopted by FHFA in the Bank investment regulation (12 CFR part 1267). That definition reads:

Investment quality means a determination made by the Bank with respect to a security or obligation that, based on documented analysis, including consideration of the sources for repayment on the security or obligation: (1) There is adequate financial backing so that full and timely payment of principal and interest on such security or obligation is expected; and (2) There is minimal risk that the timely payment of principal or interest would not occur because of adverse changes in economic and financial conditions during the projected life of the security or obligation.<sup>29</sup>

Under proposed § 1268.5(b)(1), the Bank could specify as part of the terms and conditions for a particular AMA product that a participating financial institution provide a credit enhancement greater than that needed to enhance the loan or pool to investment quality. The enhancement would need to be defined in relation to a model and methodology of the Bank's choosing, subject to conditions established in § 1268.5(e) of the proposed rule. If a Bank chooses to continue to use the same NRSRO model

it currently uses, it would not necessarily need to alter the credit enhancement levels it currently requires, unless FHFA directs it to do so or its estimated enhancement levels otherwise would not comply with the rule. For example, a Bank would need to increase credit enhancement levels if it determined that the credit enhancement currently estimated by its NRSRO model was not sufficient for an asset or pool of assets to be "investment quality" under the proposed definition of that term.

In addition, the proposed rule carries over requirements in the current regulation that a Bank's authority to hold AMA assets is specifically contingent on the Bank complying with FHFA's New business activity (NBA) regulation (12 CFR part 1272).<sup>30</sup> If the terms and conditions for a Bank's new AMA product or a modification to an existing AMA product triggered the requirements of the NBA rule, the Bank would need to file an NBA notice. FHFA would expect the Bank to provide a clear explanation in the notice of how the new or modified product's credit risk-sharing structure meets the AMA credit enhancement requirements, and how the Bank would calculate that obligation.

As now is the case under the current regulation, proposed § 1268.5(c), at least with respect to loans that would not be insured or guaranteed by the U.S. government, would continue to require the participating financial institution providing the credit enhancement to bear the direct economic consequences of actual credit losses on the assets from the first dollar of loss up to expected losses or immediately following expected losses but in an amount equal to or exceeding expected losses.<sup>31</sup> Consistent with previous Finance Board statements, the participating financial institution itself would be required to bear the economic responsibility of the expected credit losses, as required by proposed § 1268.5(c), to ensure participating financial institution involvement and to ensure that the participating financial institution bears the consequences of the credit quality of the asset or pool. The participating financial institution could not transfer

<sup>28</sup> See Proposed § 1268.2.

<sup>31</sup> As is discussed below, FHFA is proposing to change requirements in the current regulation for government insured or guaranteed loans so that members or housing associates would no longer have to bear responsibility for unreimbursed servicing expenses up to the amount of expected losses for the loan to qualify as AMA.

<sup>28</sup> *Id.* at 43967-98.

<sup>29</sup> 12 CFR 1267.1 (defining "investment quality").

this responsibility to an affiliate or non-member entity.<sup>32</sup>

While the current regulation defines “expected losses” as the base loss scenario in the methodology of an NRSRO applicable to a particular AMA asset, the proposed definition would refer to the loss given the expected future economic and market conditions in the model or methodology used by the Bank to calculate the credit enhancement for an AMA product under proposed § 1268.5. This change accounts for the fact that the proposed rule would no longer require a Bank to use an NRSRO model and would accommodate the potential for a Bank to adopt a model that applies a methodology that differs from that used in the Banks’ current models. Otherwise, FHFA believes that this proposed change would not alter what is currently required by the AMA rule; nor is this change intended to alter how a Bank would calculate “expected losses” if it continued to use its current model. Therefore, as under the current regulation, the proposed rule would require a member to provide a credit enhancement against losses for all non-government insured or guaranteed loans at least equal to the expected losses calculated by the credit enhancement model used by the Bank whether this enhancement is positioned in the first loss position or immediately following the first loss.

The proposed rule at § 1268.5(c)(1)(ii) would also continue to require the participating financial institution to secure fully its credit enhancement obligation in parallel with the requirement for advances to members under part 1266 of this chapter. This provision addresses the concern that a Bank might be exposed to credit risk if the member were not able to comply with its contractual credit enhancement obligation.

The proposed rule would not change the requirement that a Bank determine the necessary credit enhancement on a pool at the earlier of 270 days from the date of the Bank’s acquisition of the first loan in a pool or the date at which the pool reaches \$100 million in assets. This provision continues to be relevant in that it addresses safety and soundness concerns that could arise if a Bank did not timely perform the credit enhancement determination on large pools formed over extended periods. This provision ensures the Bank uses its model early enough in the process to determine that the contracted amount of the credit enhancement is sufficient to

credit enhance the pool to the level consistent with the terms and conditions of the specific AMA product.<sup>33</sup>

The proposed rule would also continue to require that the credit enhancement must be for the life of the asset or pool. This requirement would exclude, for example, structures that would comply with the credit rating requirement in the first year, but would then scale back the amount of the member’s credit enhancement in future years so the pool is no longer credit enhanced to the level consistent with the terms and conditions of the AMA product.<sup>34</sup>

The current regulation at 12 CFR 955.3(b) and (c) set forth specific requirements for a Bank to obtain the NRSRO verifications with regard to the adequacy of the credit enhancement structure and Bank’s use of the NRSRO model for estimating the required enhancement in each AMA product. Given that under the proposed rule FHFA would no longer require a Bank to use NRSRO models, these requirements would become obsolete, and FHFA is proposing to remove them.

In their place, FHFA is proposing § 1268.5(b)(2), which would require a Bank to document the basis for its conclusion that the contractual credit enhancement required for a particular pool is sufficient to meet the required credit enhancement obligation for a particular AMA product, given the Bank’s chosen model’s relevant stress scenarios. This information will help FHFA monitor the Banks’ use of their models and the adequacy of the specific credit enhancement structures used in each AMA product.

#### c. Transfer of Credit Enhancement Obligation

The proposed rule would modify current 12 CFR 955.3(b)(1) and re-adopt it as § 1268.5(c)(2). This section would establish the acceptable forms a member may use to provide the credit enhancement for AMA loans, subject to certain limitations. The proposed rule would clarify that a participating financial institution, “with the approval of the Bank,” may choose to transfer its credit enhancement obligation to its insurance affiliate (but only where the insurance is positioned after the participating financial institution bears losses in an amount at least equal to expected losses) or to another participating financial institution. The Bank could give this permission either by establishing the required form of

credit enhancement in the terms of a particular AMA product, or by providing specific approval for the transfer. The proposed change is consistent with how the AMA regulations are currently applied, and with current Bank practice with regard to AMA product structures and permissible transfers of the credit enhancement obligations.

#### d. Credit Quality of Mortgage Insurers—Supplementary Mortgage Insurance

Current 12 CFR 955.3(b) of the AMA regulation allows a member to meet part of its credit enhancement obligation through the purchase of SMI, provided that the insurer is rated not lower than the second highest credit rating category. The proposed rule would remove the option to use SMI as part of the credit enhancement structure. While the current AMA regulation addresses use of SMI as part of the credit enhancement structure and minimum criteria for providers of such insurance, it does not address borrower-funded primary mortgage insurance (PMI) or set minimum criteria for providers of PMI. Instead, the rule allows a Bank to set the minimum criteria for PMI providers. Nothing in the proposed rule alters this approach with respect to PMI. FHFA will continue to review the Banks’ assessments of PMI providers through the annual examination process.

The main reason for proposing to remove the option to use SMI in the credit enhancement structure is the fact that during the recent financial crisis, no private insurance company maintained the second highest credit rating as required by the current AMA regulation. FHFA had to waive the rule requirement for the products that relied on SMI for existing business and required the Banks with only products that relied on SMI to develop alternate structures for new business in their programs. Given that the Banks have alternate AMA structures and products that do not rely on SMI and that private mono-line insurers could face similar problems if another financial crisis were to arise, FHFA is proposing to remove these provisions. FHFA also believes that eliminating the use of SMI from authorized credit enhancement structures remains consistent with the intent of the AMA regulation to require participating financial institutions to bear the direct economic consequences of the credit risk associated with AMA loans and not transfer such risk to third parties.

For similar reasons, FHFA also proposes to eliminate the provision in 12 CFR 955.3(b) that authorizes the use of pool level insurance as part of the

<sup>32</sup> See 2000 Proposed AMA Rule, 65 FR at 25683; see also, Final AMA Rule, 65 FR 43976.

<sup>33</sup> See Final AMA Rule, 65 FR at 43975.

<sup>34</sup> See id. at 43976.

credit enhancement structure where such insurance covers that portion of the credit enhancement obligation related to geographic concentration or pool size. As discussed in more detail below, however, the proposed rule would still allow a participating financial institution to use U.S. government insurance or guarantees to meet credit enhancement requirements.

FHFA specifically requests comments regarding the use and importance of SMI or private pool insurance as part of an allowable credit enhancement structure. In particular, FHFA solicits comments on what type of requirement could replace the specific credit rating requirement for private insurance providers if it were to retain these insurance options as part of the credit enhancement structure. Additionally, FHFA requests comments on how a Bank might evaluate the claims-paying ability of an insurer in the absence of a specific credit rating requirement. Finally, FHFA requests comment on whether, if it were to adopt in the AMA regulation specific minimum requirements for providers of SMI and pool insurance, such requirements also should apply to PMI providers.

#### e. U.S. Government Insurance or Guarantee

The proposed rule would modify current 12 CFR 955.3(b)(1)(ii)(A) and (B) with regard to the use of U.S. government insurance or guarantees as part of the credit enhancement and re-adopt the provision as § 1268.5(d). The proposed provision would clarify that a participating financial institution may provide all or a portion of the required credit enhancement by having the loan insured or guaranteed by an agency or department of the U.S. government. Unlike the current regulation, however, the new, proposed language would not require government insured or guaranteed loans to meet the specific credit enhancement structure requirements (wherein the member bears the first dollar of losses for a loan or pool up to the amount of expected losses or bears losses immediately following expected losses in an amount that equals or exceeds expected losses).<sup>35</sup>

As already noted, the purpose of the credit enhancement structure requirement was to ensure that participating financial institutions, “when responsible for such losses, [had] incentive to seek ways to achieve better than expected performance [for the loans sold as AMA].”<sup>36</sup> As the Finance

Board explained, in order for a participating financial institution to meet this structure requirement with respect to government insured or guaranteed loans, given that losses eventually would be covered by the government insurance or guarantee, the participating financial institution would have to bear the economic responsibility of all unreimbursed servicing expenses, up to the amount of expected losses.<sup>37</sup> As a result, the member’s credit enhancement obligation for AMA government loans is tied closely to its servicing obligations. This link limits a participating financial institution’s ability to transfer mortgage-servicing rights for the AMA government loans to non-participating financial institutions.

In addition, FHFA does not believe that requiring a member to retain an obligation to cover unreimbursed servicing rights for AMA government loans provides an additional incentive to improve underwriting in order to achieve better than expected loan performance. To qualify for government insurance or guarantee, members will already be underwriting loans to standards imposed by the relevant government agency or department. Further, government insurance and guarantee will usually cover any losses experienced on the loan. Therefore, this requirement does not necessarily provide additional protection to the Bank beyond that provided by the government insurance or guarantee.

Thus, FHFA is proposing in § 1268.5(d) to remove the requirement that U.S. government insured or guaranteed loans meet the specific structure requirement now set forth in proposed § 1268.5(c). Proposed § 1268.5(d) would continue to require the credit enhancement provided by government insurance or guarantee be maintained for the entire period a Bank owns the AMA government loan. The proposed rule would not necessarily require that a Bank member maintain the insurance or guarantee. Instead, the Bank would have to ensure that the participating financial institution or another entity maintains the insurance or guarantee for as long as the Bank owns the loan. For example, a Bank might require any entity that acquires the mortgage servicing rights to a loan to maintain the insurance. FHFA believes increasing the flexibility allowed in transferring mortgage-servicing rights under this proposed change would prove beneficial for many smaller or medium sized members.

These members, in particular, might wish to sell their AMA government loans into AMA government products but may lack the ability to perform the servicing obligations now required by the AMA regulation. In addition, given changes in the mortgage industry, Banks may find it increasingly difficult to find member institutions to meet the servicing obligations for AMA government loans. Banks may need the flexibility to transfer such obligations to non-member institutions in order to continue to offer the product to a wide cross section of its members. The current regulation does not allow such flexibility with respect to government insured or guaranteed loans.

#### f. Model and Methodology Validation

Proposed § 1268.5(e) would set forth the specific requirements applicable to a Bank’s use of a model and methodology for estimating the required member credit enhancements for AMA loans that a participating financial institution sells to a Bank. Specifically, it would require a Bank to: (1) Validate its model and methodology at least annually and make the results available upon request by FHFA (proposed § 1268.5(e)(1)); (2) institute and maintain a process for monitoring model performance that would include tracking, back-testing, benchmarking, and stress testing a model and its results (proposed § 1268.5(e)(2)) and be otherwise consistent with applicable FHFA model guidance; (3) inform FHFA prior to making any material changes to the model and methodology (proposed § 1268.5(e)(3)); and (4) promptly change its model and methodology as directed by FHFA (proposed § 1268.5(e)(4)).

The requirements of proposed § 1268.5(e) are generally consistent with the requirements governing the Bank’s market risk capital models (12 CFR 932.5(c)) and have been added here for safety and soundness reasons. FHFA also expects a Bank to have policies and procedures commensurate with the complexity of the model and methodology, including, but not limited to, a governance structure, oversight by its board of directors, as well as formal controls. Effective model risk management should entail a comprehensive approach in identifying risk throughout the model lifecycle and should be consistent with any applicable FHFA guidance.

As proposed, the rule would allow a Bank to institute changes in its model immediately upon notifying FHFA. FHFA, however, would review a Bank’s model and methodology for estimating credit enhancements as part of the annual examination process, as well as

<sup>35</sup> See 12 CFR 955.3(b)(1)(ii) and (b)(2).

<sup>36</sup> Final AMA Rule, 65 FR at 43977.

<sup>37</sup> *Id.* (explaining how government insured loans meet the credit enhancement requirements of the AMA rule).

through its on-going off-site monitoring program. If FHFA found that the model or the Bank's use of the model were inadequate or did not result in a credit enhancement that would reasonably protect a Bank against risk of loss as required under the proposed rule, FHFA would use authority in the proposed rule to direct the Bank to make changes to the model. FHFA could also use other authorities, such as its authority to issue cease-and-desist orders, to require the Bank to make necessary changes to its model, or AMA products, to address any violations of the regulation or unsafe or unsound practices. FHFA believes that this proposed approach would allow a Bank sufficient flexibility to make timely changes to its credit enhancement model in response to technological or market developments while still allowing FHFA adequate oversight of the Bank's use of its credit enhancement model.

While the proposed new provisions would no longer require a Bank to use an NRSRO model for estimating the required credit enhancement, nothing in the proposed rule would prohibit a Bank from continuing to use its existing NRSRO model. However, use of all models, including a currently used model, would be subject to the requirements of proposed § 1268.5(e).

#### 6. Servicing Section Proposed § 1268.6

FHFA proposes to add new § 1268.6 to address the servicing of AMA loans. This provision incorporates current FHFA positions, as set forth in a recent regulatory interpretation, on the rights of the Banks to allow for transfer of mortgage servicing rights from the participating financial institution that originally sold the AMA loans at issue.<sup>38</sup> Thus, proposed § 1268.6 would clarify that a Bank can allow for a transfer of servicing rights to any institution, including a non-Bank System member. However, any transfer of mortgage servicing rights may only occur as long as it does not result in the AMA loan failing to meet any requirements of the rule, including the credit enhancement requirement. In particular, because proposed § 1268.5(c) would require that the credit enhancement on an AMA loan not insured or guaranteed by the U.S. government continue to be held by a participating financial institution for the life of the loan, the transfer of servicing cannot result in the transfer of any portion of the credit enhancement obligation to a non-Bank System member. However, as already discussed,

changes proposed in § 1268.5(d) would, if adopted, allow the Banks to transfer servicing of government insured or guaranteed AMA loans to non-member institutions, an action that is not necessarily allowed under current regulations.

Proposed § 1268.6 also would require the approval of the Banks that have any ownership interest in the loans prior to the transfer of the servicing obligation. Finally, the proposed provision would provide that the Banks have in place policies and procedures that ensure the transfer of servicing would not negatively affect the credit enhancement on the loans in question or substantially increase the Bank's exposure to risk. FHFA would expect such policies and procedures specifically to address transfers to non-Bank System member servicers given that in the case of default on an obligation to the Bank, a Bank may enjoy more rights against a member than it would against a non-member. For example, the Bank Act provides enhanced status with regard to a Bank's lien on member assets, and the Bank's membership agreement may allow the Bank to take certain actions against a member in the case of a breach of an obligation that would not be available against a non-member.<sup>39</sup> In addition, FHFA would expect policies and procedures to include contingency plans to address a case in which a large servicer fails or is otherwise unable to continue to service a Bank's AMA portfolio.

#### 7. Risk-Based Capital Requirements

The current regulation at 12 CFR 955.6 established the risk-based capital requirements for AMA, based on NRSRO ratings. These risk-based capital requirements, however, applied only so long as a Bank had not converted to the Gramm-Leach-Bliley Act capital structure and was not yet subject to the risk-based capital requirements in 12 CFR part 932.<sup>40</sup> Given that all Banks have converted their capital structures and are now subject to the AMA credit and market risk charges established by 12 CFR part 932 of the current capital regulations, this section has no continuing applicability, and FHFA proposes to remove it.

<sup>39</sup> See, e.g., 12 U.S.C. 1430(c) and (e).

<sup>40</sup> In adopting the current AMA regulations, the Finance Board noted that the AMA capital requirements in § 955.6 were "interim risk based capital requirements" and when the Finance Board's new Gramm-Leach-Bliley Act capital requirements became effective with respect to a Bank, the Bank would need to hold capital for AMA based on those new requirements. Final AMA Rule, 65 FR at 43979 (July 17, 2000).

#### 8. Other Sections—§§ 1268.7 and 1268.8

Proposed §§ 1268.7 and 1268.8 would adopt without substantive change 12 CFR 955.4 and 955.5 of the current regulation. These provisions address, respectively, reporting requirements for AMA and administrative transactions and agreements between Banks involving AMA.

### IV. Consideration of Differences Between the Banks and the Enterprises

When promulgating regulations relating to the Banks, section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires the Director of FHFA (Director) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability.<sup>41</sup> The Director also may consider any other differences that FHFA deems appropriate. The changes proposed in this rulemaking apply only to the Banks. Many of the proposed amendments are necessary to implement requirements under the Dodd-Frank Act; a number of others are technical or conforming in nature. FHFA, in preparing this proposed rule, considered the differences between the Banks and the Enterprises as they relate to the above factors and requests comments from the public about whether these differences should result in any revisions to the proposed rule.

### V. Paperwork Reduction Act

The information collection, entitled "Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances" contained in current 12 CFR part 955 of the regulations that would be transferred to 12 CFR part 1268 by this proposed rule has been assigned control number 2590-0008 by the Office of Management and Budget (OMB). The proposed rule if adopted as a final rule would not substantively or materially modify the current, approved information collection.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's

<sup>41</sup> See 12 U.S.C. 4513.

<sup>38</sup> See Regulatory Interpretation, 2015-RI-01 (June 23, 2015).

impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act.

FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Banks, which are not small entities for purposes of the Regulatory Flexibility Act.

#### List of Subjects

##### 12 CFR Part 955

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

##### 12 CFR Part 1201

Administrative practice and procedure, Federal home loan banks, Government-sponsored enterprises, Office of Finance, Regulated entities.

##### 12 CFR Part 1268

Acquired member assets, Credit, Federal home loan bank, Housing, Nationally recognized statistical rating agency.

#### Authority and Issuance

For reasons stated in the SUPPLEMENTARY INFORMATION, and under the authority of 12 U.S.C. 1430, 1430b, 1431, 4511, 4513, 4526, FHFA proposes to amend subchapter G of chapter IX and subchapters A and D of chapter XII of title 12 of the Code of Federal Regulations as follows:

#### CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

##### Subchapter G—[Removed and Reserved]

■ 1. Subchapter G, consisting of part 955 is removed and reserved.

#### CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

##### Subchapter A—Organization and Operations

#### PART 1201—GENERAL DEFINITIONS APPLYING TO ALL FEDERAL HOUSING FINANCE AGENCY REGULATIONS

■ 2. The authority citation for part 1201 continues to read:

**Authority:** 12 U.S.C. 4511(b), 4513(a), 4513(b).

■ 3. Amend § 1201.1 by revising the definition of “Acquired member assets or AMA” to read as follows:

#### § 1201.1 Definitions.

\* \* \* \* \*

*Acquired member assets* or *AMA* means assets acquired in accordance with, and satisfying the applicable requirements of, part 1268 of this chapter, or any successor thereto.

\* \* \* \* \*

#### Subchapter D—Federal Home Loan Banks

■ 4. Part 1268 is added to subchapter D to read as follows:

#### PART 1268—ACQUIRED MEMBER ASSETS

Sec.

1268.1 Definitions.

1268.2 Authorization for acquired member assets.

1268.3 Asset requirement.

1268.4 Member or housing associate nexus requirement.

1268.5 Credit risk-sharing requirement.

1268.6 Servicing.

1268.7 Reporting requirements for acquired member assets.

1268.8 Administrative transactions and agreements between Banks.

**Authority:** 12 U.S.C. 1430, 1430b, 1431, 4511, 4513, 4526.

#### § 1268.1 Definitions.

As used in this part:

*Affiliate* means any business entity that controls, is controlled by, or is under common control with, a member.

*AMA product* means an AMA structure defined by a specific set of terms and conditions that comply with this part.

*AMA program* means a Bank-established program to buy mortgage loans that meet the requirements of this part, which may comprise multiple AMA products.

*Expected losses* means the loss given the expected future economic and market conditions in the model or methodology used by the Bank under § 1268.5 and applicable to an AMA product.

*Investment quality* has the meaning set forth in § 1267.1 of this chapter.

*Participating financial institution* means a member or housing associate of a Bank that is authorized to sell mortgage loans to its own Bank through an AMA program, or a member or housing associate of another Bank that has been authorized to sell mortgage loans to the Bank pursuant to an agreement between the Bank acquiring the AMA product and the Bank of which the selling institution is a member or housing associate.

*Pool* means a group of assets acquired under a given master commitment or similar agreement.

*Residential real property* has the meaning set forth in § 1266.1 of this chapter.

#### § 1268.2 Authorization for acquired member assets.

(a) *General.* Each Bank is authorized to invest in assets that qualify as AMA, subject to the requirements of this part and part 1272 of this chapter.

(b) *Grandfathered transactions.* Notwithstanding paragraph (a) of this section, a Bank may continue to hold as AMA assets that were previously authorized by the Federal Housing Finance Board or FHFA for purchase as AMA, provided that the assets were purchased, and continue to be held, in compliance with that authorization.

#### § 1268.3 Asset requirement.

Assets that qualify as AMA shall be limited to the following:

(a) Whole loans that are eligible to secure advances under § 1266.7(a)(1)(i), (a)(2)(ii), (a)(4), or (b)(1) of this chapter, excluding:

(1) Single-family mortgage loans where the loan amount exceeds the limits established pursuant to 12 U.S.C. 1717(b)(2);

(2) Loans made to an entity, or secured by property, not located in a state; and

(3) Loans that would not be eligible to serve as collateral for an advance under § 1266.7(f) of this chapter;

(b) Whole loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property, unless such loan would not be eligible to serve as collateral for an advance under § 1266.7(f) of this chapter;

(c) State and local housing finance agency bonds; or

(d) Certificates representing interests in whole loans if:

(1) The loans qualify as AMA under paragraphs (a) or (b) of this section and meet the nexus requirements of § 1268.4; and

(2) The certificates:

(i) Meet the credit enhancement requirements of § 1268.5;

(ii) Are issued pursuant to an agreement between the Bank and a participating financial institution to share risks consistent with the requirements of this part; and

(iii) Are acquired substantially by the initiating Bank or Banks.

#### § 1268.4 Member or housing associate nexus requirement.

(a) *General provision.* To qualify as AMA, any assets described in § 1268.3 must be acquired in a purchase or funding transaction only from:



(1) A participating financial institution, provided that the asset was:

(i) Originated or issued by, through, or on behalf of the participating financial institution, or an affiliate thereof; or

(ii) Held for a valid business purpose by the participating financial institution, or an affiliate thereof, prior to acquisition by the Bank; or

(2) Another Bank, provided that the asset was originally acquired by the selling Bank consistent with this section.

(b) *Special provision for housing finance agency bonds.* In the case of housing finance agency bonds acquired by a Bank from a housing associate located in the district of another Bank (local Bank), the arrangement required by the definition of “participating financial institution” in § 1268.1 between the acquiring Bank and the local Bank may be reached in accordance with the following process:

(1) The housing finance agency shall first offer the local Bank right of first refusal to purchase, or negotiate the terms of, its proposed bond offering;

(2) If the local Bank indicates, within a three-day period, it will negotiate in good faith to purchase the bonds, the housing finance agency may not offer to sell or negotiate the terms of a purchase with another Bank; and

(3) If the local Bank declines the offer, or has failed to respond within the three-day period, the acquiring Bank will be considered to have an arrangement with the local Bank for purposes of this section and may offer to buy or negotiate the terms of a bond sale with the housing finance agency.

#### **§ 1268.5 Credit risk-sharing requirement.**

(a) *General credit risk-sharing requirement.* For each AMA product, the Bank shall implement and have in place at all times, a credit risk-sharing structure that:

(1) Requires a participating financial institution to provide the credit enhancement necessary to enhance an eligible asset or pool to the credit quality specified by the terms and conditions of the AMA product, provided, however, that such credit enhancement results in the eligible asset or pool being at least investment quality, as defined in § 1268.1; and

(2) Meets the requirements of this section.

(b) *Determination of necessary credit enhancement.* (1) At the earlier of 270 days from the date of the Bank’s acquisition of the first loan in a pool, or the date at which the pool reaches \$100 million in assets, the Bank shall determine the total credit enhancement necessary to enhance the asset or pool

to at least investment quality and to be consistent with the terms and conditions of a specific AMA product. The enhancement shall be for the life of the asset or pool. The Bank shall make this determination for each AMA product using a model and methodology that the Bank deems appropriate, provided, however, that the Bank’s use of the model and methodology complies with to the requirements and conditions of paragraph (e) of this section.

(2) A Bank shall document its basis for concluding that the contractual credit enhancement required from each participating financial institution with regard to a particular asset or pool will equal or exceed the credit enhancement level specified in the terms and conditions of the AMA product and determined in accordance with paragraph (b)(1) of this section.

(c) *Credit risk-sharing structure.* Under any credit risk-sharing structure, the credit enhancement provided by the participating financial institution shall meet the following requirements:

(1) The participating financial institution that is providing the credit enhancement required under this this paragraph (c) shall in all cases:

(i) Bear the direct economic consequences of actual credit losses on the asset or pool:

(A) From the first dollar of loss up to the amount of expected losses; or

(B) Immediately following expected losses, but in an amount equal to or exceeding the amount of expected losses; and

(ii) Fully secure its credit enhancement obligation subject to § 1266.7 of this chapter; and

(2) The participating financial institution also may provide all or a portion of the credit enhancement, with the approval of the Bank, by:

(i) Contracting with an insurance affiliate of that participating financial institution to provide an enhancement, but only where such insurance is positioned in the credit risk-sharing structure so as to cover only losses remaining after the participating financial institution has borne losses as required under paragraph (c)(1)(i) of this section;

(ii) Contracting with another participating financial institution in the Bank’s district to provide a credit enhancement consistent with this section, in return for compensation; or

(iii) Contracting with a participating financial institution in another Bank’s district, pursuant to an arrangement between the two Banks, to provide a credit enhancement consistent with this section, in return for compensation.

(d) *U.S. government insured or guaranteed loans.* Instead of the structure set forth in paragraph (c) of this section, a participating financial institution also may provide the required credit enhancement by purchasing loan-level insurance that is issued by an agency or department of the U.S. government or is a guarantee from an agency or department of the U.S. government, provided that the government insurance or guarantee remains in place for as long as the Bank owns the loan.

(e) *Appropriate methodology for calculating credit enhancement.* A Bank shall use a model and methodology for estimating the amount of credit enhancement for a pool of AMA subject to the following requirements and conditions:

(1) The Bank shall validate its model and methodology for calculating the credit enhancement for AMA pools at least annually, or more often if necessary, and make the results of such validation available to FHFA upon request;

(2) The Bank shall institute and maintain a process to monitor the performance of its model to include tracking, back-testing, bench-marking, and stress testing the model and the results it produces, and the Bank shall make information gathered from monitoring the model available to FHFA upon request;

(3) The Bank shall inform FHFA prior to making any material changes to an approved model and methodology, providing a description of the changes that the Bank intends to make and its reasons for doing so; and

(4) The Bank promptly shall make any FHFA-directed changes to its model and methodology.

#### **§ 1268.6 Servicing.**

(a) Servicing of AMA loans may be transferred to and performed by any institution, including an institution that is not a member of the Bank System, provided that the loans, after such transfer, continue to meet all requirements to qualify as AMA under §§ 1268.3, 1268.4 and 1268.5.

(b) The transfer of mortgage servicing rights and responsibilities must be approved by the Bank or Banks that own the loan or a participation interest in the loan.

(c) A Bank shall have in place policies and procedures to ensure that the transfer of mortgage servicing rights does not negatively affect the credit enhancement on the loans in question or substantially increase the Bank’s exposure to risk.

**§ 1268.7 Reporting requirements for acquired member assets.**

Each Bank shall report information related to AMA in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

**§ 1268.8 Administrative transactions and agreements between Banks.**

(a) *Delegation of administrative duties.* A Bank may delegate the administration of an AMA program to another Bank whose administrative office has been examined and approved by FHFA, or previously examined and approved by the Federal Housing Finance Board, to process AMA transactions. The existence of such a delegation, or the possibility that such a delegation may be made, must be disclosed to any potential participating financial institution as part of any AMA-related agreements signed with that participating financial institution.

(b) *Termination of Agreements.* Any agreement made between two or more Banks in connection with any AMA program may be terminated by any party after a reasonable notice period.

(c) *Delegation of Pricing Authority.* A Bank that has delegated its AMA pricing function to another Bank shall retain a right to refuse to acquire AMA at prices it does not consider appropriate.

Dated: December 10, 2015.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2015-31660 Filed 12-16-15; 8:45 am]

**BILLING CODE 8070-01-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2015-6544; Directorate Identifier 2014-NM-198-AD]

RIN 2120-AA64

**Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2012-24-06 for certain Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model 340A (SAAB/SF340A) and SAAB 340B airplanes. AD 2012-24-06 requires

replacing the stall warning computer (SWC) with a new SWC, which provides an artificial stall warning in icing conditions, and modifying the airplane for the replacement of the SWC. Since we issued AD 2012-24-06, a determination was made that airplanes with certain modifications were excluded from the AD applicability and are affected by the identified unsafe condition and the SWC required by AD 2012-24-06 contained erroneous logic. This proposed AD would add airplanes to the applicability, and would add requirements to replace the existing SWCs with new, improved SWCs and modify the airplane for the new replacement of the SWC. We are proposing this AD to prevent natural stall events during operation in icing conditions, which could result in loss of control of the airplane.

**DATES:** We must receive comments on this proposed AD by February 1, 2016.

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

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

For service information identified in this proposed rule, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email [saab2000.techsupport@saabgroup.com](mailto:saab2000.techsupport@saabgroup.com); Internet <http://www.saabgroup.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-2015-6544; 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:**

Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; 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-2015-6544; Directorate Identifier 2014-NM-198-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**

On November 21, 2012, we issued AD 2012-24-06, Amendment 39-17276 (77 FR 73279, December 10, 2012). AD 2012-24-06 applies to certain Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes. AD 2012-24-06 was prompted by reports of stall events during icing conditions where the natural stall warning (buffet) was not identified. AD 2012-24-06 requires replacing the stall warning computer (SWC) with a new SWC, which provides an artificial stall warning in icing conditions, and modifying the airplane for the replacement of the SWC. We issued AD 2012-24-06 to prevent natural stall events during operation in icing conditions, which, if not corrected, could result in loss of control of the airplane.

Airplanes with certain modifications were excluded from the applicability of AD 2012-24-06, Amendment 39-17276 (77 FR 73279, December 10, 2012). Since we issued AD 2012-24-06, we have determined that those modifications for airplanes identified in the applicability of AD 2012-24-06 are now subject to the identified unsafe

condition. In addition, a new, improved SWC has been designed to replace the existing SWC, as well as the SWC required by AD 2012–24–06. The installation of the new SWC includes modifying 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 2014–0218, dated September 29, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. The MCAI states:

A few natural stall events, specifically when operating in icing conditions, have been experienced on SAAB 340 series aeroplanes, without receiving a prior stall warning.

This condition, if not corrected, could result in loss of control of the aeroplane.

To address this potential unsafe condition, SAAB developed a modified stall warning system, incorporating improved stall warning logic, and issued Service Bulletin (SB) 340–27–098 and SB 340–27–099, providing instructions to replace the Stall Warning Computer (SWC) with a new SWC, and instructions to activate the new SWC. The new system included stall warning curves optimized for operation in icing conditions, which are activated by selection of Engine Anti-Ice.

Consequently, EASA issued AD 2011–0219 [<http://ad.easa.europa.eu/ad/2011-0219>, which corresponds to FAA AD 2012–24–06, Amendment 39–17276 (77 FR 73279, December 10, 2012)] to require installation of the improved SWC.

After that [EASA] AD was issued, in-service experience with the improved stall warning system revealed cases of premature stall warning activation during the take-off phase. In numerous recorded cases, the onset of stall warning occurred without the 6 minute delay after weight off wheels.

This condition, if not corrected, could lead to premature stick shaker activation and consequent increase in pilot workload during the take-off phase, possibly resulting in reduced control of the aeroplane.

To correct this unsafe condition, EASA issued AD 2013–0254 [<http://ad.easa.europa.eu/ad/2013-0254>] retaining the requirements of EASA AD 2011–0219, which was superseded, to require deactivation of the ice speed curves in the improved SWC on SAAB 340 aeroplanes, in accordance with SAAB SB 340–27–116.

Since EASA AD 2013–0254 was issued, SAAB developed a technical solution to eliminate the premature activation of the stall warning ice curves and issued SB 340–27–120 (modification of the existing Stall Warning System installation), SB 340–27–121 (activation of improved SWC for aeroplanes with a basic wing tip) and SB 340–27–122 (activation of improved SWC for aeroplanes with an extended wing tip). SAAB SB 340–27–120 provides modification

and installation instructions valid for pre- and post-SB 340–27–097, 340–27–098, SB 340–27–099 and SB 340–27–116 aeroplanes. For aeroplanes modified in accordance with SAAB AB mod. No. 2650 and/or mod. No. 2859 which are no longer registered in Canada, SAAB AB issued SAAB AB SB 340–27–109 to provide modification and installation instructions to remove the ice speed curve function.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2013–0254, which is superseded, and requires modification of the Stall Warning and Identification System and replacement of the SWC with an improved unit.

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–2015–6544.

#### Related Service Information Under 1 CFR Part 51

Saab AB, Saab Aeronautics has issued the following service information:

- Saab Service Bulletin 340–27–109, dated April 14, 2014.
- Saab Service Bulletin 340–27–116, dated October 18, 2013.
- Saab Service Bulletin 340–27–120, dated July 11, 2014.
- Saab Service Bulletin 340–27–121, dated July 11, 2014.
- Saab Service Bulletin 340–27–122, dated July 11, 2014.

The service information describes procedures for deactivating the stall warning speed curves in the SWCs for certain airplanes; replacing the existing SWCs with new, improved SWCs, and modifying the airplane for the new replacement of the SWC. 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.

#### 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.

#### Differences Between This Proposed AD and the MCAI or Service Information

The applicability in the MCAI excludes airplanes which have been

modified by Saab AB mod No. 2650 or mod No. 2859; however, this proposed AD does not exclude those airplanes because this proposed AD requires corrective actions for U.S. N-registered airplanes that have either modification installed.

Paragraph (2) of the MCAI requires replacement of the existing SWCs within 18 months after the effective date of the MCAI. However, due to the urgency of the identified unsafe condition, we have determined that this replacement must be done within 12 months after the effective date of this AD, as specified in paragraph (h) of this proposed AD.

These differences have been coordinated with the EASA and Saab AB, Saab Aeronautics.

#### Costs of Compliance

We estimate that this proposed AD will affect 105 airplanes of U.S. registry.

We also estimate that it would take about 78 work-hours per product to comply with the actions required by this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost about \$33,000 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$4,161,150, or \$39,630 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 removing Airworthiness (AD) 2012–24–06, Amendment 39–17276 (77 FR 73279, December 10, 2012), and adding the following new AD:

**Saab AB, Saab Aeronautics:** Docket No. FAA–2015–6544; Directorate Identifier 2014–NM–198–AD.

##### (a) Comments Due Date

We must receive comments by February 1, 2016.

##### (b) Affected ADs

This AD replaces AD 2012–24–06, Amendment 39–17276 (77 FR 73279, December 10, 2012).

##### (c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model 340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 340A (SAAB/SF340A) airplanes, serial numbers 004 through 159 inclusive.

(2) Model SAAB 340B airplanes, serial numbers 160 through 459 inclusive, except serial numbers 170, 342, 362, 363, 367, 372, 379, 385, 395, 405, 409, 431, 441, and 455.

##### (d) Subject

Air Transport Association (ATA) of America Code 27: Flight Controls.

##### (e) Reason

This AD was prompted by a determination that airplanes with certain modifications were excluded from AD 2012–24–06, Amendment 39–17276 (77 FR 73279, December 10, 2012), and are affected by the identified unsafe condition and the stall warning computer (SWC) required by AD 2012–24–06 contained erroneous logic. We are issuing this AD to prevent natural stall events during operation in icing conditions, which could result in loss of control of the airplane.

##### (f) Compliance

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

##### (g) Deactivation of Stall Speed Curves

For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 30 days after the effective date of this AD, do the deactivation specified in paragraph (g)(1) or (g)(2) of this AD, as applicable to airplane configuration, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–116, dated October 18, 2013.

(1) For airplanes with a basic wing tip that has been modified in accordance with Saab Service Bulletin 340–27–098: Deactivate the stall speed curves in the SWC having part number (P/N) 0020AK6.

(2) For airplanes with an extended wing tip that has been modified in accordance with Saab Service Bulletin 340–27–099: Deactivate the stall speed curves in the SWC having part number (P/N) 0020AK7.

##### (h) Replacement of SWCs

Within 12 months after the effective date of this AD: Do the replacement specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes with basic wing tips: Replace all SWCs with new, improved SWCs having P/N 0020AK6–1, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–121, dated July 11, 2014.

(2) For airplanes with extended wing tips: Replace all SWCs with new, improved SWCs having P/N 0020AK7–1, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–122, dated July 11, 2014.

##### (i) Concurrent Modification

Before or concurrently with the accomplishment of the applicable requirements of paragraph (h) of this AD, do the actions specified in paragraph (i)(1) or (i)(2) of this AD, as applicable to airplane configuration.

(1) For airplanes on which either Saab AB mod No. 2650 or mod No. 2859 is not installed: Modify the stall warning and identification system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–120, dated July 11, 2014.

(2) For airplanes on which either Saab AB mod No. 2650 or mod No. 2859 is installed, or on which both mods are installed: Modify the stall warning and identification system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–109, dated April 14, 2014.

##### (j) Parts Installation Prohibitions

After doing the replacement required by paragraph (h) of this AD, no person may install any SWC having P/N 0020AK, 0020AK1, 0020AK2, 0020AK4, 0020AK6, 0020AK7, or 0020AK3 MOD 1, on any airplane.

##### (k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; 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 Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

##### Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0218, dated September 29, 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–2015–6544.

(2) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email [saab2000.techsupport@saabgroup.com](mailto:saab2000.techsupport@saabgroup.com); Internet <http://www.saabgroup.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 23, 2015.

**Jeffrey E. Duven,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–30560 Filed 12–16–15; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2015-7524; Directorate Identifier 2014-NM-231-AD]

RIN 2120-AA64

**Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems)****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2014-15-04 for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. AD 2014-15-04 currently requires deactivating the potable water system, or alternatively filling and activating the potable water system. Since we issued AD 2014-15-04, the manufacturer developed a modification that would address the unsafe condition. This proposed AD would also require inspecting the in-line heater for correct brazing and corrective action if needed, and installing a shrinkable tube on the water line and a spray shield on the in-line heater. We are proposing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection and normal pitch control, and consequently result in reduced controllability of the airplane.

**DATES:** We must receive comments on this proposed AD by February 1, 2016.

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

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

For service information identified in this proposed AD, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email [saab340techsupport@saabgroup.com](mailto:saab340techsupport@saabgroup.com); Internet <http://www.saabgroup.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-2015-7524; 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:** Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1112; 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-2015-7524; Directorate Identifier 2014-NM-231-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**

On July 13, 2014, we issued AD 2014-15-04, Amendment 39-17906 (79 FR 45337, August 5, 2014). AD 2014-15-04 requires actions intended to address an unsafe condition on Saab AB, Saab Aeronautics Model SAAB 2000 airplanes.

Since we issued AD 2014-15-04, Amendment 39-17906 (79 FR 45337, August 5, 2014), a modification has been developed that would address the

unsafe condition and allow reactivation of the potable water system.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014-0255, dated November 25, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

One occurrence of rudder pedal restriction was reported on a SAAB 2000 aeroplane. Subsequent investigation showed that this was the result of water leakage at the inlet tubing for the in-line heater (25HY) in the lower part of the forward fuselage (Zone 116). The in-line heater attachment was found ruptured, which resulted in water spraying in the area. Frozen water on the rudder control mechanism in Zone 116 then led to the rudder pedal restriction.

Analysis after the reported event indicated that the pitch control mechanism (including pitch disconnect/spring unit) may also be frozen as a result of water spray, which would prevent disconnection and normal pitch control.

This condition, if not corrected, could result in further occurrences of reduced control of an aeroplane. To address this potential unsafe condition, SAAB issued Service Bulletin (SB) 2000-38-10 to provide instructions to deactivate the Potable Water System. Consequently, EASA issued [EASA] [an] Emergency AD \* \* \* to require that action. That [EASA] Emergency AD was revised and republished as EASA AD 2013-0172R1 [(<http://ad.easa.europa.eu/ad/2013-0172R1>), which corresponds to FAA AD 2014-15-041, Amendment 39-17906 (79 FR 45337, August 5, 2014)], introducing a temporary alternative procedure for filling, which would allow reactivation and operation of the Potable Water System.

Since that [EASA] AD was issued, SAAB developed an in-line heater spray shield and a water line shrink tube to eliminate the consequences of a water spray leak in case of rupture of the in-line heater. SAAB also issued a SB 2000-38-011, providing instructions for inspection of the in-line heater and installation of a shrink tube and a spray shield.

For reasons described above, this [EASA] AD retains the requirements of EASA AD 2013-0172R1, which is superseded, and requires inspection [for correct brazing] of the in-line heater [and corrective action if needed] and installation of shrink tube [on water line] and spray shield [on in-line heater].

Corrective actions include repairing or replacing the in-line heater. 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-2015-7524.

### Related Service Information Under 14 CFR Part 51

Saab issued Service Bulletin 2000–38–011, dated October 22, 2014. The service information describes procedures for inspecting for correct brazing of the in-line heater, repairing or replacing the in-line heater, and installing a shrinkable tube on the water line and a spray shield on the in-line heater. 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.

### Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry.

The actions required by AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Required parts cost \$0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2014–15–04 is \$85 per product.

We also estimate that it would take about 6 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 \$3,650 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$4,160.

### Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701:

General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), and adding the following new AD:

**Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems):**  
Docket No. FAA–2015–7524; Directorate Identifier 2014–NM–231–AD.

### (a) Comments Due Date

We must receive comments by February 1, 2016.

### (b) Affected ADs

This AD replaces AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014).

### (c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category, serial numbers 004 through 016 inclusive, 018, 022, 023, 024, 026, 029, 031, 032, 033, 035 through 039 inclusive, 041 through 044 inclusive, 046, 047, 048, 051, and 053 through 063 inclusive.

### (d) Subject

Air Transport Association (ATA) of America Code 38, Water/Waste.

### (e) Reason

This AD was prompted by a report of rudder pedal restriction which was the result of water leakage at the inlet tubing of an in-line heater in the lower part of the forward fuselage. This AD was also prompted by the development of a modification that would address the unsafe condition. We are issuing this AD to prevent rudder pedal restriction due to the pitch control mechanism becoming frozen as the result of water spray, which could prevent disconnection and normal pitch control, and consequently result in reduced controllability of the airplane.

### (f) Compliance

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

### (g) Retained Deactivation of Potable Water System With New Exception

This paragraph restates the requirements of paragraph (g) of AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), with a new exception. Except as provided by paragraph (l) of this AD, within 30 days after September 9, 2014 (the effective date of AD 2014–15–04), deactivate the potable water system, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–38–010, dated July 12, 2013, which is incorporated by reference in AD 2014–15–04.

### (h) Retained Alternative To Deactivation of Potable Water System With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), with no changes. As an alternative, or subsequent, to the action required by paragraph (g) of this AD, during each filling of the potable water system after September 9, 2014, (the effective date of AD 2014–15–04), accomplish the temporary filling procedure, in accordance with the instructions in Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue

A, dated September 9, 2013, which is incorporated by reference in AD 2014–15–04.

**(i) New Inspection and Installation**

At the applicable compliance times specified in paragraphs (j)(1) and (j)(2) of this AD, concurrently accomplish the actions specified in paragraphs (i)(1) and (i)(2) of this AD, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–38–011, dated October 22, 2014.

(1) Do a detailed inspection for correct brazing of the in-line heater, and if any discrepancy is found, before further flight, and before accomplishment of the modification required by paragraph (i)(2) of this AD, accomplish all applicable corrective actions.

(2) Install a shrink tube on the water line and a spray shield on the in-line heater.

**(j) Compliance Times for Inspection and Installation**

Do the actions specified in paragraph (i) of this AD at the applicable times specified in paragraphs (j)(1) and (j)(2) of this AD.

(1) For airplanes having had the potable water system reactivated and operated using the alternative filling procedure specified in Saab Service Newsletter SN 2000–1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013, which is incorporated by reference in AD 2014–15–04, within 6 months after the effective date of this AD.

(2) For airplanes having the potable water system deactivated using procedures specified in the Accomplishment Instructions of Saab Service Bulletin 2000–38–010, dated July 12, 2013; Before further flight after the reactivation of the potable water system.

**(k) Terminating Actions for the Deactivation of the Potable Water System**

Accomplishing the actions required by paragraph (i) of this AD terminates the requirements of paragraphs (g) and (h) of this AD.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, ANM–116, International Branch, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov.

(i) 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.

(ii) AMOCs approved previously in accordance with AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014), are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(2) *Contacting the Manufacturer*: As of the effective date of this AD, 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 Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014–0255, dated November 25, 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–2015–7524.

(2) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email [saab340techsupport@saabgroup.com](mailto:saab340techsupport@saabgroup.com); Internet <http://www.saabgroup.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 December 8, 2015.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2015–31537 Filed 12–16–15; 8:45 am]

**BILLING CODE 4910–13–P**

exempt portions of the system of records from one or more provisions of the Privacy Act of 1974.

**DATES:** Comments on this proposed rule are due by January 26, 2016.

**FOR FURTHER INFORMATION CONTACT:** John Hackett, Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW., Washington, DC 20522–8001, or at [Privacy@state.gov](mailto:Privacy@state.gov).

**SUPPLEMENTARY INFORMATION:** The Department of State maintains the Office of Foreign Missions Records system of records. The primary purpose of this system of records relates to the implementation of the Foreign Missions Act, the operation of foreign missions, and the United States' extension of privileges, exemptions, immunities, benefits, and courtesies to foreign government officials, members/employees and officers of foreign missions and certain international organizations in the United States, their immediate family members, and domestic workers who are in the United States in nonimmigrant A–3 or G–5 visa status.

The Department of State is issuing this document as a notice to amend 22 CFR part 171 to exempt portions of the Office of Foreign Missions Records system of records from the Privacy Act subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). STATE–81 is exempted under (k)(2) to the extent that records within that system are comprised of investigatory material compiled for law enforcement purposes, subject to the limitations set forth in that section.

**List of Subjects in 22 CFR Part 171**

Administrative practice and procedure; Classified information; Confidential business information; Freedom of information; Privacy.

For the reasons stated in the preamble, 22 CFR part 171 is proposed to be amended as follows:

**PART 171—[AMENDED]**

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

**Authority:** 5 U.S.C. 552, 552a; 22 U.S.C. 2651a; Pub. L. 95–521, 92 Stat. 1824, as amended; E.O. 13526, 75 FR 707; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Amend § 171.36 by adding an entry, in alphabetical order, for “The Office of

**DEPARTMENT OF STATE**

**22 CFR Part 171**

**[Public Notice: 9379]**

**RIN 1400–AD88**

**Privacy Act; STATE–81, Office of Foreign Missions Records**

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Office of Foreign Missions Records, State–81 system of records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to

Foreign Missions Records, State-81” to the lists in paragraph (b)(2)

Joyce A. Barr,

Assistant Secretary for Administration, U.S. Department of State.

[FR Doc. 2015-31551 Filed 12-16-15; 8:45 am]

BILLING CODE 4710-43-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 82

[EPA-HQ-OAR-2015-0453; FRL-9940-31-OAR]

RIN 2060-AS51

#### Protection of Stratospheric Ozone: Update to the Refrigerant Management Requirements Under the Clean Air Act; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** EPA issued a proposed rule in the **Federal Register** on November 9, 2015, proposing to update service practices that reduce emissions of ozone-depleting refrigerants as well as extend them, as appropriate, to non-ozone-depleting substitute refrigerants. The November 9, 2015, proposal provided for a 60-day public comment period ending January 8, 2016. EPA received requests from the public to extend this comment period. This document extends the comment period for 17 days, from January 8, 2016, to January 25, 2016.

**DATES:** Comments, identified by docket identification (ID) number EPA-HQ-OAR-2015-0453, must be received on or before January 25, 2016.

**ADDRESSES:** Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of November 9, 2015.

**FOR FURTHER INFORMATION CONTACT:** Luke Hall-Jordan, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number (202) 343-9591; email address [hall-jordan.luke@epa.gov](mailto:hall-jordan.luke@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period established in the proposed rule published in the **Federal Register** on November 9, 2015 (80 FR 69457) (FRL-9933-48-OAR). In that document, EPA solicited comments and information on its proposed rule titled “Protection of Stratospheric Ozone: Update to the

Refrigerant Management Requirements under the Clean Air Act.” EPA received requests from members of the public to extend the comment period. EPA is hereby extending the comment period, which was previously set to end on January 8, 2016, to January 25, 2016. Accordingly, any comments on this proposed rule must be received on or before January 25, 2016.

To submit comments, or access the public docket, please follow the detailed instructions as provided under **ADDRESSES** in the November 9, 2015, **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### List of Subjects in 40 CFR Part 82

Environmental protection, Air pollution control, Chemicals, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 10, 2015.

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2015-31661 Filed 12-16-15; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-BF36

#### Fisheries of the Exclusive Economic Zone Off Alaska; Observer Coverage Requirements for Small Catcher/Processor in the Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish Fisheries

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

**ACTION:** Notice of availability of fishery management plan amendments; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 112 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 102 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). If approved, Amendments 112 and 102 would modify the criteria for NMFS to place small catcher/processors in the partial observer coverage category under the North Pacific Groundfish and

Halibut Observer Program (Observer Program). Under Amendments 112 and 102, the GOA and BSAI FMPs would each be amended to allow certain catcher/processors with relatively small levels of groundfish production to be placed in the partial observer coverage category. Amendments 112 and 102 are intended to promote the goals of the BSAI and GOA FMPs and to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

**DATES:** Submit comments on or before February 16, 2016.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2015-0114, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0114](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2015-0114), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

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

Electronic copies of Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP and the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action (collectively the “Analysis”) are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Eich, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries of the GOA under the GOA FMP. NMFS manages the groundfish fisheries of



Bering Sea and Aleutian Islands under the BSAI FMP. The Council prepared the GOA FMP pursuant to the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*). Regulations implementing the GOA FMP appear at 50 CFR 679.

The Magnuson-Stevens Act in section 304(a) requires that each regional fishery management council submit an amendment to a fishery management plan for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act in section 304(a) also requires that the Secretary, upon receiving an amendment to a fishery management plan, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. The Council has submitted Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP to the Secretary for review. This notice announces that proposed Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP are available for public review and comment.

Amendments 112 and 102 to the FMPs were adopted by the Council in June 2015. If approved by the Secretary, Amendments 112 and 102 would amend Section 3.2.4.1 of the BSAI and GOA FMPs to state that catcher/processors would be subject to full observer coverage requirement with some exceptions specified in regulations. To be consistent with current terminology, Amendments 112 and 102 would replace references to “less than 100 percent” and “greater than or equal to 100 percent” with “partial” and “full,” respectively, in Section 3.2.4.1 of both the GOA and BSAI FMPs. Additionally, the Amendments would make minor technical edits and modifications in terminology in Section 3.2.4.1 of the GOA and BSAI FMPs to conform to current NMFS style guidelines. These minor technical edits and modifications in terminology are not substantive. Amendments 112 and 102 would also amend Appendix A to the GOA and BSAI FMPs to list the date that the Amendments are implemented, if approved, in chronological order.

The objectives of Amendments 112 and 102 are to (1) refine the balance between observer data quality from the fishery and the cost of observer coverage to catcher/processors with limited groundfish production relative to the rest of the catcher/processor fleet by allowing those catcher/processors with limited production to be placed in the partial observer coverage category based on contemporary groundfish production amounts; and (2) implement this exception without altering the full

observer coverage requirements for all trawl catcher/processors and catcher/processors in a catch share program.

#### Background on the Observer Program

Regulations implementing the Observer Program allow NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the BSAI and GOA groundfish and halibut fisheries. The Observer Program was implemented in 1990 (55 FR 4839, February 12, 1990). In 2012, NMFS restructured the funding and deployment systems of the Observer Program (77 FR 70062, November 21, 2012). Since implementation of the restructured Observer Program in 2013, vessels, shoreside processors and stationary floating processors participating in the groundfish and halibut fisheries off Alaska are placed in one of two observer coverage categories: (1) Partial observer coverage category or (2) full observer coverage category.

In the full observer coverage category, vessel operators obtain observers by contracting directly with observer providers. Operators of vessels in the full observer coverage category pay the observer provider for each day the observer is on board the vessel, including days that the vessel is travelling to or from the fishing grounds but not fishing.

NMFS deploys observers on vessels in the partial observer coverage category according to a statistical sample design based on an annual deployment plan developed in consultation with the Council. Vessels in the partial observer coverage category are required to carry observers only on fishing trips selected at random pursuant to the statistical sample design. Instead of paying for each day an observer is on board, NMFS assesses a fee equal to 1.25 percent of the ex-vessel value of the retained groundfish and halibut landed by vessels in the partial observer coverage category. NMFS uses these fees to establish a Federal contract with an observer service provider to deploy observers in the partial observer coverage category. Under this structure, observer coverage funding is based on the number of days a vessel operates (full observer coverage category) or on the ex-vessel value of a vessel's retained catch regardless of the amount of time the vessel is covered by an observer (partial observer coverage category).

Under the restructured Observer Program, almost all catcher/processors were assigned to the full observer coverage category to obtain independent estimates of catch, at-sea discards, and prohibited species catch (PSC) to reduce

the potential for introducing error into NMFS' catch accounting system (as described in the proposed rule: 77 FR 23326, April 18, 2012).

The restructured Observer Program provided for three limited exceptions for catcher/processors to be placed in the partial observer coverage category in recognition that the cost of full observer coverage would be disproportionate to total revenues for some small catcher/processors. First, the restructured Observer Program provided an exception (specified at the current § 679.51(a)(2)(v)) that applies to “hybrid” vessels less than 60 feet length overall (LOA) that acted as both a catcher vessel and a catcher/processor in the same year in any year from 2003 through 2009. Second, the restructured Observer Program provided an exception from full coverage (specified at the current § 679.5(a)(2)(v)) if a catcher/processor had an average daily production of less than 5,000 lb (2.3 mt) round weight equivalent in its most recent full calendar year of operation from 2003 through 2009. Third, the restructured Observer Program provided an exception from full coverage (specified at § 679.5(a)(2)(iv)(B)) if a catcher/processor did not process more than one metric ton round weight of groundfish on any day in the immediately preceding year.

The first two exceptions are based on a vessel's activity between 2003 and 2009. A vessel that started processing after 2009 could never qualify to be placed in the partial observer coverage category under either of these exceptions. The first two exceptions permanently placed a vessel in the partial observer coverage category. These exceptions have no provision to review the production of a catcher/processor placed in the partial observer coverage category on an ongoing basis and remove them from the partial observer coverage category if their production increases. Out of approximately seventy catcher/processors in the Observer Program, three catcher/processors have qualified for, and elected to be assigned permanently to the partial observer coverage category under these two exceptions (Section 2.1.1 and Table 2 of the Analysis).

The third exception, the one metric ton exception, is theoretically open to any catcher/processor that began production after 2009. However, in reviewing production data from 2008 through 2014 for this action, NMFS found no active catcher/processor (*i.e.*, a catcher/processor which did any processing in a year) that processed one metric ton or less on every day during

a year (Section 2.1.1 of the Analysis). One catcher/processor qualified for placement in the partial observer coverage category in 2015 under the one metric ton exception, but that catcher/processor processed nothing in 2014 and therefore processed one metric ton or less on every day in 2014 (Section 2.1.1 of the Analysis).

#### **Need for Amendments 112 and 102 to the BSAI and GOA FMPs**

Beginning with comments on the proposed rule for the restructured Observer Program, industry participants asked that the final rule for the restructured Observer Program allow NMFS to place catcher/processors with limited production in the partial observer coverage category. In response to these comments, NMFS stated in the final rule for the restructured Observer Program (77 FR 70062, November 21, 2012) that neither the Council nor NMFS had analyzed the situation of small catcher/processors that began production after 2009. NMFS explained that if these industry participants wished to be considered for placement in the partial observer coverage category, the Council and NMFS would need to make these changes through a separate rulemaking process.

Industry participants subsequently sought to change in the rules for placement of catcher/processors in the partial observer coverage category. The

Council and NMFS reviewed and developed a series of analyses that resulted in this proposed action. The history of this action is described in detail in Section 1.2 of the Analysis.

Data on past production identified a small number of catcher/processors that processed a small amount of groundfish relative to the rest of the fleet. The Council and NMFS concluded that these vessels were paying, or would pay, a disproportionate amount for full observer coverage relative to the amount these vessels had processed, or would be likely to process. The Council and NMFS concluded that the cost of full observer coverage might be discouraging beneficial activity, such as processing sablefish in remote fishing grounds in the Aleutian Islands or processing by small jig gear vessels.

As noted earlier, Amendments 112 and 102 would amend Section 3.2.4.1 of the BSAI and GOA FMPs to state that catcher/processors would be subject to full observer coverage requirements with some exceptions, as specified in regulations. The proposed rule describes the regulations that would assign catcher/processors to either the full or partial coverage categories. Those regulatory provisions are not repeated here.

#### **Public Comments**

NMFS is soliciting public comments on proposed Amendments 112 and 102

to the FMPs through the end of the comment period (see **DATES**). A proposed rule that would implement Amendment 112 to the BSAI FMP and Amendment 102 to the GOA FMP is intended to be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule pursuant to the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendments 112 and 102 to the BSAI and GOA FMP in order to be considered in the approval/disapproval decision on the amendment. NMFS will consider all comments on the Amendments received by the end of the comment period, whether specifically directed to the FMP amendments or the proposed rule, in the approval/disapproval decision.

Comments received after the end of the comment period may not be considered in the approval/disapproval decision on Amendments 112 and 102. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: December 14, 2015.

**Galen R. Tromble,**

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

[FR Doc. 2015-31761 Filed 12-15-15; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register

Vol. 80, No. 242

Thursday, December 17, 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.

**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.

## 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.

#### LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE [12/1/2015 through 12/10/2015]

Firm name	Firm address	Date accepted for investigation	Product(s)
Badgett Corporation .....	1150 Pagni Drive, Chickasha, OK 73023.	12/10/2015	The firm manufacturers fabricated and machine equipment, products, and tools for industries.
Implast Interior Technologies, LLC d/ b/a Trims Unlimited.	332 Industrial Park Drive, Imlay City, MI 48444.	12/10/2015	The firm manufacturers sewn articles of cloth, vinyl and leather for furniture, automotive interiors and medical equipment.
Meramec Instrument Transformer Co	1 Andrews Way, Cuba, MO 64553 ..	12/10/2015	The firm manufacturers various types of current transformers including board mounted, encapsulated, internally mounted and outdoor mounted.
Poulsen Cascade Tackle, LLC .....	15875 SE 114th Avenue #N, Clackamas, OR 97015.	12/10/2015	The firm manufacturers fishing tackle and accessories.
Southern Machine Works, Inc .....	907 E. Bois D'Arc Avenue, Duncan, OK 73534.	12/10/2015	The firm manufacturers precision machines, milling, tubing, and welding services.

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: December 10, 2015.  
**Miriam Kearse,**  
*Lead Program Analyst.*  
 [FR Doc. 2015-31729 Filed 12-16-15; 8:45 am]  
**BILLING CODE 3510-WH-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 1992]

#### Reorganization of Foreign-Trade Zone 147, (Expansion of Service Area) Under Alternative Site Framework, Berks County, Pennsylvania

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as

amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas*, the FTZ Corporation of Southern Pennsylvania, grantee of Foreign-Trade Zone 147, submitted an application to the Board (FTZ Docket B-46-2015, docketed July 20, 2015) for authority to expand the service area of the zone to include Adams, Fulton, Juniata, Lebanon and Perry Counties, Pennsylvania, as described in the application, adjacent to the Harrisburg

Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 44326, July 27, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 147 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 10 day of December 2015.

**Paul Piquado,**

*Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Andrew McGilvray,**  
*Executive Secretary.*

[FR Doc. 2015-31755 Filed 12-16-15; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-983]

#### **Drawn Stainless Steel Sinks From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2014-2015**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on drawn stainless steel sinks from the People's Republic of China (PRC) for the period of review (POR) April 1, 2014, through March 31, 2015.

**DATES:** Effective December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Brian Smith or Ross Belliveau, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1766 or (202) 482-4952, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 1, 2015, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on drawn stainless steel sinks from the PRC for the POR (AD order).<sup>1</sup>

In April 2015, the Department received multiple timely requests to conduct an administrative review of the antidumping duty order on drawn stainless steel sinks from the PRC.

On May 26, 2015, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department published in the **Federal Register** a notice of initiation of an administrative review of the AD order.<sup>2</sup> The administrative review was initiated with respect to 26 companies, and covers the period April 1, 2014, through March 31, 2015. Subsequent to the initiation of the administrative review, the requesting parties timely withdrew their review requests for 10 of these companies, as discussed below.

### Partial Rescission of Review

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 its request within 90 days of the date of publication of notice of initiation of the requested review. All requesting parties withdrew their respective requests for an administrative review of the following companies within 90 days of the date of publication of the *Initiation Notice*:<sup>3</sup> Elkay (China) Kitchen Solutions, Co., Ltd.; Guangdong G-Top Import & Export Co., Ltd.; Guangdong New Shichu Import & Export Co., Ltd.; Guangdong Yingao Kitchen Utensils Co., Ltd.; Jiangmen New Star Hi-Tech Enterprise Ltd.; Jiangmen Pioneer Import & Export Co., Ltd.; Primy Cooperation Limited; Tianjin ZNJ Industries Co., Ltd.; Xinhe Stainless Steel Products Co., Ltd.; and Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd. Accordingly, the

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 17392 (April 1, 2015).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 30041 (May 26, 2015) (*Initiation Notice*).

<sup>3</sup> See Letter from Tianjin ZNJ Industries Co., Ltd. to the Department, dated June 26, 2015; Letter from Hajoca Corporation to the Department, dated July 31, 2015; Letters from Elkay Manufacturing Company (the Petitioner) to the Department dated July 14, August 7, and August 24, 2015; Letter from Guangdong Yingao Kitchen Utensils Co., Ltd. to the Department, dated August 11, 2015; and Letter from Guangdong New Shichu Import & Export Co., Ltd. to the Department, dated August 24, 2015.

Department is rescinding this review, in part, with respect to these companies, in accordance with 19 CFR 351.213(d)(1).<sup>4</sup>

The instant review will continue with respect to the following companies: B&R Industries Limited; Feidong Import and Export Co., Ltd.; Foshan Shunde Minghao Kitchen Utensils Co., Ltd.; Franke Asia Sourcing Ltd.; Grand Hill Work Company; Guangdong Dongyuan Kitchenware Industrial Co., Ltd.; Hangzhou Heng's Industries Co., Ltd.; J&C Industries Enterprise Limited; Jiangmen Hongmao Trading Co., Ltd.; Jiangxi Zoje Kitchen Utensils Co., Ltd.; Ningbo Oulin Kitchen Utensils Co., Ltd.; Shenzhen Kehuaxing Industrial Ltd.; Shunde Foodstuffs Import & Export Company Limited of Guangdong; Yuyao Afa Kitchenware Co., Ltd.; Zhongshan Newecan Enterprise Development Corporation Limited; and Zhongshan Superte Kitchenware Co., Ltd./ Zhongshan Superte Kitchenware Co., Ltd. invoiced as Foshan Zhaoshun Trade Co., Ltd.

### Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this 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 directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

### Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred

<sup>4</sup> As stated in *Change in Practice in NME Reviews*, the Department will no longer consider the non-market entity as an exporter conditionally subject to administrative reviews. See *Antidumping Proceedings; Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 3, 2013).

and the subsequent assessment of double antidumping duties.

### Notification Regarding Administrative Protective Order

This notice serves as the only 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 return/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 published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 11, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015-31775 Filed 12-16-15; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-475-819]

### Certain Pasta From Italy: Rescission of Countervailing Duty Administrative Review; 2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on pasta from Italy for the period of review (POR) January 1, 2014, through December 31, 2014, based on the timely withdrawal of requests for review.

**DATES:** *Effective date:* December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:** Mark Kennedy, 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) 482-7883.

### SUPPLEMENTARY INFORMATION:

#### Background

On July 1, 2015, the Department published the notice of opportunity to request an administrative review of the CVD order on pasta from Italy for the POR January 1, 2014, through December

31, 2014.<sup>1</sup> On July 29, 2015, Ritrovo, LLC (Ritrovo) requested that the Department conduct an administrative review of La Romagna S.r.l., I Sapori dell'Arca S.r.l., Vero Lucano S.r.l., Azienda Agricola Casina Rossa di De Laurentiis Nicola, Pastificio Bolognese of Angelo R. Dicuonzo, and Ser.com.snc. On the same date, La Fabbrica della Pasta do Gragnano S.a.s. di Antonino Moccia (La Fabbrica) requested an administrative review of its POR sales and of its affiliated producer, Pastificio C.A.M.S. srl. On the same date, La Molisana, SpA (La Molisana) requested an administrative review of itself for this POR.<sup>2</sup> On July 30, 2015, Gruppo PTGC Oleificio USA Corp. (Gruppo Fooding) requested an administrative review of Poiatti, S.p.A.<sup>3</sup> Pursuant to the requests and in accordance with 19 CFR 351.213(b), the Department published a notice initiating an administrative review of Azienda Agricola Casina Rossa di De Laurentiis Nicola, I Sapori dell'Arca S.r.l., La Fabbrica, La Molisana, La Romagna S.r.l., Pastificio Bolognese of Angelo R. Dicuonzo, Ser.com.snc, Vero Lucano S. r. l., Pastificio C.A.M.S. srl, and Poiatti, S.p.A.<sup>4</sup> On November 30, 2015, La Molisana and Gruppo Fooding timely withdrew their requests for administrative review.<sup>5</sup> On December 1, 2015, La Fabbrica and Ritrovo timely withdrew their requests for an administrative review.<sup>6</sup>

#### Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in

<sup>1</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 80 FR 37583 (July 1, 2015).

<sup>2</sup> See Letter from Ritrovo, "Request for Administrative Review Certain Pasta from Italy," dated July 29, 2015; Letter from La Molisana, "Certain Pasta From Italy: Request for Review by La Molisana, S.p.A.," dated July 29, 2015; Letter from La Fabbrica, "Certain Pasta From Italy: Request for Review by La Fabbrica della Pasta do Gragnano S.a.s. di Antonino Moccia and Pastificio C.A.M.S. srl," dated July 29, 2015.

<sup>3</sup> See Letter from Gruppo Fooding, "Certain Pasta From Italy: Request for Administrative Review by Gruppo PTGC Oleificio USA Corp., Importer of Pasta Produced by Poiatti, S.p.A.," dated July 30, 2015.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 53106 (September 2, 2015).

<sup>5</sup> See Letter from La Molisana, "Certain Pasta From Italy: Withdraw Request for Review," dated November 30, 2015; Letter from Gruppo Fooding, "Certain Pasta From Italy: Withdraw Request for Review," dated November 30, 2015.

<sup>6</sup> See Letter from La Fabbrica, "Certain Pasta From Italy: Withdraw Request for Review," dated December 1, 2015; Letter from Ritrovo, "Withdrawal of Request for Administrative Review Certain Pasta from Italy," dated December 1, 2015.

part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for review were withdrawn, and all parties withdrew their requests within 90 days of the publication date of the notice of initiation. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review in its entirety.

#### Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess CVDs on all appropriate entries of certain pasta from Italy. CYDs shall be assessed at rates equal to the cash deposit of estimated CYDs 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 15 days after the date of publication of this notice of rescission of administrative review.

#### Notifications

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an 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 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: December 11, 2015.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2015-31799 Filed 12-16-15; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

RIN 0648–XD283

**Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permit**

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS proposes to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from five marine mammal stocks listed under the Endangered Species Act (ESA) by the Bering Sea and Aleutian Islands (BSAI) flatfish trawl, the BSAI pollock trawl, and the BSAI Pacific cod longline fisheries. In accordance with the MMPA, NMFS must issue this permit provided it can make the determinations that: The incidental take will have a negligible impact on the affected stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and a take reduction plan and monitoring program have been implemented, and vessels in these fisheries are registered. NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the endangered Western North Pacific (WNP) stock of humpback whales, endangered Central North Pacific (CNP) stock of humpback whales, endangered Western U.S. stock of Steller sea lions, threatened Alaska stock of ringed seals, and Alaska stock of bearded seals. Accordingly, NMFS solicits public comments on the draft negligible impact determination (NID) and on the proposal to issue a permit to vessels that operate in these fisheries for the taking of affected endangered or threatened stocks of marine mammals.

**DATES:** Comments must be received by January 19, 2016.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2014–0057, by either of the following methods:

*Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/](http://www.regulations.gov/)#!/docketDetail;D=NOAA-NMFS-2014-0057, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

*Mail:* Submit written comments to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Ellen Sebastian, P.O. Box 21668, Juneau, AK 99802–1668.

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

Electronic copies of the draft NID for the affected stocks and copies of the recovery plans for humpback whales and Steller sea lions are available at <http://www.alaskafisheries.noaa.gov/cm/analyses/default.aspx> and <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>.

**FOR FURTHER INFORMATION CONTACT:**

Kristin R. Mabry, NMFS Alaska Region, 907–586–7490, [Kristin.Mabry@noaa.gov](mailto:Kristin.Mabry@noaa.gov); or Shannon Bettridge, NMFS Office of Protected Resources, 301–427–8402, [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

NMFS proposes to issue a three-year permit under MMPA section 101(a)(5)(E) to participants registered in the Alaska BSAI flatfish trawl and BSAI pollock trawl fisheries to incidentally take individuals from the following marine mammal stocks listed under the ESA: The endangered WNP and CNP stocks of humpback whales, endangered Western U.S. stock of Steller sea lions, threatened Alaska stock ringed seals; and the Alaska stock of bearded seals; and to participants registered in the BSAI Pacific cod longline fishery to incidentally take individuals from the Alaska stock of ringed seals. The bearded seal does not currently have status under the ESA because its ESA listing was vacated by the U.S. District Court for the District of Alaska on July 25, 2014. NMFS is appealing that decision. In the interim, NMFS will continue to consider the effects of fisheries on bearded seals under MMPA section 101(a)(5)(E), even though the

ESA listing of the species is currently not in effect.

Pursuant to section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1361 *et seq.*, NMFS shall for a period of up to three consecutive years allow the incidental, but not the intentional, taking of marine mammal species listed under the ESA, 16 U.S.C. 1531 *et seq.*, by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental mortality and serious injury will have a negligible impact on the affected species or stocks; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

NMFS proposes to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline fisheries to incidentally take individuals from the WNP and CNP stocks of humpback whales, the Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. Because other stocks of threatened or endangered marine mammals are not taken in Category I or Category II groundfish fisheries (as listed in the 2016 List of Fisheries (LOF)), effects to no other species or stocks are evaluated for this proposed permit. The data for considering these authorizations were reviewed coincident with the preparation of the 2016 MMPA List of Fisheries (80 FR 58427, September 29, 2015), the 2014 marine mammal stock assessment reports (SARs), and recovery plans for humpback whales and Steller sea lions.

Based on observer data and marine mammal reporting forms, the BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline fisheries are Category II fisheries that operate in the ranges of affected stocks. A description of these fisheries can be found in the draft NID (see **ADDRESSES**). These federally-managed fisheries take place inside both state waters (from the coastline out to three nautical miles) and federal waters (three to two

hundred nautical miles from shore). The federally-managed fisheries inside Alaska state waters are often referred to as state “parallel” fisheries and are included in this authorization. All other Category II fisheries that interact with these marine mammal stocks observed off the coasts of Alaska are state-managed fisheries (as opposed to state parallel fisheries). Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E) but are required to report injuries or mortality of marine mammals incidental to their operations.

In accordance with the MMPA, NMFS has determined that incidental taking from the BSAI pollock and flatfish trawl and BSAI Pacific cod longline fisheries will have a negligible impact on WNP and CNP stocks of humpback whales, the Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. This proposed authorization is based on a determination that the incidental take of these fisheries will have a negligible impact on the affected marine mammal stocks; recovery plans have been completed for humpback whales and Steller sea lions, and NMFS is developing recovery plans for ringed and bearded seals; a monitoring program is established, vessels in the fisheries are registered, and the necessary take reduction plan (TRP) has been developed or is being developed.

A previous three-year MMPA permit was issued on December 13, 2010, for BSAI flatfish trawl, BSAI pollock trawl, BSAI Pacific cod longline, and BSAI sablefish pot, all Category II fisheries that were determined to have negligible impacts on ESA-listed marine mammal stocks, including: Humpback whale (WNP and CNP stocks), Steller sea lion (Western and Eastern U.S. stocks), fin whale (northeastern Pacific stock), and sperm whale (North Pacific stock) (75 FR 32689, December 29, 2010). Because that permit has expired, NMFS proposes to issue this new three-year permit.

#### **Basis for Determining Negligible Impact**

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if mortality and serious injury (M/SI) incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a draft NID (see **ADDRESSES**).

Although the MMPA does not define “negligible impact,” NMFS has issued regulations providing a qualitative definition of “negligible impact” as

defined in 50 CFR 216.103, and through scientific analysis, peer review, and public notice developed a quantitative approach. As it applies here, the definition of “negligible impact” is “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.” The development of the approach is outlined in detail in the draft NID made available through this notice and was described in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (*e.g.*, 72 FR 60814, October 26, 2007; 78 FR 54553, September 4, 2013).

The negligible impact criteria are described below and use the Potential Biological Removal (PBR) in their application. The MMPA defines PBR as “the maximum number of animals, not including natural mortalities that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population and was developed to assess the level of incidental take in commercial fisheries.” The PBR level is the product of the minimum population estimate of the stock, one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size, and a recovery factor of between .1 and 1.0.

#### **Criteria for Determining Negligible Impact**

In 1999, NMFS proposed criteria to determine whether M/SI incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock for MMPA 101(a)(5)(E) permits (64 FR 28800, May 27, 1999). In applying the 1999 criteria, Criterion 1 is whether total known, assumed, or extrapolated human-caused M/SI is less than 10% of the potential biological removal level (PBR) for the stock. If total known, assumed, or extrapolated human-caused M/SI is less than 10% of PBR, the analysis would be concluded, and the impact would be determined to be negligible. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. Criterion 2 is satisfied if the total known, assumed, or extrapolated human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR. If Criterion 2 is satisfied, vessels operating in individual fisheries may be permitted if management measures are being taken to address non-fisheries-related mortality and serious injury. Criterion 3 is satisfied if total fisheries-related M/SI is greater than 10% of PBR and less than

PBR, and the population is stable or increasing. Fisheries may then be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 10% of PBR will continue to be used. Criterion 5 states that if total fisheries-related M/SI are greater than PBR, permits may not be issued for that species or stock.

For its analysis NMFS used the 2014 SARs, which estimate mean or minimum annual mortality from observed commercial fisheries. For the ice seals, NMFS also reviewed previous incidental take statements (ITS) associated with ESA section 7 consultations as indicators of the levels of M/SI to these species from groundfish fisheries. ITS included in biological opinions on federal fisheries actions estimate take over a three-year period. In the case of ringed and bearded seals, NMFS used the maximum observed mortality in a given year as the starting point in generating the three-year average, as opposed to the annual average mortality. Since PBRs for the two ice seals are not currently available, NMFS considered both sources of data in the NID analysis for making a negligible impact determination of the effects of M/SI from groundfish fisheries on those species. The specific ITS comparison analysis is available for review in the draft NID that accompanies this notice.

The time frame for the data used in this analysis includes the most recent five-year period for which data are available and have been analyzed (2008–2012). The NMFS Guidelines for Assessing Marine Mammal Stocks (GAMMS) and the subsequent GAMMS II provide guidance that, when available, the most recent five-year time frame of commercial fishery incidental serious injury and mortality data is an appropriate measure of effects of fishing operations on marine mammals (Wade and Angliss 1997). A five-year time frame provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions as they may change over time. In cases where available observer data are only available outside that time frame, as is the case for state-managed fisheries, the most recent observer data are used. Where entanglement data from the NMFS Marine Mammal Health and Stranding Network are considered, the five-year time frame from 2008–2012 is used. The draft NID made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off Alaska

are having a negligible impact on the WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and Alaska stocks of ringed and bearded seals. A summary of the analysis and subsequent determination follows.

### Description of the Fisheries

A brief description follows of three Category II federally-managed fisheries in the 2016 List of Fisheries (80 FR 58427, September 29, 2015) with documented M/SI of ESA-listed species during 2008–2012 and considered in this NID analysis.

#### *BSAI Flatfish Trawl Fishery*

In 2008, Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands allocated most of the BSAI flathead sole, rock sole, and yellowfin sole to the trawl catcher processor sectors using bottom trawl gear. American Fisheries Act catcher processors and trawl catcher vessels target yellowfin sole allocated to the BSAI trawl limited access sector. Other vessel categories and gear types catch some flatfish incidentally in other directed fisheries. In 2013, 32 vessels targeted flatfish in the BSAI. Rock sole is generally targeted during the roe season, January to March. Then these vessels shift to several different targets; notably Atka mackerel, arrowtooth flounder, flathead sole, yellowfin sole, Pacific cod, and Pacific ocean perch. Vessels also can fish in the Gulf of Alaska to fish for arrowtooth, Pacific cod, flathead sole, rex sole, and rockfish. In the BSAI, most of the flathead sole, rock sole, and yellowfin sole fisheries occur on the continental shelf in the eastern Bering Sea in water shallower than 200 meters. Some effort follows the contour of the shelf to the northwest and extends as far north as Zhemchug Canyon. Very few flathead sole, rock sole, and yellowfin sole are taken in the Aleutian Islands due to the limited shallow water areas.

The SARs have documented incidental takes of marine mammals in this fishery since 1988. Observer coverage during 2008–2012 was 100%. Species taken include bearded seal, harbor porpoise and harbor seal (Bering Sea), killer whale (Alaska resident), killer whale (GOA, AI, and BS transient), northern fur seal (Eastern Pacific stock), spotted seal (Alaska stock), ringed seal (Alaska stock), ribbon seal (Alaska stock), Steller sea lion (Western U.S. stock), and Pacific walrus. Tables 3–7 in the draft NID report the observed and mean annual mortality of WNP and CNP stocks of humpback

whales, Western U.S. stock of Steller sea lions, and the Alaska stocks of bearded and ringed seals.

#### *BSAI Pollock Trawl Fishery*

In 2013, 121 vessels targeted pollock in the Bering Sea and Aleutian Islands management area. The pattern of the recent pollock fishery in the BSAI is to focus on a winter, spawning-aggregation fishery. The A season fishery is January 20 through June 10. Fishing in this season lasts about 8–10 weeks depending on the catch rates. The B season is June 10 through November 1. Fishing in the B season is typically July through October and has been conducted to a greater extent west of 170°W longitude compared to the A season fishing location in the southern Bering Sea. Directed fishing is closed for pollock in all areas from November 1 to January 20. Fishing is also closed around designated rookeries and haulouts out to 20 nm and closed within Steller sea lion foraging areas in the Bering Sea and Aleutian Islands. The BSAI pollock total allowable catch (TAC) is allocated 40% to the A season and 60% to the B season. No more than 28% of the annual directed fishing allowance for pollock can be taken inside the Sea Lion Conservation Area in the southern Bering Sea before April 1.

The SARs have recorded incidental takes of marine mammals in this fishery since 1988. Observer coverage ranged from 85–98% during 2008–2012. Species taken include Dall's porpoise (Alaska stock), harbor seal, humpback whale (CNP stock), humpback whale (WNP stock), fin whale (Northeast Pacific stock), killer whale (GOA, Aleutian Islands, and Bering Sea Transient stocks), minke whale (Alaska stock), ribbon seal (Alaska stock), spotted seal (Alaska stock), ringed seal (Alaska stock), bearded seal (Alaska stock), northern fur seal (Eastern Pacific stock), Steller sea lion (Western U.S. stock). Tables 3–7 in the draft NID report the observed and mean annual mortality of WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and the threatened Alaska stocks of bearded and ringed seals.

#### *BSAI Pacific Cod Longline Fishery*

This fishery targets Pacific cod with hook and line gear in the Bering Sea with 45 permits issued or fished. Fishing effort in this fishery occurs within the U.S. EEZ of the Eastern Bering Sea and the portion of the North Pacific Ocean adjacent to the Aleutian Islands, which is west of 170°W longitude up to the U.S.-Russian

Convention Line of 1867. Management measures for the BSAI groundfish fisheries constrain fishing both temporally and spatially. The authorized gear, fishing season, criteria for determining fishing seasons, and area restrictions by gear type are defined in the regulations implementing the BSAI fishery management plan (50 CFR part 679).

The SARs have recorded incidental takes of marine mammals in this fishery since 1988. Observer coverage ranged 51–64% from 2008–2012. Species taken include Dall's porpoise (Alaska stock), killer whale (GOA, AI, and BS Transient stocks), northern fur seal (Eastern Pacific stock), and ringed seal (Alaska stock). Table 7 in the draft NID reports the observed and mean annual mortality of the Alaska stock ringed seals.

### Negligible Impact Determinations

The draft NID made available through this notice provides a complete analysis of the criteria for determining whether commercial fisheries off Alaska are having a negligible impact on WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, and the Alaska stocks of bearded and ringed seals. A summary of the analysis and subsequent determination follows.

#### *Humpback Whale, WNP Stock*

Criterion 1 was not satisfied because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 3.0 animals (Allen and Angliss 2015). The annual average M/SI to the WNP stock of humpback whales from all human-caused sources is 2.16 animals, which is 71.87% of this stock's PBR (above the 10% PBR (0.3 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

Criterion 2 was also not satisfied, because fisheries-related mortality alone exceeds 10% of PBR. The estimate of fisheries-related mortality is 0.9, which is 30% of the PBR.

NMFS used NID Criterion 3 to evaluate impacts of commercial fisheries on the WNP stock of humpback whales because the total fisheries related M/SI is greater than 10% of the stock's PBR but less than PBR, and the stock is stable or increasing. The total of 0.9 fisheries-related M/SI per year is above 10% of PBR (0.3), and it is below the stock's PBR of 3.0 animals. The 2014 SAR reports a 6.7% annual rate of increase over the 1991–1993 estimate using the best available information, but acknowledges that number is biased high to an unknown degree with no



confidence limits. Further, there are only minor fluctuations in expected fisheries-related M/SI. Using Criterion 3 and the best available information on the population growth of the WNP stock of humpback whales and on fisheries-related M/SI as reported in the 2014 SAR, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock.

#### *Humpback Whale, CNP Stock*

Criterion 1 was not satisfied because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 82.8 animals. The annual average M/SI to the CNP stock of humpback whales from all human-caused sources is 15.89 animals, which is 19.19% of this stock's PBR (above the 10% PBR (8.28 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

CNP humpback whales do not precisely fit the criteria as written for Criterion 2 or 3. Criterion 2 is satisfied if the total known, assumed, or extrapolated human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR. Criterion 2 was not satisfied because total human-caused mortality (15.89) does not exceed PBR (82.8).

Criterion 3 is satisfied if total fishery-related M/SI is greater than 10% PBR, less than PBR, and the population is stable or increasing. The fisheries-related M/SI (3.95) for this stock is 4.77% of PBR. The fisheries-related M/SI is less than 10% of PBR and therefore less than PBR.

Although CNP humpback whales do not precisely meet the criteria for Criterion 1, 2, or 3, data support a negligible impact determination for this stock. The stock's population growth rate is increasing, increases in fisheries-related M/SI are limited, and human-caused M/SI is below PBR. The 2014 SAR reports a range of annual rates of population increase from 4.9–10%, depending on the study and specific area. These data suggest that the stock is increasing. The level of total human-caused M/SI (15.89 animals) is 19.19% of the PBR and is expected to remain below PBR for the foreseeable future. Thus, the expected total human-caused M/SI is well below the Criterion 2 M/SI threshold supporting a negligible impact determination. Further, there are only minor fluctuations in fisheries-related M/SI. The expected total fisheries-related M/SI is well below the Criterion 3 M/SI threshold supporting a negligible impact determination. NMFS determines that, based on the best

available information, M/SI incidental to commercial fishing will have a negligible impact on the stock.

#### *Steller Sea Lion, Western U.S. Stock*

Criterion 1 was not satisfied for Steller sea lion, Western U.S. stock, because the total human-related mortalities and serious injuries are not less than 10% PBR. The PBR calculated for this stock is 292 animals. The annual average M/SI to the Western U.S. stock of Steller sea lion from all human-caused sources is 244.9 animals, which is 83.87% of this stock's PBR (above the 10% PBR (29.2 animals) threshold). As a result, NMFS cannot make a negligible impact determination based on Criterion 1 and the other criteria must be examined.

Criterion 2 was also not satisfied. The total fishery-related M/SI per year is 32.7 animals per year and is 11.2% of the stock's PBR of 292 animals. Total human-caused M/SI is 83.87% of the stock's PBR of 292 animals. Because total human-caused M/SI are not greater than PBR, and fisheries-related mortality is not less than 10% PBR, NMFS cannot make a negligible impact determination based on Criterion 2.

NMFS used NID Criterion 3 to evaluate impacts of commercial fisheries on the Steller sea lion, Western U.S. stock because the total fisheries related M/SI is greater than 10% of the stock's PBR but less than PBR and the stock is stable or increasing. The total M/SI from commercial fisheries of 32.7 animals per year is 11.2% of PBR (above 10% PBR), and is below the stock's PBR of 292; there are only minor fluctuations in expected fisheries-related M/SI. The level of total human-caused M/SI is estimated to be below PBR and is expected to remain below PBR for the foreseeable future. Survey data collected since 2000 indicate that Steller sea lion decline continues in the central and western Aleutian Islands but regional populations east of Samalga Pass have increased or are stable. Overall, the stock is increasing at an annual rate of 1.67 (non-pups) and 1.45 (pups). Using the best available information on this stock of Steller sea lions and on the fisheries-related M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on this stock based on Criterion 3.

#### *Bearded Seal, Alaska Stock*

The best available information on total fisheries-related M/SI for the bearded seal stock is not consistent with thresholds required for NMFS to make a negligible impact determination for this stock based on Criterion 1. NMFS

estimates that total human-caused M/SI is likely greater than 10% PBR based on the best available information on minimum stock abundance and total human-caused M/SI. Although NMFS cannot calculate PBR for this stock with the available information, NMFS examined whether total human-caused M/SI for this stock is less than a proxy for PBR based on the formula established in the MMPA for calculating PBR. Section 3(20) of the MMPA defines PBR as "the product of the following factors: (A) The minimum population estimate of the stock ( $N_{MIN}$ ); (B) one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size ( $0.5R_{MAX}$ ); and (C) a recovery factor of between 0.1 and 1.0 ( $F_R$ )" (16 U.S.C. 1362(20)).  $PBR = N_{MIN} \times 0.5R_{MAX} \times F_R$ .

NMFS evaluated the current human-caused M/SI under the assumption that it represents a percentage of the stock's unknown PBR. When considering Criterion 1, NMFS rearranged the PBR equation to estimate whether total human-caused M/SI for this stock is likely less than 10% of a proxy PBR for the stock,  $N_{MIN} = PBR / (0.5R_{MAX} \times F_R)$ .

The total human-caused M/SI is 6,790.22 animals. If this total human related M/SI of 6,790.22 animals were equal to 10% of the stock's PBR,  $N_{MIN}$  would need to be 2,263,406 bearded seals (given a  $F_R$  of 0.5 and a recommended pinniped  $R_{MAX}$  of 12%). An  $N_{MIN}$  of 2,263,406 is far greater than the crude estimate of 155,000 animals based on regional surveys throughout the seal's Alaska range provided in the 2010 Status Review and even greater than the more recent core area estimate of 61,800. Because this population level is highly unlikely, NMFS determines that the annual average total human-caused M/SI of 6,790.22 animals is likely greater than 10% of PBR for this stock. Therefore, NMFS cannot make a negligible impact determination for this stock based on Criterion 1, and the other criteria must be examined.

NMFS used the equation in a similar manner to the process above in Criterion 1 to evaluate whether Criterion 2 was satisfied (*i.e.*, if total human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR). NMFS first evaluated whether the total human-caused mortality estimate of 6,790.22 animals is likely greater than the stock's proxy PBR. Based on the PBR equation, if the total human-caused M/SI of 6,790.22 were equal to PBR, the  $N_{MIN}$  for this stock would need to be 226,340.7. However, core area estimate for the central and eastern Bering Sea of 61,800 bearded seals and the 2010 Status Review estimate of 155,000 are

both considerably less than 226,340.7. If  $N_{\text{MIN}}$  is less than 226,340.7 animals, solving for the proxy PBR level based on the PBR equation would result in a proxy PBR level smaller than 6,790.22 animals. Therefore, NMFS estimates that total human-caused mortality is greater than a proxy PBR.

NMFS then rearranged the PBR equation to evaluate whether fisheries-related M/SI for this stock is likely equal to 10% of the stock's proxy PBR,  $N_{\text{MIN}} = \text{PBR} / (0.5R_{\text{MAX}} \times F_R)$ . The annual average fisheries-related M/SI is 2.22 animals. If the annual average fisheries-related M/SI of 2.22 were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 22.2 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 740 animals would be required to calculate the proxy PBR level of 22.2 animals.

As indicted above, NMFS reviewed other analyses in which M/SI to bearded seals from groundfish fisheries has been evaluated. NMFS issued an ITS authorizing take of bearded seals in the 2014 ESA section 7 consultation on the North Pacific groundfish fisheries. NMFS estimated that 18.0 seals would be taken in a three-year period. Using an annual average of 6.0 seals as a second estimate for annual fisheries-related M/SI, if 6.0 bearded seals were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 60 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 2,000 animals would be required to calculate the proxy PBR level of 60 animals.

Using the best information currently available, the core area population estimate for the central and eastern Bering Sea of approximately 61,800 bearded seals and the 2010 Status Review estimate of 155,000 are both orders of magnitude greater than an  $N_{\text{MIN}}$  of 740 or 2,000 animals. Because these very low population levels are highly unlikely, NMFS determines that fisheries-related M/SI is less than 10% of a proxy PBR.

NMFS used NID Criterion 2 to evaluate impacts of commercial fisheries on the bearded seal because the total human-caused M/SI are likely greater than the stock's PBR, the total fisheries-related M/SI are likely less than 10% of the PBR, and management measures are being taken to address non-fisheries-related M/SI. Non-fisheries-related M/SI as reported in the SARs include subsistence and research. The ESA provides take exemption for subsistence harvest of listed species by Alaska Natives (16 U.S.C. 1539(e)). Likewise, the MMPA provides take exemption for subsistence harvest of marine mammals by Alaska Natives (16

U.S.C. 1371(b)). Bearded seals, ringed seals, and other ice seal species are managed by the Ice Seal Committee and NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. Currently, the subsistence harvest of ice seals by Alaska Natives appears to be sustainable and does not pose a threat to the populations.

Based on NID Criterion 2 and the best available information on bearded seal population, fisheries-related M/SI, and total human-caused M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock. This determination is supported by review of M/SI incidental to U.S. commercial fishing, revealing total commercial fishery M/SI is low, and the fisheries where bycatch does occur are monitored extensively. If bycatch rates change, NMFS would have that information relatively quickly and could reevaluate the NID as necessary. Also, the non-fishery M/SI due to subsistence hunting is monitored and although the current subsistence harvest is substantial in some areas, there is little to no evidence that subsistence harvests have or are likely to pose serious risks to the Alaska stock of bearded seals.

#### *Ringed Seal, Alaska Stock*

The best available information on total fisheries-related M/SI for the ringed seal stock is not consistent with thresholds required for NMFS to make a NID for this stock based on Criterion 1. NMFS estimates that total human-caused M/SI is likely greater than PBR based on the best available information on minimum stock abundance and total human-caused M/SI. Although NMFS cannot calculate PBR for this stock with the available information, NMFS examined whether total human-caused M/SI for this stock is less than a proxy for PBR based on the formula established in the MMPA for calculating PBR. As described in the Criterion 1 analysis for the bearded seal, NMFS rearranged the PBR equation to estimate whether total human-caused M/SI for this stock is likely less than 10% of the stock's PBR.

NMFS estimates that total human-caused M/SI for ringed seals is 9,571.32 animals. If the total human related M/SI of 9,571.32 animals were equal to 10% of the stock's proxy PBR, the proxy PBR would have to be 95,713.2 and  $N_{\text{MIN}}$  for this population would need to be 3,190,440 ringed seals (given a  $F_R$  of 0.5 and a recommended pinniped  $R_{\text{MAX}}$  of 12%). Because an  $N_{\text{MIN}}$  of 3,190,440 ringed seals is far greater than the best

available estimate of 170,000 ringed seals in the U.S. EEZ of the Bering Sea in late April (Conn et al. 2013), NMFS determines that the annual average M/SI to the Alaska stock of ringed seal from all human-caused sources of mortality (9,571.32) is likely greater than 10% of a proxy PBR for this stock. Therefore, NMFS cannot make a negligible impact determination for this stock based on Criterion 1, and the other criteria must be examined.

NMFS used the equation in a similar manner to the process above in Criterion 1 to evaluate whether Criterion 2 was satisfied (*i.e.*, if total human-caused M/SI is greater than PBR, but fisheries-related M/SI is less than 10% of PBR). NMFS first evaluated whether the total human-caused mortality estimate of animals is likely greater than the stock's proxy PBR. Based on the PBR equation, if the total human-caused M/SI of 9,571.32 were equal to a proxy PBR, the  $N_{\text{MIN}}$  for this stock would need to be 319,044. However, the best available population estimate of 170,000 ringed seals is considerably less than 319,044 animals. If  $N_{\text{MIN}}$  is less than 319,044, solving for a proxy PBR based on the PBR equation would result in a proxy PBR smaller than 9,571.32 animals. Therefore, NMFS estimates that total human-caused M/SI is greater than a proxy PBR.

NMFS then rearranged the PBR equation to examine whether fisheries-related M/SI for this stock is likely equal to 10% of the stock's proxy PBR,  $N_{\text{MIN}} = \text{PBR} / (0.5R_{\text{MAX}} \times F_R)$ . The annual average fisheries-related M/SI is 4.12 animals. If the annual average fisheries-related M/SI of 4.12 were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 41.2 animals. Based on the rearranged PBR equation above, an  $N_{\text{MIN}}$  of 1,373 animals would be required to calculate the proxy PBR level of 41.2 animals.

As with the bearded seals, NMFS also reviewed other analyses in which M/SI to ringed seals from groundfish fisheries has been evaluated. NMFS issued an incidental take statement authorizing take of ringed seals in the 2014 ESA section 7 consultation on the North Pacific groundfish fisheries. NMFS estimated that 36.0 seals would be taken in a three-year period. Using an annual average of 12.0 seals as a second estimate for annual fisheries-related M/SI, if 12.0 seals were equal to 10% of the stock's proxy PBR, the proxy PBR level would be 120 animals. Based on the PBR equation above, an  $N_{\text{MIN}}$  of 4,000 animals would be required to calculate the proxy PBR level of 120 animals.

Preliminary analysis of the U.S. surveys, which included only a small

subset of the 2012 data, produced an estimate of 170,000 ringed seals in the U.S. EEZ of the Bering Sea in late April. This estimate is orders of magnitude greater than an  $N_{\text{MIN}}$  of 1,373 animals or 4,000 animals. Because these very low population levels are highly unlikely, NMFS determined that fisheries-related M/SI is less than 10% of PBR.

Criterion 2 states that if the total human-caused M/SI are greater than PBR and fisheries related mortality is less than 10% of PBR, "individual fisheries may be permitted if management measures are being taken to address non-fisheries-related M/SI." Non-fisheries-related M/SI as reported in the SARs include subsistence and gunshots. The ESA provides take exemption for subsistence harvest of listed species by Alaska Natives (16 U.S.C. 1539(e)). Likewise, the MMPA provides take exemption for subsistence harvest of marine mammals by Alaska Natives (16 U.S.C. 1371(b)). Bearded seals, ringed seals, and other ice seal species are co-managed by the Ice Seal Committee and NMFS by monitoring subsistence harvest and cooperating on needed research and education programs pertaining to ice seals. Currently, the subsistence harvest of ice seals by Alaska Natives appears to be sustainable and does not pose a threat to the populations.

Based on NID Criterion 2 and the best available information on ringed seal population, fisheries-related M/SI, and total human-caused M/SI, NMFS determines that M/SI incidental to commercial fishing will have a negligible impact on the stock. This determination is supported by review of M/SI incidental to U.S. commercial fishing, revealing total commercial fishery M/SI is low, and the fisheries where bycatch does occur are monitored extensively. If bycatch rates change, NMFS would have that information relatively quickly and could reevaluate the NID as necessary. Also, the non-fishery M/SI due to subsistence hunting is monitored and although the current subsistence harvest is substantial in some areas, there is little to no evidence that subsistence harvests have or are likely to pose serious risks to the Alaska stock of ringed seals.

### Conclusions for Proposed Permit

In conclusion, based on the negligible impact criteria outlined in 1999 (64 FR 28800), the 2014 Alaska SARs, the best scientific information and data available, NMFS has determined that for a period of up to three years, M/SI incidental to the BSAI pollock trawl and BSAI flatfish trawl fisheries will have a negligible impact on WNP and CNP

stocks of humpback whales, Western U.S. stock of Steller sea lions, and Alaska stocks of bearded and ringed seals. Additionally, NMFS has determined that for a period of up to three years, M/SI incidental to the BSAI Pacific cod longline fishery will have a negligible impact on the Alaska stock of ringed seals.

The impacts on the human environment of continuing and modifying the Bering sea trawl fisheries, including the taking of threatened and endangered species of marine mammals, were analyzed in the Biological Opinion for Authorization of Groundfish Fisheries under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Island Management Area; in the Alaska Groundfish Harvest Specifications Supplemental Information Report; the ESA section 7 Biological Opinion that considered effects from the groundfish fisheries on bearded seals; in the ESA section 7 Biological Opinion on Oil and Gas Leasing and Exploration Activities in the U.S. Beaufort and Chukchi Seas; and in the Biological Opinion on the Authorization of the Alaska Groundfish Fisheries Under the Proposed Revised Steller Sea Lion Protection Measures.

Because this permit would not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

### Recovery Plans

Section 4(f) of the ESA requires that NMFS develop recovery plans for ESA-listed species, unless such a plan will not promote the conservation of the species. Recovery Plans for humpback whales and Steller sea lions have been completed (see **ADDRESSES**). NMFS is developing recovery plans for the Alaska stocks of both bearded and ringed seals.

### Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. MMPA registration for

participants in the BSAI trawl and longline fisheries has been integrated with the Federal groundfish limited entry permit process of the Federal Vessel Monitoring System.

### Monitoring Program

BSAI trawl and longline fisheries considered for authorization under this permit are monitored by NMFS-certified observers in the North Pacific Groundfish Observer Program. The rate of observer coverage is high (ranging from 50–100%) and is recorded by fishery and by year in the draft NID analysis. Accordingly, as required by MMPA section 118, a monitoring program is in place for the BSAI Pollock trawl, flatfish trawl, and Pacific cod longline fisheries.

### Take Reduction Plans

MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. With the exception of the bearded seal, the stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA (MMPA section 3(19)(C)). The three fisheries considered for this permit are Category II fisheries. Therefore, the four listed stocks and three fisheries meet the triggers for convening a take reduction team (TRT) and developing a TRP.

The obligations to develop and implement a TRP are further subject to the availability of funding. MMPA section 118(f)(3) contains specific priorities for developing TRPs. At this time, NMFS has insufficient funding available to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA sections 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the WNP and CNP stocks of humpback whale, the Western U.S. stock of Steller sea lions, the Alaska stock of bearded seals, and the Alaska stock of ringed seals as lower priorities compared to other marine mammal stocks and fisheries for establishing TRTs, based on M/SI levels incidental to those fisheries and population levels and trends. Accordingly, given these factors and NMFS' priorities, developing TRPs for these five stocks in these three fisheries will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRTs.

**Solicitation for Public Comments**

NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit. As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: BSAI pollock trawl, BSAI flatfish trawl, and BSAI Pacific cod longline. Accordingly, NMFS proposes to issue a

permit to participants in the BSAI pollock and flatfish trawl Category II fisheries for the taking of individuals from the WNP and CNP stocks of humpback whales, Western U.S. stock of Steller sea lions, Alaska stock of bearded seals, and the Alaska stock of ringed seals (the that occurs within the U.S. Exclusive Economic Zone (EEZ) of the Beaufort, Chukchi, and Bering Seas) incidental to the fisheries' operations, and proposes to issue a permit to

participants in the BSAI Pacific cod longline Category II fisheries for the taking of individuals from the Alaska stock of ringed seals incidental to the fisheries' operations (Table 1). As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any mortality or serious injury must be reported to NMFS.

**TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE SPECIFIC THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS**

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline .....	I	False killer whale, MHI IFKW stock Humpback whale, CNP stock Sperm whale, Hawaii stock
CA thresher shark/swordfish drift gillnet (>14 in mesh) .....	I	Humpback whale, CA/OR/WA stock Sperm whale, CA/OR/WA stock
HI shallow-set (swordfish target) longline/set line .....	II	Humpback whale, CNP stock
AK Bering Sea/Aleutian Islands flatfish trawl .....	II	Humpback whale, CNP stock Humpback whale, WNP stock Steller sea lion, Western U.S. stock Bearded seal, Alaska stock Ringed seal, Alaska stock
AK Bering Sea/Aleutian Island pollock trawl .....	II	Humpback whale, CNP stock Humpback whale, WNP stock Steller sea lion, Western U.S. stock Bearded seal, Alaska stock Ringed seal, Alaska stock
AK Bering Sea/Aleutian Islands Pacific cod longline .....	II	Ringed seal, Alaska stock
WA/OR/CA sablefish pot .....	II	Humpback whale, CA/OR/WA stock

Dated: December 11, 2015.

**Donna S. Wieting,**

Director, Office of Protected Resources, National Marine Fisheries Service.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE309**

**Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ecosystem Workgroup (EWG) will host a series of five webinars in January and February 2016, which are open to the public. Each webinar will begin at 1:30 p.m.

**DATES:** The webinars will be held January 12, January 14, January 26, January 28, and February 2, 2016.

**ADDRESSES:** The following login instructions will work for any of the webinars in this series.

1. Join the meeting by visiting this link: <http://www.gotomeeting.com/online/webinar/join-webinar>.

2. Enter the Webinar ID: 121-225-731.

3. Please enter your name and email address (required).

Once you have joined the webinar, choose either your computer's audio or select "Use Telephone." If you do not select "Use Telephone" you will be connected to audio using your computer's microphone and speakers (VoIP).

If you do not have a headset and speakers, you may use your telephone for the audio portion of the meeting by dialing this TOLL number 1-(702) 489-0007 (not a toll-free number), then enter your phone audio access code 471-159-571, then enter your audio phone pin (shown after joining the webinar).

A public listening station will also be provided at the Council office.

*Council address:* Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kit Dahl, Pacific Council; phone: (503) 820-2422.

**SUPPLEMENTARY INFORMATION:** The webinars will cover the following topics:

- Tuesday, January 12: Contents of the Annual California Current Ecosystem Status Report; physical oceanography indicators

- Thursday, January 14: Biological indicators

- Tuesday, January 26: Human dimensions indicators

- Thursday, January 28: Habitat indicators

- Tuesday, February 2: Risk assessments and application of indicators to decision making

Each webinar will begin with a short presentation by members of NOAA's California Current Integrated Ecosystem Assessment Team, followed by a discussion facilitated by the EWG. This webinar series is part of the Coordinated Ecosystem Indicator Review Initiative intended to address goals and objectives from the Council's Fishery Ecosystem Plan. Through these webinars, the EWG seeks input from Council advisory bodies and the public on the indicators presented in the Annual Report and how they can effectively support the Council's goal of integrating ecosystem considerations into fishery management decisions.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820-2425 at least 5 days prior to the meeting date.

Dated: December 14, 2015.

#### Tracey L. Thompson,

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

[FR Doc. 2015-31735 Filed 12-16-15; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XE350

#### Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of the second SEDAR 45 post-workshop webinar for Gulf of Mexico Vermilion Snapper.

**SUMMARY:** The SEDAR 45 assessment of the Gulf of Mexico Vermilion Snapper will consist of one in-person workshop and a series of webinars. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The second SEDAR 45 post-workshop webinar will be held from 1 p.m. to 3 p.m. January 12, 2016.

**ADDRESSES:** *Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: [Julie.neer@safmc.net](mailto:Julie.neer@safmc.net).

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions

have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data/Assessment Workshop, and (2) a series of webinars. The product of the Data/Assessment Workshop is a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from the In-person Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office

(see **ADDRESSES**) at least 10 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: December 14, 2015.

#### Tracey L. Thompson,

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

[FR Doc. 2015-31736 Filed 12-16-15; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Indirect Cost Rates for the Damage Assessment, Remediation, and Restoration Program for Fiscal Year 2014

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The National Oceanic and Atmospheric Administration's (NOAA's) Damage Assessment, Remediation, and Restoration Program (DARRP) is announcing new indirect cost rates on the recovery of indirect costs for its component organizations involved in natural resource damage assessment and restoration activities for fiscal year (FY) 2014. The indirect cost rates for this fiscal year and date of implementation are provided in this notice. More information on these rates and the DARRP policy can be found at the DARRP Web site at [www.darrp.noaa.gov](http://www.darrp.noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information, contact LaTonya Burgess at 301-713-4248, ext. 211, by fax at 301-713-4389, or email at [LaTonya.Burgess@noaa.gov](mailto:LaTonya.Burgess@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The mission of the DARRP is to restore natural resource injuries caused by releases of hazardous substances or oil under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*) and the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and to support restoration of physical injuries to National Marine Sanctuary resources under the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The DARRP consists of three component organizations: the Office of Response and Restoration (ORR) within the National Ocean Service; the Restoration Center within the National Marine

Fisheries Service; and the Office of the General Counsel Natural Resources Section (GCNRS). The DARRP conducts Natural Resource Damage Assessments (NRDAs) as a basis for recovering damages from responsible parties, and uses the funds recovered to restore injured natural resources.

Consistent with federal accounting requirements, the DARRP is required to account for and report the full costs of its programs and activities. Further, the DARRP is authorized by law to recover reasonable costs of damage assessment and restoration activities under CERCLA, OPA, and the NMSA. Within the constraints of these legal provisions and their regulatory applications, the DARRP has the discretion to develop indirect cost rates for its component organizations and formulate policies on the recovery of indirect cost rates subject to its requirements.

**The DARRP's Indirect Cost Effort**

In December 1998, the DARRP hired the public accounting firm Rubino & McGeehin, Chartered (R&M) to: Evaluate the DARRP cost accounting system and allocation practices; recommend the appropriate indirect cost allocation methodology; and determine the indirect cost rates for the three organizations that comprise the DARRP. A **Federal Register** notice on R&M's effort, their assessment of the DARRP's cost accounting system and practice, and their determination regarding the most appropriate indirect cost methodology and rates for FYs 1993 through 1999 was published on December 7, 2000 (65 FR 76611).

R&M continued its assessment of DARRP's indirect cost rate system and structure for FYs 2000 and 2001. A second federal notice specifying the DARRP indirect rates for FYs 2000 and 2001 was published on December 2, 2002 (67 FR 71537).

In October 2002, DARRP hired the accounting firm of Cotton and Company LLP (Cotton) to review and certify DARRP costs incurred on cases for purposes of cost recovery and to develop indirect rates for FY 2002 and subsequent years. As in the prior years, Cotton concluded that the cost accounting system and allocation practices of the DARRP component organizations are consistent with federal accounting requirements. Consistent with R&M's previous analyses, Cotton also determined that the most appropriate indirect allocation method continues to be the Direct Labor Cost Base for all three DARRP component organizations. The Direct Labor Cost Base is computed by allocating total indirect cost over the sum of direct labor

dollars, plus the application of NOAA's leave surcharge and benefits rates to direct labor. Direct labor costs for contractors from ERT, Inc. (ERT), Freestone Environmental Services, Inc. (Freestone), and Genwest Systems, Inc. (Genwest) were included in the direct labor base because Cotton determined that these costs have the same relationship to the indirect cost pool as NOAA direct labor costs. ERT, Freestone, and Genwest provided on-site support to the DARRP in the areas of injury assessment, natural resource economics, restoration planning and implementation, and policy analysis. Subsequent federal notices have been published in the **Federal Register** as follows:

- FY 2002, published on October 6, 2003 (68 FR 57672)
- FY 2003, published on May 20, 2005 (70 FR 29280)
- FY 2004, published on March 16, 2006 (71 Fed Reg. 13356)
- FY 2005, published on February 9, 2007 (72 FR 6221)
- FY 2006, published on June 3, 2008 (73 FR 31679)
- FY 2007 and FY 2008, published on November 16, 2009 (74 FR 58948)
- FY 2009 and FY 2010, published on October 20, 2011 (76 FR 65182)
- FY 2011, published on September 17, 2012 (77 FR 57074)
- FY 2012, published on August 29, 2013 (78 FR 53425)
- FY 2013, published on October 14, 2014 (79 FR 61617)

Cotton's recent reports on these indirect rates can be found on the DARRP Web site at [www.darrp.noaa.gov](http://www.darrp.noaa.gov).

Cotton reaffirmed that the Direct Labor Cost Base is the most appropriate indirect allocation method for the development of the FY 2014 indirect cost rates.

**The DARRP's Indirect Cost Rates and Policies**

The DARRP will apply the indirect cost rates for FY 2014 as recommended by Cotton for each of the DARRP component organizations as provided in the following table:

DARRP component organization	FY 2014 indirect rate (%)
Office of Response and Restoration (ORR) .....	113.54
Restoration Center (RC) .....	67.50
General Counsel Natural Resources Section (GCNRS) .....	29.37

These rates are based on the Direct Labor Cost Base allocation methodology.

The FY 2014 rates will be applied to all damage assessment and restoration case costs incurred between October 1, 2013 and September 30, 2014. DARRP will use the FY 2014 indirect cost rates for future fiscal years, beginning with FY 2015, until subsequent year-specific rates can be developed.

For cases that have settled and for cost claims paid prior to the effective date of the fiscal year in question, the DARRP will not re-open any resolved matters for the purpose of applying the revised rates in this policy for these fiscal years. For cases not settled and cost claims not paid prior to the effective date of the fiscal year in question, costs will be recalculated using the revised rates in this policy for these fiscal years. Where a responsible party has agreed to pay costs using previous year's indirect rates, but has not yet made the payment because the settlement documents are not finalized, the costs will not be recalculated.

**David Westerholm,**  
 Director, Office of Response and Restoration.  
 [FR Doc. 2015-31728 Filed 12-16-15; 8:45 am]  
**BILLING CODE 3510-JE-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**  
**RIN 0648-XE232**

**Endangered and Threatened Species; Recovery Plans**

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

**ACTION:** Notice of availability; extension of public comment period.

**SUMMARY:** We, NMFS, announce the extension of the comment period for the *Proposed Endangered Species Act (ESA) Recovery Plan for Snake River Fall Chinook Salmon* (Proposed Plan) published on November 2, 2015. The Proposed Plan addresses the Snake River Fall Chinook Salmon (*Oncorhynchus tshawytscha*) evolutionarily significant unit (ESU), which is listed as threatened under the ESA. The geographic area covered by the Proposed Plan is the lower and middle mainstem Snake River and tributaries as well as the mainstem Columbia River below its confluence with the Snake River. As required under the ESA, the Proposed Plan contains objective, measurable delisting criteria, site-specific management actions necessary to achieve the Proposed

Plan's goals, and estimates of the time and costs required to implement recovery actions. We are soliciting review and comment from the public and all interested parties on the Proposed Plan. The close of the comment period is being extended—from January 4, 2016, to February 5, 2016—to provide additional opportunity for public comment.

**DATES:** The deadline for receipt of comments on the Proposed Recovery Plan published on November 2, 2015 (80 FR 67386), is extended to close of business on February 5, 2016.

**ADDRESSES:** You may submit comments on the Proposed Recovery Plan by the following methods:

- **Electronic Submissions:** Submit all electronic public comments via: [nmfs.wcr.snakeriverfallchinookplan@noaa.gov](mailto:nmfs.wcr.snakeriverfallchinookplan@noaa.gov). Please include "Comments on Snake River Fall Chinook Salmon Recovery Plan" in the subject line of the email.

- **Facsimile:** (503) 230-5441.

- **Mail:** Patricia Dornbusch, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

**Instructions:** Comments must be submitted by one of the above methods to ensure that they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Proposed Plan are available at [http://www.westcoast.fisheries.noaa.gov/protected\\_species/salmon\\_steelhead/recovery\\_planning\\_and\\_implementation/snake\\_river/current\\_snake\\_river\\_recovery\\_plan\\_documents.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/snake_river/current_snake_river_recovery_plan_documents.html).

Persons wishing to obtain an electronic copy on CD ROM of the Proposed Plan may do so by calling Bonnie Hossack at (503) 736-4741 or by emailing a request to [bonnie.hossack@noaa.gov](mailto:bonnie.hossack@noaa.gov) with the subject line "CD ROM Request for Snake River Fall Chinook Salmon Recovery Plan."

**FOR FURTHER INFORMATION CONTACT:** Patricia Dornbusch, NMFS Snake River Fall Chinook Salmon Recovery Coordinator, at (503) 230-5430, or [patty.dornbusch@noaa.gov](mailto:patty.dornbusch@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Extension of Comment Period**

On November 2, 2015 (80 FR 67386) we (NMFS) published in the **Federal Register** a request for public comment

on the *Proposed Endangered Species Act Recovery Plan for Snake River Fall Chinook Salmon*. The public comment period for this action is set to end on January 4, 2016. The comment period is being extended through February 5, 2016, to provide additional opportunity for public comment.

**Background**

We are responsible for developing and implementing recovery plans for Pacific salmon and steelhead listed under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*). The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

We believe it is essential to have local support of recovery plans by those whose activities directly affect the listed species and whose continued commitment and leadership will be needed to implement the necessary recovery actions. We therefore support and participate in collaborative efforts to develop recovery plans that involve state, tribal, and federal entities, local communities, and other stakeholders. For this Proposed Plan for threatened Snake River Fall Chinook Salmon, we worked collaboratively with state, tribal, and federal partners to produce a recovery plan that satisfies the ESA requirements. We have determined that this *Proposed ESA Recovery Plan for Snake River Fall Chinook Salmon* meets the statutory requirements for a recovery plan and we are proposing to adopt it as the ESA recovery plan for this threatened species. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a recovery plan. This notice solicits comments on this Proposed Plan.

**Development of the Proposed Plan**

For the purpose of recovery planning for the ESA-listed species of Pacific salmon and steelhead in Idaho, Oregon, and Washington, NMFS designated five geographically based "recovery domains." The Snake River Fall Chinook Salmon ESU spawning range is in the Interior Columbia domain. For each domain, NMFS appointed a team of scientists, nominated for their geographic and species expertise, to provide a solid scientific foundation for recovery plans. The Interior Columbia Technical Recovery Team included biologists from NMFS, other federal agencies, states, tribes, and academic institutions.

A primary task for the Interior Columbia Technical Recovery Team was to recommend criteria for determining

when each component population within an ESU or distinct population segment (DPS) should be considered viable (*i.e.*, when they are have a low risk of extinction over a 100-year period) and when ESUs or DPSs have a risk of extinction consistent with no longer needing the protections of the ESA. All Technical Recovery Teams used the same biological principles for developing their recommendations; these principles are described in the NOAA technical memorandum *Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units* (McElhany *et al.*, 2000). Viable salmonid populations (VSP) are defined in terms of four parameters: abundance, productivity or growth rate, spatial structure, and diversity.

We also collaborated with state, tribal, and federal biologists and resource managers to provide technical information used to develop the Proposed Plan. In addition, NMFS established a multi-state (Idaho, Oregon, and Washington), tribal, and federal partners' regional forum called the Snake River Coordination Group that addresses the four ESA-listed Snake River salmon and steelhead species. They met twice a year to be briefed and provide technical and policy information to NMFS. We presented regular updates on the status of this Proposed Plan to the Snake River Coordination Group and posted draft chapters on NMFS' West Coast Region Snake River recovery planning Web page. We also made full drafts of the Proposed Plan available for review to the state, tribal, and Federal entities with which we collaborated to develop the plan.

In addition to the Proposed Plan, we developed and incorporated the *Module for the Ocean Environment* (Fresh *et al.* 2014) as Appendix D to address Snake River Fall Chinook Salmon recovery needs in the Columbia River estuary, plume, and Pacific Ocean. To address recovery needs related to the Columbia River Hydropower System, we developed and incorporated the *Supplemental Recovery Plan Module for Snake River Salmon and Steelhead Mainstem Columbia River Hydropower Projects* (NMFS 2014b) as Appendix E of this Proposed Plan. To address recovery needs related to the Lower Columbia River mainstem and estuary, we incorporated the *Columbia River Estuary ESA Recovery Plan Module for Salmon and Steelhead* (NMFS 2011a) as Appendix F. To address recovery needs for fishery harvest management in the mainstem Snake and Columbia Rivers, Columbia River estuary, and ocean, we developed and incorporated the *Snake*

*River Harvest Module* (NMFS 2014a) as Appendix G.

### The Public Draft Recovery Plan

The Proposed Plan contains biological background and contextual information that includes description of the ESU, the planning area, and the context of the plan's development. It presents relevant information on ESU structure, guidelines for assessing salmonid population and ESU status, and a brief summary of Interior Columbia Technical Recovery Team products on population structure and species status. It also presents NMFS' proposed biological viability criteria and threats criteria for delisting.

As described in Chapter 2 of the Proposed Plan, the historical Snake River fall Chinook salmon ESU consisted of two populations. The population above the Hells Canyon Dam Complex is extirpated, leaving only one extant population—the Lower Mainstem Snake River population. An ESU with a single population would be at greater extinction risk than an ESU with multiple populations. This is a key consideration in the proposed Snake River fall Chinook salmon biological viability criteria, since there is more than one possible scenario for achieving the criteria. The proposed viability criteria include two possible scenarios and a placeholder for developing additional scenarios that would be consistent with delisting. Scenario A focuses on achieving ESA delisting with two populations (*i.e.*, the extant Lower Mainstem Snake River population and a recovered Middle Snake population above the Hells Canyon Complex). Scenario B illustrates a single-population pathway to delisting. The placeholder scenario describes a framework under which additional single-population scenarios could be developed that would involve developing natural production emphasis areas that would have a low percentage of hatchery-origin spawners. NMFS is interested in comments on how such additional scenarios might be developed, potentially for inclusion in the final recovery plan.

The Proposed Plan also describes specific information on the following: current status of Snake River Fall Chinook Salmon; limiting factors and threats throughout the life cycle that have contributed to the species decline; recovery strategies and actions addressing these limiting factors and threats; and a proposed research, monitoring, and evaluation program for adaptive management. For recovery actions, the Proposed Plan includes a table summarizing each proposed

action, life stage affected, estimated costs, timing, and potential implementing entities. It also describes how implementation, prioritization of actions, and adaptive management will proceed. The Proposed Plan also summarizes time and costs (Chapter 9) required to implement recovery actions. In some cases, costs of implementing actions could not be determined at this time and NMFS is interested in additional information regarding scale, scope, and costs of these actions. We are also particularly interested in comments on establishing appropriate forums to coordinate implementation of the recovery plan.

### Public Comments Solicited

We are soliciting written comments on the Proposed Plan. All substantive comments received by the date specified above will be considered and incorporated, as appropriate, prior to our decision whether to approve the plan. While we invite comments on all aspects of the Proposed Plan, we are particularly interested in comments on developing specific scenarios to address the placeholder recovery scenario, comments on the cost of recovery actions for which we have not yet determined implementation costs, and comments on establishing an appropriate implementation forum for the plan. We will issue a news release announcing the adoption and availability of the final plan. We will post on the NMFS West Coast Region Web site ([www.wcr.noaa.gov](http://www.wcr.noaa.gov)) a summary of, and responses to, the comments received, along with electronic copies of the final plan and its appendices.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 14, 2015.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2015–31748 Filed 12–16–15; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 80 FR 76948, Dec. 11, 2015.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Friday, December 18, 2015.

**CHANGES IN THE MEETING:** The time of the meeting has changed. This meeting

will now be held at 9:30 a.m. on Friday, December 18, 2015.

**CONTACT PERSON FOR MORE INFORMATION:** Christopher Kirkpatrick, 202–418–5964.

**Natise Allen,**

*Executive Assistant.*

[FR Doc. 2015–31877 Filed 12–15–15; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID USA–2015–HQ–0049]

### Proposed Collection; Comment Request

**AGENCY:** Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Administrative Assistant to the Secretary of the Army 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 February 16, 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 the Army, U.S. Army Corps of Engineers, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center, 7400 Leake Avenue, New Orleans, LA 70118, ATTN: CEIWR-NDC-C (Mickey LaMaca), or call Department of the Army Reports Clearance Officer at (703) 428-6440.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Description of Vessels, Description of Operations; ENG Forms 3931 and 3932; OMB Control Number 0710-0009.

*Needs and Uses:* The Corps of Engineers uses ENG Forms 3931 and 3932 as the basic instruments to collect vessel and operating descriptions for use in waterborne commerce statistics. These data constitute the sole source for domestic vessel characteristics and operating descriptions for domestic vessels operating on U.S. navigable waterways. These data are also critical to the enforcement of the "Harbor Maintenance Tax" authorized under section 1402 of Public Law 99-662.

*Affected Public:* Business or other for profit.

*Annual Burden Hours:* 2,039.

*Number of Respondents:* 3,058.

*Responses per Respondent:* 1.

*Annual Responses:* 3,058.

*Average Burden per Response:* 40 minutes.

*Frequency:* Annually.

The information collection is the basic data from which the Corps of Engineers compiles and publishes waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and O&M of existing projects. It is also used by other federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics.

Dated: December 14, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2015-31699 Filed 12-16-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting**

**AGENCY:** Defense Acquisition University, DoD.

**ACTION:** Meeting notice.

**SUMMARY:** The Department of Defense is publishing this notice to announce a Federal Advisory Committee meeting of the Defense Acquisition University Board of Visitors. This meeting will be open to the public.

**DATES:** Wednesday, January 20, 2016, from 9:00 a.m. to 4:30 p.m.

**ADDRESSES:** DAU West, Bldg 82, Classroom 1, 32444 Echo Lane, San Diego, CA 92147.

**FOR FURTHER INFORMATION CONTACT:**

Caren Hergenroeder, Protocol Director, DAU. Phone: 703-805-5134. Fax: 703-805-5940. Email: [caren.hergenroeder@dau.mil](mailto:caren.hergenroeder@dau.mil).

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

*Purpose of the Meeting:* The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest.

**Agenda**

- 9:00 a.m. Welcome and Announcements
- 9:10 a.m. DAU Update
- 9:30 a.m. West Region Overview
- 10:00 a.m. Discussion with West Region Customers
- 12:00 p.m. Lunch—Discussion of "Becoming a Chaosmeister"
- 1:30 p.m. ACQ 315 Understanding Industry
- 3:00 p.m. Faculty Performance Development Program
- 4:30 p.m. Adjourn

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102-3.140 through 102-3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating

will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Caren Hergenroeder at 703-805-5134. Written Statements: Pursuant to 41 CFR 102-3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Acquisition University Board of Visitors about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Acquisition University Board of Visitors.

All written statements shall be submitted to the Designated Federal Officer for the Defense Acquisition University Board of Visitors, and this individual will ensure that the written statements are provided to the membership for their consideration.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Acquisition University Board of Visitors until its next meeting. Committee's Designated Federal Officer or Point of Contact: Ms. Christen Goulding, 703-805-5412, [christen.goulding@dau.mil](mailto:christen.goulding@dau.mil).

Dated: December 14, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2015-31711 Filed 12-16-15; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF ENERGY**

**Nuclear Energy Advisory Committee**

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Notice of Renewal.

**SUMMARY:** Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, (Pub. L. 92-463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102-3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee (NEAC) will be renewed for a two-year period beginning on December 11, 2015.

The Committee will provide advice to the Department of Energy's Office of Nuclear Energy on complex science and

technical issues that arise in the planning, managing, and implementation of DOE's nuclear energy program.

Additionally, the renewal of the NEAC has been determined to be essential to conduct business of the Department of Energy and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Robert Rova, Designated Federal Officer at (301) 903-9096.

Issued at Washington, DC, on December 11, 2015.

**Amy Bodette,**  
*Committee Management Officer.*

[FR Doc. 2015-31785 Filed 12-16-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Biological and Environmental Research Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of Renewal.

**SUMMARY:** Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, (Pub. L. 92-463) and in accordance with title 41 of the Code of Federal Regulations, section 102-3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee's (BERAC) charter will be renewed for a two-year period.

The Committee provides advice and recommendations to the Director, Office of Science on the biological and environmental research programs.

Additionally, the renewal of the BERAC has been determined to be essential to conduct business of the Department of Energy's mission and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sharlene C. Weatherwax at (301) 903-3251.

Issued in Washington, DC, on December 11, 2015.

**Amy Bodette,**  
*Committee Management Officer.*

[FR Doc. 2015-31783 Filed 12-16-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Fusion Energy Sciences Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** January 13, 2016, 8:30 a.m. to 6:00 p.m., January 14, 2016, 8:30 a.m. to 12:00 noon.

**ADDRESSES:** Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585-1290; Telephone: (301) 903-4941.

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Meeting:* To discuss the series of technical workshops held in 2015. These workshops were initiated by the Office of Fusion Energy Sciences (FES) to seek community engagement and input for future program planning activities.

#### Tentative Agenda Items

- Discussion of the workshops on Integrated Simulations for Magnetic Fusion Energy Sciences, Plasma Transients, Plasma-Materials Interactions, and Plasma Science Frontiers.
- Perspective on Science and Energy at DOE.
- Current Status and Future Plans for ITER.
- FES Perspective.
- Public Comment.
- Adjourn.

**Note:** Remote attendance of the FESAC meeting will be possible via Zoom. Instructions can be found on FESAC Web site at <http://science.energy.gov/fes/fesac/meetings/> or by contacting Dr. Samuel J. Barish by email at [sam.barish@science.doe.gov](mailto:sam.barish@science.doe.gov) or by phone (301) 903-2917.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Ed Synakowski at (301) 903-8584 (fax) or [ed.synakowski@science.doe.gov](mailto:ed.synakowski@science.doe.gov) (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1G-033, Forrestal Building; 1000 Independence Avenue SW., Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays; and on the Fusion Energy Sciences Advisory Committee Web site at <http://science.energy.gov/fes/fesac/>.

Issued at Washington, DC, on December 11, 2015.

**LaTanya R. Butler,**  
*Deputy Committee Management Officer.*

[FR Doc. 2015-31792 Filed 12-16-15; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, January 7, 2016 6:00 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897-3737, [Greg.Simonton@lex.doe.gov](mailto:Greg.Simonton@lex.doe.gov).

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management and related activities.

#### Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of November Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments From the Board
- Adjourn

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.portsab.energy.gov/>.

Issued at Washington, DC, on December 9, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015-31784 Filed 12-16-15; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### State Energy Advisory Board (STEAB)

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

**ACTION:** Notice of Open Teleconference.

**SUMMARY:** This notice announces an open teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, January 21, 2016 from 3:30 p.m. to 4:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer at the address or phone number listed below.

**FOR FURTHER INFORMATION CONTACT:** Michael Li, Policy Advisor, Office of Energy Efficiency and Renewable Energy, US Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number 202-287-5718, and email: [michael.li@ee.doe.gov](mailto:michael.li@ee.doe.gov).

#### SUPPLEMENTARY INFORMATION:

*Purpose of the Board:* To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

*Tentative Agenda:* Receive STEAB Task Force updates on action items and revised objectives for FY 2016; discuss follow-up opportunities and engagement with EERE and other DOE staff as needed to keep Task Force work moving forward; continue engagement with DOE, EERE and EPSA staff regarding energy efficiency and renewable energy projects and initiatives; and receive updates on member activities within their states. Discuss plans for next live STEAB meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Michael Li at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a

fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: <http://www.energy.gov/eere/steab/state-energy-advisory-board>.

Issued at Washington, DC, on December 11, 2015.

**LaTanya R. Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2015-31791 Filed 12-16-15; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC16-50-000.  
*Applicants:* The Narragansett Electric Company.

*Description:* Application for Authorization Pursuant to Section 203 of the Federal Power Act to Acquire Interconnection Facilities, Requests for Confidential Treatment and Certain Waivers of The Narragansett Electric Company.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211-5179.

*Comments Due:* 5 p.m. ET 1/4/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER15-1524-001.

*Applicants:* PacifiCorp.

*Description:* Compliance filing: OATT Formula Rate Schedule 10 Loss Factor Compliance Filing to be effective 12/1/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211-5151.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16-182-001.

*Applicants:* Cameron Ridge II, LLC.

*Description:* Tariff Amendment: Amendment to 1 to be effective 12/31/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211-5150.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16-507-000.

*Applicants:* PacifiCorp.

*Description:* Section 205(d) Rate Filing: Idaho Power JOA Concurrence to be effective 10/30/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211-5152.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16-508-000.

*Applicants:* California Independent System Operator Corporation.

*Description:* Tariff Cancellation: Termination of IID APSA to be effective 2/22/2016.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5156.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16–509–000.

*Applicants:* NSTAR Electric Company.

*Description:* Initial rate filing: Exelon West Medway Design and Engineering Agreement to be effective 12/11/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5157.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16–510–000.

*Applicants:* NSTAR Electric Company.

*Description:* Initial rate filing: NRG Canal Design and Engineering Agreement to be effective 12/11/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5160.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ER16–511–000.

*Applicants:* Southwestern Public Service Company.

*Description:* Section 205(d) Rate Filing: 2015–12–11 SPS–CapRkSlr–E&P–686–0.0.0—Filing to be effective 12/12/2015.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5197.

*Comments Due:* 5 p.m. ET 1/4/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 11, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015–31719 Filed 12–16–15; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC16–49–000.

*Applicants:* TerraForm Private LLC, Meadow Creek Project Company LLC, Goshen Phase II LLC, Wolverine Creek Goshen Interconnection LLC, Canadian Hills Wind, LLC, Rockland Wind Farm LLC, Burley Butte Wind Park, LLC, Golden Valley Wind Park, LLC, Milner Dam Wind Park, LLC, Oregon Trail Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, Camp Reed Wind Park, LLC, Payne's Ferry Wind Park, LLC, Salmon Falls Wind Park, LLC, Yahoo Creek Wind Park, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, Requests for Expedited Action, Waivers of Filing Requirements and Confidential Treatment of Transaction Document of TerraForm Private LLC, et al.

*Filed Date:* 12/10/15.

*Accession Number:* 20151210–5189.

*Comments Due:* 5 p.m. ET 12/31/15.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16–86–001.

*Applicants:* Arizona Public Service Company.

*Description:* Compliance filing: Rate Schedule No. 217 Exhibit D, Weed Control to be effective 12/15/2015.

*Filed Date:* 12/10/15.

*Accession Number:* 20151210–5158.

*Comments Due:* 5 p.m. ET 12/31/15.

*Docket Numbers:* ER16–505–000.

*Applicants:* South Central MCN LLC.  
*Description:* Baseline eTariff Filing: South Central MCN LLC Wholesale Distribution Agreements to be effective 1/1/2016.

*Filed Date:* 12/10/15.

*Accession Number:* 20151210–5179.

*Comments Due:* 5 p.m. ET 12/31/15.

*Docket Numbers:* ER16–506–000.

*Applicants:* PJM Interconnection, L.L.C., West Penn Power Company, The Potomac Edison Company, Trans-Allegheny Interstate Line Company, Monongahela Power Company.

*Description:* Section 205(d) Rate Filing: West Penn et al submit two IA Nos. 4160 & 4313 and ECSA No. 4314 to be effective 2/12/2016.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5113.

*Comments Due:* 5 p.m. ET 1/4/16.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES16–10–000.

*Applicants:* Rochester Gas & Electric Corporation.

*Description:* Application for Authorization to Issue Short Term Debt of Rochester Gas and Electric Corporation.

*Filed Date:* 12/10/15.

*Accession Number:* 20151210–5185.

*Comments Due:* 5 p.m. ET 12/31/15.

*Docket Numbers:* ES16–11–000.

*Applicants:* Westar Energy, Inc.

*Description:* Application for Authority To Issue and Pledge Securities of Westar Energy, Inc.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5063.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ES16–12–000.

*Applicants:* Kansas Gas and Electric Company.

*Description:* Application under Section 204 of Kansas Gas and Electric Company.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5073.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ES16–13–000.

*Applicants:* Kansas Gas and Electric Company.

*Description:* Application under Section 204 of Kansas Gas and Electric Company.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5074.

*Comments Due:* 5 p.m. ET 1/4/16.

*Docket Numbers:* ES16–14–000.

*Applicants:* Prairie Wind Transmission, LLC.

*Description:* Application of Prairie Wind Transmission, LLC for Authorization under Section 204 of the Federal Power Act.

*Filed Date:* 12/11/15.

*Accession Number:* 20151211–5093.

*Comments Due:* 5 p.m. ET 1/4/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: December 11, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-31718 Filed 12-16-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP16-27-000]

#### Paulsboro Natural Gas Pipeline Company, LLC; Notice of Application

Take notice that on December 1, 2015, Paulsboro Natural Gas Pipeline Company, LLC (PNGPC), 800 Billingsport Road, Paulsboro, New Jersey 08066, filed an application in Docket No. CP16-27-000 under sections 7(b) and 7(c) of the Natural Gas Act (NGA), and part 157 of the Commission's regulations requesting authorization to relocate, replace, remove, in part, and abandon in place, in part, an approximately 2.4-mile, 6- and 8-inch diameter existing natural gas pipeline between Delaware County, Pennsylvania, and Gloucester County, New Jersey. PNGPC also requests a blanket certificate pursuant to part 157, subpart F, of the Commission's regulations, authorizing PNGPC to engage in certain self-implementing routine construction, operation and abandonment activities, as well as waivers of certain regulatory requirements, including the Commission's interstate pipeline open access, tariff, accounting, posting, and reporting requirements, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any questions regarding this application should be directed to Mark Wilgus, Senior Community Relations Specialist, Paulsboro Natural Gas Pipeline Company LLC, 800 Billingsport Road, Paulsboro, New Jersey 08066, or by calling (856) 224-4354 (telephone) or by email at [mark.wilgus@pbfenergy.com](mailto:mark.wilgus@pbfenergy.com).

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or

issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's

environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on January 4, 2016.

Dated: December 11, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-31721 Filed 12-16-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 8722-018]

#### David O. Harde; Notice of Termination of License (Minor Project) by Implied Surrender and Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

- Type of Proceeding:* Termination of License by Implied Surrender.
- Project No.:* 8722-018.
- Date Initiated:* December 11, 2015.
- Licensee:* David O. Harde.

e. Name and Location of Project: Landis-Harde Hydroelectric Project located on Perry Creek, in El Dorado County, California.

f. *Filed Pursuant to:* Standard Article 16.

g. *Licensee Contact Information:* Mr. David O. Harde, 6540 Perry Creek Road, Somerset, California 95684, Phone: (530) 620-5629.

h. *FERC Contact:* Mr. Ashish Desai, (202) 502-8370, [Ashish.Desai@ferc.gov](mailto:Ashish.Desai@ferc.gov).

i. Deadline for filing comments, motions to intervene and protests, is 30 days from the issuance date of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P-8722-018.

j. Description of Project Facilities: (1) A 4-foot-high, 42-foot-long reinforced concrete dam; (2) a 24-inch-diameter, 1,000-foot-long penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 100 kW; and (4) a 500-foot-long tap connecting the project with an existing Pacific Gas and Electric Company 21-kv transmission line west of the powerhouse.

k. Description of Proceeding: The licensee is in violation of standard Article 16 of its license, issued on April 27, 1990 (51 FERC ¶ 61,088). Article 16 states in part: If the Licensee shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license.

Commission records indicate that the project has not been operational since 2006 when the licensee determined, that the project was no longer financially viable due to low water flows and high insurance rates. After several years of

correspondence regarding transferring the license to a third party and resuming project operation, the licensee has become non-responsive. Most recently, by letter dated September 1, 2015, the licensee informed the Commission of its intent to file a license transfer application shortly thereafter. The licensee did not file a transfer application. By letter dated September 4, 2015, Commission staff requested the licensee file documentation regarding the non-operational status of the project within 30 days. The licensee did not file the requested information. By letter dated October 27, 2015, the Commission ordered the licensee to file a plan and schedule to resume project operations or a transfer application within 30 days, and failure to do so would result in termination of the project license by implied surrender. The licensee has not filed a response.

1. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number (P-8722-018) excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the

project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: December 11, 2015.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2015-31722 Filed 12-16-15; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP15-504-000]

#### **Dominion Carolina Gas Transmission; Notice of Schedule for Environmental Review of the Columbia to Eastover Project**

On May 29, 2015, Dominion Carolina Gas Transmission (Dominion) filed an application in Docket No. CP15-504-000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Columbia to Eastover Project (Project), and would provide 18,000 dekatherms per day of firm transportation service to the existing International Paper Plant in Eastover, South Carolina.

On June 12, 2015, the Federal Energy Regulatory Commission (Commission or

FERC) issued its Notice of Application for the Project. The notice informed agencies issuing federal authorizations of the requirement under EPCA 2005 section 313 to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This Notice of Schedule identifies the Commission staff's planned schedule for the completion of the EA for the Project.

#### Schedule for Environmental Review

Issuance of EA—February 19, 2016

90-day Federal Authorization Decision Deadline—May 19, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

#### Project Description

For the Columbia to Eastover Project, Dominion would construct and operate approximately 28 miles of new 8-inch-diameter natural gas pipeline and new appurtenant facilities in Calhoun and Richland Counties, South Carolina.

#### Background

On July 16, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Columbia to Eastover Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Commission received comments from the U.S. Fish and Wildlife Service, South Carolina Department of Natural Resources, Friends of the Congaree Swamp, McEntire Joint National Guard Base, Richland County Conservation Commission, Congaree Riverkeeper, and several landowners including Beckham Swamp LLC, Belle Grove LLC, and St. Matthews Church. In addition to general opposition to the Project, we received requests for minor and major reroutes of the pipeline to utilize more existing utility rights-of-way and a reduction in number and length of access roads. The primary environmental issues raised by the commentors are potential impacts on the following resources: sensitive fish species, the Cowasee Basin, specific archaeological sites, local tree farms, and recreation areas.

#### Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC Web site ([www.ferc.gov](http://www.ferc.gov)). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP15-504), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 11, 2015.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2015-31720 Filed 12-16-15; 8:45 am]

BILLING CODE 6717-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2015-0668; 9940-23-OW]

#### Notice of an Extension To Provide Information on Existing Programs That Protect Water Quality From Forest Road Discharges

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for the notice, "Opportunity to Provide Information on Existing Programs that Protect Water Quality from Forest Road Discharges." In response to stakeholder requests, EPA is extending the comment period for an additional 32 days, from January 11, 2016, to February 12, 2016.

**DATES:** The comment period for the notice, that was published on November 10, 2015 (80 FR 69653), is extended. Comments must be received on or before February 12, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2015-0668, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Prasad Chumble, EPA Headquarters, Office of Water, Office of Wastewater Management via email at [chumble.prasad@epa.gov](mailto:chumble.prasad@epa.gov) or telephone at 202-564-0021.

**SUPPLEMENTARY INFORMATION:** On November 10, 2015 EPA published in the *Federal Register* (80 FR 69653) a request for information and comments on existing public and private sector programs that address stormwater discharges from forest roads. This information will assist EPA in responding to the remand in *Environmental Defense Center, Inc. v. U.S. EPA*, 344 F.2d 832 (9th Cir. 2003) that requires EPA to consider whether the Clean Water Act requires the Agency to regulate stormwater discharges from forest roads. EPA is considering the implementation, effectiveness, and scope of existing programs in addressing water quality impacts attributable to stormwater discharges from forest roads to assist in responding to the court's question. The Agency plans to assess a variety of existing programs, including federal, state, local, tribal, third party certifications, and combinations of these approaches, including voluntary best management practices (BMP)-based approaches. In preparing its response to the remand, EPA is coordinating with other federal agencies, and will assess whether any additional stormwater controls are called for, consistent with

federal law, including the 2014 amendments to the Clean Water Act. As initially published in the **Federal Register**, written comments were to be submitted to EPA on or before January 11, 2016 (a 60-day public comment period). Since publication, EPA has received several requests for additional time to submit comments. EPA is extending the public comment period for 32 days until February 12, 2016.

Dated: December 8, 2015.

**Joel Beauvais,**

*Acting Deputy Assistant Administrator, Office of Water.*

[FR Doc. 2015-31664 Filed 12-16-15; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2015-0022; FRL-9939-19]

### Pesticide Product Registration; Receipt of Applications for New Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before January 19, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2015-0022 and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about

dockets generally, is available at <http://www.epa.gov/dockets>.

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

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

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

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

###### B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

##### II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing

notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. **EPA Registration Numbers:** 264-776 and 264-1093. **Docket ID number:** EPA-HQ-OPP-2015-0745. **Applicant:** Bayer CropScience LP, 2 TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. **Active ingredient:** Trifloxystrobin. **Product type:** Fungicide. **Proposed use:** Cotton. **Contact:** RD.

2. **EPA Registration Numbers:** 264-824; 264-825. **Docket ID number:** EPA-HQ-OPP-2015-0722. **Applicant:** Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, RTP, NC 27709. **Active ingredient:** Prothioconazole. **Product type:** Fungicide. **Proposed use:** Cotton. **Contact:** RD.

3. **EPA Registration Numbers:** 279-3460, 279-3052, 279-3158. **Docket ID number:** EPA-HQ-OPP-2015-0763. **Applicant:** FMC, 1735 Market Street, Philadelphia, PA 19103. **Active ingredient:** Clomazone. **Product type:** Herbicide. **Proposed uses:** Asparagus and edamame. **Contact:** RD.

4. **EPA Registration Number:** 432-RLGL; 432-RLGA; 432-RLGT; 432-RLGI; and 432-RLUG. **Docket ID number:** EPA-HQ-OPP-2015-0707. **Applicant:** Bayer Environmental Science LLC, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. **Active ingredient:** Fluopyram. **Product type:** Fungicide. **Proposed uses:** Turf and Ornamentals. **Contact:** RD.

5. **EPA Registration Number or File Symbol:** 11678-73; 66222-243; 66222-EAE. **Docket ID number:** EPA-HQ-OPP-2015-0478. **Applicant:** Makhteshim Agan of North America, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604. **Active ingredient:** Fluensulfone. **Product type:** Insecticide. **Proposed uses:** Root vegetables (crop subgroup 1B except sugar beet), leaves of root and tuber vegetables (crop group 2); leafy vegetables (crop group 4 except brassica vegetables), head and stem brassica (crop subgroup 5A), brassica leafy vegetables (crop subgroup 5B), low growing berry (crop subgroup 13-07G), and tobacco. **Contact:** RD.

6. **File Symbol:** 71512-1 and 71512-8. **Docket ID number:** EPA-HQ-OPP-2015-0703. **Applicant:** ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH, 44077. **Active ingredient:** Fluazinam. **Product type:** Fungicide. **Proposed uses:** Mayhaw, cabbage, squash/cucumber subgroup 9B, brassica leafy group 5 (except cabbage), and tuberous and corm subgroup 1C. **Contact:** RD.



**Authority:** 7 U.S.C. 136 *et seq.*

**Dated:** December 10, 2015.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2015-31757 Filed 12-16-15; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2015-0021; FRL-9939-25]

**Pesticide Product Registration; Receipt of Application for a New Active Ingredient**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received an application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

**DATES:** Comments must be received on or before January 19, 2016.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

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

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

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

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

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <http://www.epa.gov/dockets/comments.html>.

**II. Registration Application**

EPA has received an application to register a pesticide product containing an active ingredient not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on this application. Notice of receipt of this application does not imply a decision by the Agency on this application.

*File Symbol:* 70051-REN. *Docket ID number:* EPA-HQ-OPP-2015-0748. *Applicant:* Certis USA, LLC, 9145 Guilford Rd., Suite 175, Columbia, MD 21046. *Product name:* Trident Biological Insecticide. *Active ingredient:* Insecticide—*Bacillus thuringiensis* variety *tenebrionis* strain SA-10 at 14.32%. *Proposed uses:* Agricultural and residential. *Contact:* BPPD.

**Authority:** 7 U.S.C. 136 *et seq.*

**Dated:** December 7, 2015.

**R. McNally,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2015-31758 Filed 12-16-15; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**FCC To Hold Open Commission Meeting, Thursday, December 17, 2015**

December 10, 2015.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 17, 2015, which is scheduled to commence at 10:30 a.m. in Room TW-C305, at 445 12th Street SW., Washington, DC.

Item No.	Bureau	Subject
1 .....	WIRELINE COMPETITION	TITLE: Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. 160 (c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks. (WC Docket No. 14-192); Lifeline and Link Up Reform and Modernization (WC Docket No. 11-42); Connect America Fund (WC Docket No. 10-90) SUMMARY: The Commission will consider a Memorandum Opinion and Order and Report and Order addressing a petition from US Telecom that seeks forbearance from various categories of statutory and Commission requirements applicable to incumbent local exchange carriers.

Item No.	Bureau	Subject
2 .....	MEDIA .....	TITLE: Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations (MB Docket No. 03-185); Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268); Amendment of Part 15 of the Commission's Rules to Eliminate the Analog Turner Requirement (ET Docket No. 14-175) SUMMARY: The Commission will consider a Third Report and Order that extends the deadline for LPTV and TV Translator Stations to Transition to Digital and adopts measures to mitigate the impact of incentive auction displacement. The Fourth Notice of Proposed Rulemaking seeks comment on channel sharing issues between certain stations.
3 .....	INTERNATIONAL .....	TITLE: Comprehensive Review of Licensing and Operating Rules for Satellite Services (IB Docket No. 12-267) SUMMARY: The Commission will consider a Second Report and Order that streamlines, eliminates or updates numerous provisions of Part 25 of the Commission's rules governing licensing and operation of space stations and earth stations for the provision of satellite communication services.
4 .....	INTERNATIONAL .....	SUMMARY: The Commission will hear a presentation on the outcomes of the International Telecommunication Union's World Radio Conference that took place in November 2015.

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**Consent Agenda**

The Commission will consider the following subjects listed below as a

consent agenda and these items will not be presented individually:

1 .....	MEDIA .....	TITLE: Application of Hampton Roads Educational Telecommunications Association for a New Noncommercial Educational FM Station at Gloucester Point SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning a joint Application for Review challenging the grant of an application filed by Hampton Roads Educational Telecommunications Association for a new NCE FM station.
2 .....	MEDIA .....	TITLE: Public Media of New England, Inc. Application for a New LPFM Station at Haverhill, Massachusetts SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Boston Radio Association seeking review of the grant of a construction permit for a new LPFM station to Public Media of New England, Inc.
3 .....	MEDIA .....	TITLE: Cocoa Minority Educational Media Association, Application for a New LPFM Station at Cocoa, Florida SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Cocoa Minority Educational Media Association seeking review of CMEMA's dismissed application for a new LPFM station.
4 .....	MEDIA .....	TITLE: California Association for Research and Education, Inc., Application for a New Noncommercial Educational FM Broadcast Station at Upton, KY, and Bethel Fellowship, Inc., Application for a New Noncommercial Educational FM Broadcast Station at Cecilia, Kentucky SUMMARY: The Commission will consider an Order on Reconsideration in which Bethel seeks reconsideration of a denial of its Application for Review seeking denial of CARE's noncommercial educational FM application.
5 .....	MEDIA .....	TITLE: Calvary Chapel of Honolulu, Inc., Application to Construct New Noncommercial Educational FM Stations at Honolulu, Hawaii, and Maka'ainana Broadcasting Company, Ltd., Application to Construct New Noncommercial Educational FM Stations at Kaneohe, Hawaii SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning Applications for Review filed by Maka'ainana Broadcasting Company, Ltd. regarding mutually exclusive applications to construct new noncommercial educational FM stations in Hawaii.
6 .....	MEDIA .....	TITLE: John Edward Ostlund, Application for a Permit to Construct a new AM Station at Easton, California, and Hilo Broadcasting, LLC, Application for a Permit to Construct a New AM Station at Captain Cook, Hawaii SUMMARY: The Commission will consider a Memorandum Opinion and Order concerning an Application for Review filed by Hilo Broadcasting, LLC regarding mutually exclusive AM station applications.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests

will be accepted, but may be impossible to fill. Send an email to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live with open captioning

over the Internet from the FCC Live Web page at [www.fcc.gov/live](http://www.fcc.gov/live).

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993-3100 or go to [www.capitolconnection.gmu.edu](http://www.capitolconnection.gmu.edu).

**FCC**

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418-0500; TTY 1-888-835-5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live Web page at [www.fcc.gov/live](http://www.fcc.gov/live).

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services, call (703) 993-3100 or go to [www.capitolconnection.gmu.edu](http://www.capitolconnection.gmu.edu).

Federal Communications Commission.

**Gloria Miles,**

*Information Specialist.*

[FR Doc. 2015-31671 Filed 12-16-15; 8:45 am]

**BILLING CODE 6712-01-P**

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**FEDERAL DEPOSIT INSURANCE CORPORATION**
**Sunshine Act Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors met in open session at 10:06 a.m. on Tuesday, December 15, 2015, to consider the following matters:

*Summary Agenda:*

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart V—Management Official Interlocks.

Memorandum and resolution re: Notice of Proposed Rulemaking Regarding Proposed Revisions to Part 341 of the FDIC's Rules and Regulations Requiring the Registration of Securities Transfer Agents.

Memorandum and resolution re: Fourth Joint **Federal Register** Notice Addressing FDIC Regulations in Accordance with the Economic Growth and Regulatory Paperwork Reduction Act ("EGRPRA").

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

*Discussion Agenda:*

Memorandum and resolution re: Proposed 2016 FDIC Operating Budget.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters on less than seven days' notice to the public; and that no earlier notice of the meeting than that previously provided on December 9, 2015, was practicable.

The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: December 15, 2015.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2015-31853 Filed 12-15-15; 4:15 pm]

**BILLING CODE P**

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**FEDERAL DEPOSIT INSURANCE CORPORATION**
**Sunshine Act Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:23 a.m. on Tuesday, December 15, 2015, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Thomas J. Curry (Comptroller of the Currency), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable;

that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10).

Dated: December 15, 2015.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2015-31854 Filed 12-15-15; 4:15 pm]

**BILLING CODE P**

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**FEDERAL MARITIME COMMISSION**
**Notice of Agreements Filed**

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site ([www.fmc.gov](http://www.fmc.gov)) or by contacting the Office of Agreements at (202)-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.:* 201143-013.

*Title:* West Coast MTO Agreement.

*Parties:* APM Terminals Pacific, Ltd.; California United Terminals, Inc.; Eagle Marine Services, Ltd.; Everport Terminal Services, Inc.; International Transportation Service, Inc.; Long Beach Container Terminal, Inc.; Trapac, Inc.; Total Terminals LLC; West Basin Container Terminal LLC; Yusen Terminals, Inc.; Pacific Maritime Services, L.L.C.; SSA Terminals, LLC; and SSA Terminal (Long Beach), LLC.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

*Synopsis:* The amendment deletes Seaside Transportation Service LLC as a party to the Agreement.

*Agreement No.:* 201202-008.

*Title:* Oakland MTO Agreement.

*Parties:* Everport Terminal Services, Inc.; Ports America Outer Harbor Terminal, LLC; SSA Terminals, LLC; SSA Terminals (Oakland), LLC; and Trapac, Inc.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

*Synopsis:* The amendment deletes Seaside Transportation Service, LLC as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: December 11, 2015.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2015-31651 Filed 12-16-15; 8:45 am]

BILLING CODE 6731-AA-P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in

the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *First Farmers Financial Corporation*, Converse, Indiana; to merge with Century Bank Corp., Fairmount, Indiana, and thereby indirectly acquire The Citizens Exchange Bank, Fairmount, Indiana.

Board of Governors of the Federal Reserve System, December 14, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015-31763 Filed 12-16-15; 8:45 am]

BILLING CODE 6210-01-P

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

### EARLY TERMINATIONS GRANTED NOVEMBER 1, 2015 THRU NOVEMBER 30, 2015

11/02/2015		
20160056 .....	G	Suncor Energy Inc.; Canadian Oil Sands Limited; Suncor Energy Inc.
20160094 .....	G	Leeds Equity Partners V, L.P.; Higher One Holdings, Inc.; Leeds Equity Partners V, L.P.
20160114 .....	G	Allergan plc; Mimetogen Pharmaceuticals Inc.; Allergan plc.
11/03/2015		
20150863 .....	G	Mylan N.V.; Perrigo Company plc; Mylan N.V.
20160070 .....	G	Carl C. Icahn; American International Group, Inc.; Carl C. Icahn.
20160124 .....	G	DSV A/S; UTi Worldwide Inc.; DSV A/S.
20160132 .....	G	Calpine Corporation; Granite Ridge Holdings LLC; Calpine Corporation.
11/04/2015		
20160019 .....	G	SS&C Technologies, Inc.; Carlyle U.S. Growth Fund III, L.P.; SS&C Technologies, Inc.
20160027 .....	G	Mr. Patrick Drahi; Cablevision Systems Corporation; Mr. Patrick Drahi.
20160029 .....	G	Mr. Patrick Drahi; Comcast Corporation; Mr. Patrick Drahi.
20160080 .....	G	H&F EFS AIV I, L.P.; Lee Equity Partners Fund Summer AIV LP; H&F EFS AIV I, L.P.
20160123 .....	G	Benchmark Electronics, Inc.; Vance Street Capital LLC; Benchmark Electronics, Inc.
20160127 .....	G	Brentwood Associates Private Equity V, L.P.; Sea Island Clothiers Holdings, LLC; Brentwood Associates Private Equity V, L.P.
20160129 .....	G	ServiceMaster Global Holdings, LLC; David Royce; ServiceMaster Global Holdings, LLC.
11/05/2015		
20160035 .....	G	AqGen Island Holdings, Inc.; C.G. JCF, L.P.; AqGen Island Holdings, Inc.
11/06/2015		
20160028 .....	G	Tyler Technologies, Inc.; Larry D. Leinweber; Tyler Technologies, Inc.
20160135 .....	G	Estate of Vincent Camuto; Estate of Vincent Camuto; Estate of Vincent Camuto.
20160137 .....	G	AEA Investors Small Business Fund II LP; Quad-C Partners VII, L.P.; AEA Investors Small Business Fund II LP.

## EARLY TERMINATIONS GRANTED NOVEMBER 1, 2015 THRU NOVEMBER 30, 2015—Continued

20160141 .....	G	CCMP Capital Investors III (AV-9), L.P.; PQ Group Holdings Inc.; CCMP Capital Investors III (AV-9), L.P.
20160143 .....	G	PQ Group Holdings Inc.; Eco Services Group Holdings LLC; PQ Group Holdings Inc.
20160145 .....	G	CCMP Capital Investors III (AV-7), L.P.; PQ Group Holdings Inc.; CCMP Capital Investors III (AV-7), L.P.
20160156 .....	G	Thales Group; Vormetric, Inc.; Thales Group
20160157 .....	G	Lake Michigan Credit Union; United Federal Credit Union; Lake Michigan Credit Union.
20160160 .....	G	Saudi Arabian Oil Company; LANXESS AG; Saudi Arabian Oil Company.
20160163 .....	G	nexAir Holding, Inc.; Praxair, Inc.; nexAir Holding, Inc.
20160170 .....	G	Carlyle Global Financial Services Partners II, LP; Edgewood Partners Holdings, LLC; Carlyle Global Financial Services Partners II, LP.
20160177 .....	G	Intercontinental Exchange, Inc.; Interactive Data Holdings Corporation; Intercontinental Exchange, Inc.

## 11/09/2015

20160118 .....	G	Singapore Post Limited; Genossenschaft Constanter; Singapore Post Limited
20160149 .....	G	Capita plc; Xchanging plc; Capita plc
20160155 .....	G	PBF Energy Inc.; Exxon Mobil Corporation; PBF Energy Inc. 20160159 G TransCanada Corp.; Talen Energy Corporation; TransCanada Corp. 20160164 G Green Plains Inc.; Murphy USA Inc.; Green Plains Inc.
20160172 .....	G	Participacoes Industriais do Nordeste, S.A.; Ball Corporation ; Participacoes Industriais do Nordeste, S.A.

## 11/10/2015

20160061 .....	G	TRC Companies, Inc.; Willbros Group, Inc.; TRC Companies, Inc.
20160101 .....	G	Blue Mountain Credit Alternatives Fund Ltd.; Angiotech Pharmaceuticals, Inc.; Blue Mountain Credit Alternatives Fund Ltd.
20160111 .....	G	Mason Capital, Ltd.; Edgewell Personal Care Company; Mason Capital, Ltd.
20160152 .....	G	Bristol-Myers Squibb Company; Five Prime Therapeutics, Inc.; Bristol-Myers Squibb Company.

## 11/12/2015

20160088 .....	G	Dialog Semiconductor Plc; Atmel Corporation; Dialog Semiconductor Plc.
20160174 .....	G	Project Aurora Parent, Inc.; SolarWinds, Inc.; Project Aurora Parent, Inc.

## 11/13/2015

20160175 .....	G	EQUATE Petrochemical Company; Kuwait Petroleum Corporation ; EQUATE Petrochemical Company.
20160178 .....	G	EQUATE Petrochemical Company; The Dow Chemical Company; EQUATE Petrochemical Company.

## 11/16/2015

20160119 .....	G	WEX Inc.; Benaissance, LLC; WEX Inc.
20160131 .....	G	Cologix Holdings, Inc.; NAC Holdings LLC; Cologix Holdings, Inc.
20160139 .....	G	Svenska Cellulosa Aktiebolaget SCA ; Wausau Paper Corp.; Svenska Cellulosa Aktiebolaget SCA.
20160151 .....	G	NorthStar Asset Management Group Inc.; GTCR Fund X/B LP; NorthStar Asset Management Group Inc.
20160179 .....	G	Securitas AB ; Diebold, Incorporated; Securitas AB.
20160184 .....	G	Shaobo Li ; Nipro Corporation ; Shaobo Li.
20160185 .....	G	Blackstone Capital Partners IV L.P.; Arlington Capital Partners III, L.P.; Blackstone Capital Partners IV L.P.
20160187 .....	G	Trend Micro, Inc.; Hewlett Packard Enterprise Company; Trend Micro, Inc.
20160192 .....	G	Navitas Midstream Partners, LLC; Apache Corporation ; Navitas Midstream Partners, LLC.
20160197 .....	G	Envision Healthcare Holdings, Inc.; QRx Medical Management, LLC; Envision Healthcare Holdings, Inc.
20160202 .....	G	Trilantic Capital Partners IV L.P.; Antero Resources Investment LLC; Trilantic Capital Partners IV L.P.

## 11/17/2015

20151733 .....	G	Schlumberger N.V.; Cameron International Corporation ; Schlumberger N.V.
20160203 .....	G	TCP Antero I-1 Holdco, LLC; Antero Resources Investment LLC; TCP Antero I-1 Holdco, LLC.
20160205 .....	G	Paul M. Rady; Antero Resources Investment LLC; Paul M. Rady.
20160213 .....	G	Warburg Pincus Private Equity X O&G, L.P.; Antero Resources Investment LLC; Warburg Pincus Private Equity X O&G, L.P.
20160214 .....	G	Warburg Pincus Private Equity VIII, L.P.; Antero Resources Investment LLC; Warburg Pincus Private Equity VIII, L.P.
20160215 .....	G	Warburg Pincus Private Equity X L.P.; Antero Resources Investment LLC; Warburg Pincus Private Equity X L.P.
20160216 .....	G	BIF III Holtwood Holding (Delaware) LLC; Talen Energy Corporation ; BIF III Holtwood Holding (Delaware) LLC
20160217 .....	G	Glen C. Warren, Jr.; Antero Resources Investment LLC; Glen C. Warren, Jr.
20160220 .....	G	Invesco Perpetual UK Investment Series Investment Company; Biofem LLC; Invesco Perpetual UK Investment Series Investment Company.
20160221 .....	G	Invesco Perpetual UK 2 Investment Series Investment Company; Biofem LLC; Invesco Perpetual UK 2 Investment Series Investment Company.
20160224 .....	G	Gryphon Partners 3.5, L.P.; Robert W. Fisher ; Gryphon Partners 3.5, L.P.
20160229 .....	G	Endologix, Inc.; TriVascular Technologies, Inc.; Endologix, Inc.
20160231 .....	G	Brooks Automation, Inc.; BioStorage Technologies, Inc.; Brooks Automation, Inc.
20160236 .....	G	Genstar Capital Partners VII, L.P.; Lee Equity Partners Fund PDR AIV, L.P.; Genstar Capital Partners VII, L.P.

## 11/18/2015

20160222 .....	G	CF Woodford Investment Fund; Biofem LLC; CF Woodford Investment Fund.
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## EARLY TERMINATIONS GRANTED NOVEMBER 1, 2015 THRU NOVEMBER 30, 2015—Continued

## 11/19/2015

20160136 .....	G	CDC Holdings, L.P.; Windstream Holdings, Inc.; CDC Holdings, L.P.
20160167 .....	G	Genstar Capital Partners VII, L.P.; PSG MB Holding Company I, L.P.; Genstar Capital Partners VII, L.P.
20160180 .....	G	TPG-Axon Partners, LP; GNC Holdings, Inc.; TPG-Axon Partners, LP.
20160181 .....	G	TPG-Axon Partners (Offshore), Ltd.; GNC Holdings, Inc.; TPG-Axon Partners (Offshore), Ltd.

## 11/20/2015

20160209 .....	G	Blue Cross Blue Shield of Michigan Mutual Insurance Company; DDDS Holdings, LLC; Blue Cross Blue Shield of Michigan Mutual Insurance Company.
20160232 .....	G	Kinder Morgan Inc.; BP plc; Kinder Morgan Inc.
20160235 .....	G	Expedia, Inc.; HomeAway, Inc.; Expedia, Inc.
20160248 .....	G	The Lyme Forest Fund IV LP; Hawthorne Timber Company, LLC; The Lyme Forest Fund IV LP.
20160250 .....	G	GIP II CPV Holdings Partnership, L.P.; CPV Shore Holdings, LLC; GIP II CPV Holdings Partnership, L.P.
20160251 .....	G	Yorktown Energy Partners VIII, L.P.; Antero Resources Investment LLC; Yorktown Energy Partners VIII, L.P.
20160252 .....	G	American Capital Equity III, LP; Riverside Micro-Cap, Fund II, L.P.; American Capital Equity III, LP.
20160253 .....	G	Yorktown Energy Partners VII, L.P.; Antero Resources Investment LLC; Yorktown Energy Partners VII, L.P.
20160254 .....	G	Toshiba Corporation ; Chicago Bridge & Iron Company N.V.; Toshiba Corporation.
20160256 .....	G	NeuStar, Inc.; MarketShare Partners, LLC; NeuStar, Inc.
20160258 .....	G	ABRY Partners VIII, L.P.; Directravel Holdings, LLC; ABRY Partners VIII, L.P.
20160259 .....	G	TPG Growth III (A), L.P.; Palladium Equity Partners III, L.P.; TPG Growth III (A), L.P.
20160263 .....	G	Brenntag AG ; Ridgemont Equity Partners I–B, L.P.; Brenntag AG.
20160264 .....	G	Cisco Systems, Inc.; Lancope, Inc.; Cisco Systems, Inc.
20160265 .....	G	Alphabet Inc.; Diane Greene ; Alphabet Inc.
20160266 .....	G	FMI Associates, L.L.C.; Maurice J. Wagener ; FMI Associates, L.L.C.
20160275 .....	G	Agnaten SE ; Douglas Zell and Emily Mange ; Agnaten SE.
20160279 .....	G	Sammer and Rawa Anabi Family Trust ; Rebel Oil Company, Inc.; Sammer and Rawa Anabi Family Trust.
20160285 .....	G	TA XI L.P.; Dan Randolph ; TA XI L.P.
20160308 .....	G	Nexstar Broadcasting Group, Inc.; West Virginia Media Partners, LP; Nexstar Broadcasting Group, Inc.

## 11/23/2015

20160158 .....	G	Sola Ltd, Charitable Trust ; Loral Space & Communications Inc.; Sola Ltd, Charitable Trust.
20160191 .....	G	Fairholme Funds, Inc.; Sears Holdings Corporation ; Fairholme Funds, Inc.
20160200 .....	G	Carl C. Icahn ; Chesapeake Energy Corporation ; Carl C. Icahn.
20160274 .....	G	FedEx Corporation ; TNT Express N.V.; FedEx Corporation.
20160276 .....	G	Dan T. Montgomery; A. James Clark Revocable Trust ; Dan T. Montgomery.
20160278 .....	G	Boston Scientific Corporation ; Dr. James R. Leininger ; Boston Scientific Corporation.
20160280 .....	G	Gryphon Partners IV, L.P.; The Huron Fund III, L.P.; Gryphon Partners IV, L.P.
20160284 .....	G	New Flyer Industries Inc.; Motor Coach Holdings, LP; New Flyer Industries Inc.
20160288 .....	G	Chiyoda Corporation ; Ezra Holdings Limited; Chiyoda Corporation.
20160289 .....	G	Caterpillar Inc.; Roy D. Sturgeon ; Caterpillar Inc.
20160291 .....	G	Bridgestone Corporation ; The Pep Boys—Manny, Moe & Jack ; Bridgestone Corporation.

## 11/24/2015

20160148 .....	G	FEI Company; DCG Systems, Inc.; FEI Company
20160165 .....	G	NeoGenomics, Inc.; General Electric Company; NeoGenomics, Inc.
20160166 .....	G	General Electric Company; NeoGenomics, Inc.; General Electric Company
20160168 .....	G	Elliott Associates, L.P.; Cabela's Incorporated; Elliott Associates, L.P.
20160169 .....	G	Elliott International Limited; Cabela's Incorporated; Elliott International Limited.
20160226 .....	G	LSF9 Cypress LP; Gypsum Supply Co. Employee Stock Ownership Plan Trust ; LSF9 Cypress LP.
20160260 .....	G	LetterOne Holdings S.A.; The Huron Fund III, L.P.; LetterOne Holdings S.A.
20160281 .....	G	AstraZeneca PLC; ZS Pharma, Inc.; AstraZeneca PLC.

## 11/25/2015

20150944 .....	S	NXP Semiconductors N.V.; Freescale Semiconductor, Ltd.; NXP Semiconductors N.V.
20160153 .....	G	Blucora, Inc.; HDV Holdings LLC; Blucora, Inc.
20160233 .....	G	Pamlico Capital III, L.P.; Chicago Growth Partners II, LP; Pamlico Capital III, L.P.
20160268 .....	G	Johnson & Johnson ; Novira Therapeutics, Inc.; Johnson & Johnson.
20160273 .....	G	Cathay Financial Holding Co., Ltd.; CCMP Capital Octagon Holdings, LLC; Cathay Financial Holding Co., Ltd.
20160295 .....	G	AutoNation, Inc.; MWM Real Estate, LLC; AutoNation, Inc.
20160298 .....	G	AutoNation, Inc.; Allen Samuels Enterprises, Inc.; AutoNation, Inc.

## 11/27/2015

20160277 .....	G	Endurance International Group, Inc.; Constant Contact, Inc.; Endurance International Group, Inc.
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## 11/30/2015

20160206 .....	G	Sachem Head Offshore Ltd.; Autodesk, Inc.; Sachem Head Offshore Ltd.
20160207 .....	G	Sachem Head LP; Autodesk, Inc.; Sachem Head LP.
20160208 .....	G	Scott D. Ferguson ; Autodesk, Inc.; Scott D. Ferguson.

## EARLY TERMINATIONS GRANTED NOVEMBER 1, 2015 THRU NOVEMBER 30, 2015—Continued

20160283 .....	G	Johnson & Johnson ; Hanmi Pharmaceutical Co., Ltd.; Johnson & Johnson.
20160297 .....	G	Kinross Gold Corporation ; Barrick Gold Corporation ; Kinross Gold Corporation.
20160309 .....	G	AAA Mid-Atlantic Inc.; AAA Allied Group, Inc.; AAA Mid-Atlantic Inc.
20160325 .....	G	Constellation Brands, Inc.; Jack White, Jr.; Constellation Brands, Inc.
20160328 .....	G	Targa Resources Corp.; Targa Resources Partners LP; Targa Resources Corp.
20160330 .....	G	AP VIII DSB Holdings, L.P.; Warburg Pincus Private Equity X, L.P.; AP VIII DSB Holdings, L.P.
20160334 .....	G	Arbor Investments III, L.P.; Ornu Co-operative Limited; Arbor Investments III, L.P.
20160341 .....	G	Riverstone Global Energy and Power Fund; Bonanza Creek Energy, Inc.; Riverstone Global Energy and Power Fund.
20160347 .....	G	Fossil Group, Inc.; Misfit, Inc.; Fossil Group, Inc.

**FOR FURTHER INFORMATION CONTACT:**

Theresa Kingsberry Program Support Specialist, Federal Trade Commission Premerger Notification Office Bureau of Competition, Room CC-5301, Washington, DC 20024 (202) 326-3100.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2015-31670 Filed 12-16-15; 8:45 am]

**BILLING CODE 6750-01-P**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**Centers for Disease Control and Prevention**

[60Day-16-16GX; Docket No. CDC-2015-0113]

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on a proposed new information collection request entitled "Mining Industry Surveillance System".

**DATES:** Written comments must be received on or before February 16, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2015-0113 by any of the following methods: Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.

*Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and

Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: omb@cdc.gov.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

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 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

**Proposed Project**

Mining Industry Surveillance System—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety & health at work for all people through research and prevention. The Federal Mine Safety & Health Act of 1977, section 501, enables NIOSH to carry out research relevant to the health and safety of workers in the mining industry. Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of the NIOSH since its creation by the Occupational Safety and Health Act in 1970. Surveillance activities at the Office of Mine Safety and Health Research (OMSHR), a Division of NIOSH, are focused on the nation's mining workforce. OMSHR is planning to develop the Mining Industry

Surveillance System, a unique source of longitudinal information on U.S. mines and their employees. Its purpose will be to: (1) Track changes and emerging trends over time; (2) provide current data to guide research and training activities; (3) provide updated demographic and occupational data for the mining workforce; and (4) provide denominator data to help understand the risk of work-related injuries, disease, and fatalities in specific demographic and occupational subgroups. The goal of the proposed project is to improve its surveillance capability related to the occupational risks in mining. NIOSH is requesting a three-year approval for this data collection.

NIOSH is planning to use the Mining Industry and Workforce Survey (MIWS) to collect data for the Mining Industry Surveillance System. Data will be collected through surveys conducted on a rotating basis in mining sectors aligned with national mining

association. In Phase 1 of the project, the MIWS will be conducted in the stone/sand and gravel mining sector in year 1, the metal/nonmetal mining sector in year 2, and the coal mining sector in year 3. Data from this survey will provide denominator data so that accident, injury, and illness reports can be evaluated in relation to the population at risk.

Additionally, NIOSH cannot separately determine the number of contractor employees working in metal, nonmetal, stone, or sand and gravel mines. The survey will collect mine-level data on contractor employees to allow NIOSH to determine the quantity of contract labor that mine operators use and the type of work these employees perform. NIOSH will also use the MIWS to collect mine-level data that will provide a valuable picture of the current working environment (work schedules and shift work practices) used in the U.S. mining industry.

Based on the stratification and sample size allocation plan developed for this project, 34% of all sampled mines have fewer than 10 employees. Mines with 10 or fewer employees will not have to do any sampling as they will be asked to provide data for all of their employees. Small mines will require up to 45 minutes to complete the survey. Mines with 11 or more employees will need up to 1.5 hours given their need to generate an employee roster and sample 10 of their employees. Thus, NIOSH is estimating that the average annual burden to complete the survey will be 1 hour. Non-responding mines will be asked to complete the Nonresponse Survey which consists of only seven questions. NIOSH estimates that the burden for this brief survey will be 10 minutes or less.

The total estimated burden hours are 1,397. There is no cost to the respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Responding Stone/Sand & Gravel Mines (Year 1).	Mining Industry & Workforce Survey	526	1	1	526
Nonresponding Stone/Sand & Gravel Mines (Year 1).	Nonresponse Survey .....	350	1	10/60	58
Responding Metal/Nonmetal Mines (Year 2).	Mining Industry & Workforce Survey	369	1	1	369
Nonresponding Metal/Nonmetal Mines (Year 2).	Nonresponse Survey .....	246	1	10/60	41
Responding Coal Mines (Year 3) .....	Mining Industry & Workforce Survey	363	1	1	363
Nonresponding Coal Mines (Year 3)	Nonresponse Survey .....	242	1	10/60	40
<b>Total .....</b>	.....	.....	.....	.....	<b>1,397</b>

**Leroy A. Richardson,**  
*Chief, Information Collection Review Office,  
 Office of Scientific Integrity, Office of the  
 Associate Director for Science, Office of the  
 Director, Centers for Disease Control and  
 Prevention.*

[FR Doc. 2015-31741 Filed 12-16-15; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-16-0009]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in

accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639-7570 or send an email to [omb@cdc.gov](mailto:omb@cdc.gov). Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.



**Proposed Project**

**National Disease Surveillance Program—I—Case Reports—Revision—National Center for Emerging and Zoonotic Infectious Disease (NCEZID), Centers for Disease Control and Prevention (CDC)**

*Background and Brief Description*

Surveillance of the incidence and distribution of disease has been an important function of the US Public Health Service (PHS) since an 1878 Act of Congress, which authorized the PHS to collect morbidity reports. After the Malaria Control in War Areas Program had fulfilled its original 1942 objective of reducing malaria transmission, its basic tenets were carried forward and broadened by the formation of the Communicable Disease Center (CDC) in 1946. CDC was conceived of as a well-equipped, broadly staffed agency used to translate facts about analysis of morbidity and mortality statistics on communicable diseases and through field investigations.

The surveillance emphasis has shifted as certain diseases have declined in incidence, national emergencies have prompted involvement in new areas, and other diseases have taken on new aspects. Surveillance for the following diseases was approved three years ago: Creutzfeldt-Jakob Disease (CJD), Cyclosporiasis cayetanensis, Q Fever, Dengue, Reye Syndrome, Hantavirus pulmonary syndrome (HPS), Tick-borne Rickettsial Disease, Kawasaki syndrome,

Trichinosis, Legionellosis, Tularemia, Lyme Disease (LD), Typhoid Fever, Malaria, Viral Hepatitis, and Plague. Due to change requests and surveillance systems moving to and receiving information collection approval under OMB Control number 0920-0728 (National Notifiable Diseases Surveillance System (NNDSS)) during the last three years, the following diseases/conditions are now included in this program: Creutzfeldt-Jakob Disease (CJD), Reye Syndrome, Kawasaki syndrome, and Acute Flaccid Myelitis. CDC needs to continue this surveillance package for another three years to maintain continuity in these surveillance systems. The data throughout the years are used to monitor the occurrence of non-notifiable conditions and to plan and conduct prevention and control programs at the state, territorial, local and national levels.

CDC currently collects data for certain diseases in summary form under OMB Control number 0920-0004, (National Disease Surveillance Program II—Disease Summaries). These disease summaries are for important, yet different types of infections from those covered in this disease case reports request. Maintaining separate OMB Control number approvals for these two types of data collections assists CDC in managing the two surveillance activities.

CDC works with state health departments to propose, coordinate, and

evaluate nationwide surveillance systems. State epidemiologists are responsible for the collection, interpretation, and transmission of medical and epidemiological information to CDC.

The original purpose for reporting communicable diseases was to determine the prevalence of diseases dangerous to public health. However, collecting data also provided the basis for planning and evaluating effective programs for prevention and control of infectious diseases. Current information on disease incidence is needed to study present and emerging disease problems. CDC coordination of nationwide reporting maintains uniformity so that comparisons can be made from state to state and year to year.

In addition to development of prevention and control programs, surveillance data serves as statistical material for those engaged in research or medical practice, aid to health education officials and students, and data for manufacturers of pharmaceutical products. Annual surveillance data are published in the MMWR Surveillance Summary. The total burden requested is 190 hours, a decrease in 11,257 hours since the last submission. This is due to the other diseases reporting moving to the Notifiable Diseases Surveillance System (0920-0728). There is no cost to respondents other than their time.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Epidemiologist .....	CJD .....	20	2	20/60
Epidemiologist .....	Kawasaki Syndrome .....	55	8	15/60
Epidemiologist .....	Reye Syndrome .....	50	1	20/60
Epidemiologist .....	Acute Flaccid Myelitis .....	100	1	30/60
<b>Total</b> .....	.....	.....	.....	.....

**Leroy Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2015-31706 Filed 12-16-15; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[60Day-16-0821; Docket No. CDC-2015-0114]**

**Proposed Data Collection Submitted for Public Comment and Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, 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. This notice invites comment on a proposed revision of an information collection request entitled

“Quarantine Station Illness Response Forms: Airline, Maritime, and Land/Border Crossing” which will enable CDC to collect information concerning cases of illness or death that occur during or after travel to the United States in order to determine if further public health follow-up is required.

**DATES:** Written comments must be received on or before February 16, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2015-0114 by any of the following methods:

- Federal eRulemaking Portal: Regulation.gov. Follow the instructions for submitting comments.
- Mail: Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (Regulations.gov) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below. 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 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

#### Proposed Project

Quarantine Station Illness Response Forms: Airline, Maritime, and Land/Border Crossing (0920-0821, expires 04/30/2016). Revision. Division of Global Migration and Quarantine, National Center for Emerging Zoonotic and Infectious Diseases, Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

CDC is requesting approval for a revision to this existing information collection with the intent of ensuring that CDC can continue and improve the collection of pertinent information related to communicable disease or deaths that occur aboard conveyances during travel within the United States and into the United States from a foreign country, as authorized under 42 Code of Federal Regulations part 70 and 71, respectively.

Concerning routine operations, CDC is adjusting its estimates of respondents and burden associated with the use of the Air Travel, Maritime Conveyance, and Land Travel Illness or Death Investigation forms.

- CDC is requesting an increase in the number of respondents to the Air Travel Illness or Death Investigation form, from 1626 respondents to 1800. This results

in an additional 15 hours of burden per year.

- CDC is requesting fewer respondents to the Maritime Conveyance Illness or Death Investigation Form, from 1873 to 750 reports. This results in a decrease of 94 hours.

- CDC is requesting a decrease in the number of respondents to the Land Travel Illness or Death Investigation form, from 259 respondents to 100. This results in a decrease of 13 hours.

Also included are adjustments to the number of respondents and estimated burden to the public for the use of the United States Traveler Health Declaration and Ebola Risk Assessment forms at U.S. ports of entry. These forms are currently used to collect contact information and assess travelers' risk for Ebola if they are coming to the United States from Sierra Leone and Guinea. The adjustments are as follows:

- CDC is requesting 40,238 fewer respondents to the United States Traveler Health Declaration (English: Hard Copy, fillable PDF, electronic portal), resulting in a decrease of 10,060 burden hours.

- CDC is requesting an additional 6,814 respondents to the United States Traveler Health Declaration (French translation guide), with an increase of 1,703 burden hours.

- CDC is requesting 76 fewer respondents for the United States Traveler Health Declaration (Arabic translation guide), with a decrease of 19 burden hours.

- CDC is requesting 2,637 fewer respondents to the Ebola Risk Assessment Form (English hard copy), and an associated decrease of 659 burden hours.

- CDC is requesting an increase of 141 respondents to the Ebola Risk Assessment (French translation guide) and an increase of 35 burden hours.

- CDC is requesting eight fewer respondents to the Ebola Risk Assessment (Arabic translation guide) and two fewer burden hours.

CDC is also requesting an adjustment to the number of respondents and burden hours for the use of the Interactive Voice Response (IVR) system surveys.

- CDC is requesting 40,238 fewer respondents to the IVR Active Monitoring Survey (English: Recorded), with 56,333 fewer burden hours.

- CDC is requesting an increase of 6,814 respondents to the IVR Active Monitoring Survey (French: Recorded) and an additional 9,540 burden hours.

- CDC is requesting 76 fewer respondents to the IVR Active Monitoring: Arabic translation

assistance (no script), with a decrease of 106 burden hours.

These adjustments result in a decrease of 55,994 burden hours.

CDC requested a total of 38,817 respondents and 29,388 burden hours annually. The respondents to these information collections are travelers and

ship medical personnel. There is no cost to respondents other than the time required to provide the information requested.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Form	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours
Traveler .....	Airline Travel Illness or Death Investigation Form.	1,800	1	5/60	150
Ship Medical Personnel .....	Maritime Conveyance Illness or Death Investigation Form.	750	1	5/60	63
Traveler .....	Land Travel Illness or Death Investigation Form.	100	1	5/60	8
Traveler .....	Ebola Risk Assessment Form (Ill traveler interview: English, French, Arabic, or other as needed).	100	1	15/60	25
Traveler .....	United States Traveler Health Declaration (English: Hard Copy, fillable PDF, electronic portal).	9,000	1	15/60	2250
Traveler .....	United States Traveler Health Declaration (French translation guide).	8,400	1	15/60	2100
Traveler .....	United States Traveler Health Declaration (Arabic translation guide).	100	1	15/60	25
Traveler .....	Ebola Risk Assessment Form (English hard copy).	810	1	15/60	203
Traveler .....	Ebola Risk Assessment French translation guide.	252	1	15/60	63
Traveler .....	Ebola Risk Assessment Arabic translation guide.	5	1	15/60	1
Traveler .....	IVR Active Monitoring Survey (English: Recorded).	9,000	21	4/60	12,600
Traveler .....	IVR Active Monitoring Survey (French: Recorded).	8,400	21	4/60	11,760
Traveler .....	IVR Active Monitoring: Arabic translation assistance (no script).	100	21	4/60	140
Total .....	.....	38,817	.....	.....	29,388

#### Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015-31742 Filed 12-16-15; 8:45 am]

BILLING CODE 4163-18-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

[Docket No. FDA-2011-D-0164]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

#### ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 19, 2016.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0734. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food

and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Guidance for Industry on Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act, OMB Control Number 0910-0734—Extension

Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(o)(4)) authorizes FDA to require, and if necessary, order labeling changes if FDA becomes aware of new safety information that FDA believes should be included in the labeling of certain prescription drug and biological products approved under section 505 of the FD&C Act or section 351 of the PHS Act (42 U.S.C. 262). Section 505(o)(4) of the FD&C Act applies to prescription

drug products with an approved new drug application (NDA) under section 505(b) of the FD&C Act, biological products with an approved biologics license application under section 351 of the PHS Act, or prescription drug products with an approved abbreviated new drug application under section 505(j) of the FD&C Act if the reference listed drug with an approved NDA is not currently marketed. Section 505(o)(4) imposes timeframes for application holders to submit and FDA staff to review such changes, and gives FDA new enforcement tools to bring about timely and appropriate labeling changes. The guidance provides information on the implementation of the new provisions, including a description of the types of safety labeling changes that ordinarily might be required under the new legislation, how FDA plans to determine what

constitutes new safety information, the procedures involved in requiring safety labeling changes, and enforcement of the requirements for safety labeling changes.

FDA requires safety labeling changes by sending a notification letter to the application holder. Under section 505(o)(4)(B), the application holder must respond to FDA's notification by submitting a labeling supplement or notifying FDA that the applicant does not believe the labeling change is warranted and submitting a statement detailing the reasons why the application holder does not believe a change is warranted (a rebuttal statement).

Based on FDA's experience to date with safety labeling changes requirements under section 505(o)(4), we estimate that approximately 42 application holders will elect to submit approximately one rebuttal statement

each year and that each rebuttal statement will take approximately 6 hours to prepare.

In addition, in the guidance, FDA states that new labeling prepared in response to a safety labeling change notification should be available on the application holder's Web site within 10 calendar days of approval. FDA estimates that approximately 407 application holders will post new labeling one time each year in response to a safety labeling change notification and that the posting of the labeling will take approximately 4 hours to prepare.

In the **Federal Register** of September 2, 2015 (80 FR 53161), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Rebuttal statement .....	42	1	42	6	252

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN <sup>1</sup>

Type of submission	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Posting approved labeling on application holder's Web site	407	1	407	4	1,628

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collect of information.

Dated: December 10, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-31696 Filed 12-16-15; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2010-D-0226]

**Medical Device ISO 13485:2003 Voluntary Audit Report Program; Termination of Pilot Program; Announcement of the Medical Device Single Audit Program Operational Phase**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the termination of the Medical Device ISO Voluntary Audit Report Pilot Program. This program allowed the submission of ISO audit reports performed by third parties, along with audit reports from the preceding 2 years, to determine if the owner or operator of the medical device establishment could be removed from FDA's routine inspection work plan for 1 year. FDA is also announcing its participation in the operational phase of the Medical Device Single Audit Program (MDSAP), which will allow third parties recognized by the MDSAP consortium to submit audit reports that FDA will utilize for routine inspections.

**DATES:** This notice is effective March 31, 2016.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruff, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3615, Silver Spring, MD 20993-0002, 301-796-6556.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of March 19, 2012 (77 FR 16036), FDA announced the availability of a final guidance entitled "Guidance for Industry, Third Parties and Food and Drug Administration Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Submission Pilot Program" (Ref. 1). This guidance document was effective on June 5, 2012, and as stated in the guidance was an interim measure while developing a single audit program, to implement section 228 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110-85), which amended section 704(g)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(g)(7)). The pilot allowed the owner or operator of the medical device

establishment to be removed from FDA's routine inspection work plan for 1 year from the last day of the ISO 13485:2003 audit. The voluntary submitted ISO 13485:2003 audit report provides FDA some information on the conformance of the manufacturer with basic and fundamental quality management system requirements for medical devices.

In 2012, FDA started working on the MDSAP with other global regulators within the International Medical Device Regulators Forum (IMDRF) for purposes of leveraging work performed for other medical device regulators to meet its inspection obligations. On November 15, 2013 (78 FR 68853), FDA announced its participation within the MDSAP consortium's pilot program, which is effective January 1, 2014, through December 31, 2016.

After review of the MDSAP Mid-Pilot Report, which published in August 2015 (Ref. 2), FDA announced that it will participate with the other MDSAP Consortium regulators from Australia, Brazil, Canada, and Japan in the implementation of the operational phase of the program starting January 1, 2017. The MDSAP program provides FDA better assurances than the ISO 13485:2003 Voluntary Audit Report Submission Pilot because FDA's requirements under 21 CFR 820 or other FDA regulations typically covered during FDA inspections are encompassed within the MDSAP audit model.

On January 1, 2017, MDSAP will become fully operational to include opening applications for additional auditing organizations beyond the limited eligible auditing organizations within the pilot phase. Each regulator within the consortium has committed to continuing to utilize the MDSAP audits during the pilot as well as during the operational phase as described in the MDSAP public announcements posted on FDA's Web page (Ref. 3).

Also, Health Canada in a recent announcement laid out the timeframe for which they will terminate their Canadian Medical Device Conformity Assessment System (CMDCAS) program and utilize MDSAP as the means by which manufacturers will obtain a medical device license for distribution of medical devices in Canada (Ref. 4). As a result of the implementation of the MDSAP program, FDA will no longer accept ISO 13485:2003 Voluntary Audit Report Submissions after March 31, 2016, to assist transitioning manufacturers over to MDSAP.

## II. References

The following references are on display in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <http://www.regulations.gov>. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA Guidance, Guidance for Industry, Third Parties and Food and Drug Administration Staff: Medical Device ISO 13485:2003 Voluntary Audit Report Pilot Program, available at <http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM212798.pdf>.

2. Medical Device Single Audit Program (MDSAP) Mid-Pilot Status Report, January 2014–December 2016, available <http://www.fda.gov/downloads/MedicalDevices/InternationalPrograms/MDSAPPilot/UCM461661.pdf>.

3. Medical Device Single Audit Program (MDSAP) Pilot, available at <http://www.fda.gov/MedicalDevices/InternationalPrograms/MDSAPPilot/>.

4. Health Canada's transition strategy from CMDCAS to MDSAP, available at <http://www.hc-sc.gc.ca/dhp-mps/md-im/activit/int/index-eng.php>.

Dated: December 8, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–31692 Filed 12–16–15; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2015–N–0001]

### The Twentieth Food and Drug Administration International Separation Science Society Symposium on the Interface of Regulatory and Analytical Sciences for Biotechnology Health Products—WCBP 2016

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research, in cosponsorship with the International Separation Science Society (CASSS), is announcing a meeting entitled "The Twentieth FDA CASSS Symposium on the Interface of Regulatory and

Analytical Sciences for Biotechnology Health Products—WCBP 2016." The purpose of the meeting is to discuss development of biotechnology-derived drug products and analytic methodologies for the development of biotechnology-derived drug products.

**DATES:** The meeting will be held January 26, 2016, from 8 a.m., until January 28, 2016, at 5 p.m.

**ADDRESSES:** The meeting will be held at The Mayflower Hotel, 1127 Connecticut Ave. NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Linda Mansouria, CASSS, 5900 Hollis St., Suite R3, Emeryville, CA 94608, 510–428–0740, FAX: 510–428–0741, [lmansouria@casss.org](mailto:lmansouria@casss.org).

### SUPPLEMENTARY INFORMATION:

#### I. Background

CASSS is a scientific society providing forums for the dissemination of information and discussions among industry, academic and regulatory professionals founded on the development and applications of separation science. This cosponsored meeting provides state-of-the-art presentations on the technologies used to produce and assess product quality of biotechnology-derived drug products.

#### II. Registration and Accommodations

##### A. Registration

There is a registration fee to attend this meeting. The registration fee is charged to help defray the costs of programming and facilities. Seats are limited, and registration will be on a first-come, first-served basis.

To register, please complete registration online at <http://www.casss.org/?WCBP1600>. (FDA has verified the Web address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) The costs of registration for the different categories of attendees are as follows:

Category	Cost
Industry Representatives.	\$1995 (early bird); \$2395 (onsite).
Academic .....	\$795 (early bird); \$895 (onsite).
Government .....	\$795 (early bird); \$895 (onsite).

##### B. Accommodations

Attendees are responsible for their own hotel accommodations. Attendees making reservations at the Mayflower Hotel in Washington DC are eligible for a reduced rate of \$295 USD, not including applicable taxes. To receive the reduced rate, contact the Mayflower

Hotel (1-877-212-5752) and identify yourself as an attendee of “CASSS—WCBP 2016.” If you need special accommodations due to a disability, please contact Linda Mansouria (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

### III. Transcripts

We expect that transcripts will be available approximately 30 days after the meeting. A transcript will be available in either hard copy or on CD-ROM, after submission of a Freedom of Information request. Send written requests to the Division of Freedom of Information (ELEM-1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Send faxed requests to 301-827-9267.

Dated: December 11, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015-31691 Filed 12-16-15; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2015-D-4562]

#### **Safety Assessment for Investigational New Drug Application Safety Reporting; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a draft guidance for industry entitled “Safety Assessment for IND Safety Reporting.” The draft guidance provides recommendations to sponsors on developing a systematic approach to investigational new drug application (IND) safety reporting for human drugs and biological products developed under an IND. This draft guidance is a follow-on to the guidance for industry and investigators entitled “Safety Reporting Requirements for INDs and BA/BE Studies” that provides recommendations for how sponsors of INDs can identify and evaluate important safety information that must be submitted to FDA and all participating investigators, including a recommendation that sponsors develop a safety assessment committee.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR

10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 16, 2016. Submit comments on the information collection issues under the Paperwork Reduction Act of 1995 by February 16, 2016.

**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-D-4562 for “Safety Assessment for Investigational New Drug Application Safety Reporting; Draft Guidance for Industry; Availability.” Received comments will be placed in the docket and, except for those

submitted as “Confidential Submissions,” publicly viewable at <http://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <http://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <http://www.fda.gov/regulatoryinformation/dockets/default.htm>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <http://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit comments on information collection issues to the Office of Management and Budget in the following ways:

- Fax to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the title “Safety Assessment for IND Safety Reporting.”

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food

and Drug Administration, 10001 New Hampshire Ave., Hillingdale Bldg., 4th Floor, Silver Spring, MD 20993-0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Dianne Paroan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993-0002, 301-796-2500; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of a draft guidance for industry entitled "Safety Assessment for IND Safety Reporting." The draft guidance provides recommendations to sponsors on developing a systematic approach to IND safety reporting for human drugs and biological products developed under an IND. The draft guidance is a follow-on to the guidance for industry and investigators entitled "Safety Reporting Requirements for INDs and BA/BE Studies."<sup>1</sup> It provides recommendations for how sponsors of INDs can identify and evaluate important safety information that must be submitted to FDA and all participating investigators under the IND safety reporting regulations at § 312.32 (21 CFR 312.32). The draft guidance provides recommendations on the following: (1) The composition and role of a safety assessment committee, (2) aggregate analyses for comparison of adverse event rates across treatment groups, (3) planned unblinding of safety data, (4) reporting thresholds for IND safety reporting, and (5) the development of a safety surveillance plan.

The IND safety reporting requirements for human drugs and biological products are found at § 312.32, and the guidance for industry and investigators entitled "Safety Reporting Requirements

for INDs and BA/BE Studies" describes and provides recommendations for complying with these requirements. During the evaluation of comments to the draft guidance for industry and investigators entitled "Safety Reporting Requirements for INDs and BA/BE Studies" (Docket No. FDA-2010-D-0482) and at meetings with stakeholders, FDA identified the need for additional guidance on IND safety reporting topics for IND studies.

It is critical for sponsors to detect and report, as early as possible, serious and unexpected suspected adverse reactions and clinically important increased rates of previously recognized serious adverse reactions (§ 312.32(c)(1)(i) and (iv)). Early detection of such occurrences will enable sponsors to carry out their obligation to monitor the progress of the investigation (21 CFR 312.56(a)) and, when necessary, to take steps to protect subjects to allow an investigational drug to be safely developed despite potential risks. Early detection also allows sponsors to report meaningful safety information to FDA and all participating investigators in an IND safety report as soon as possible.

Timely reporting of meaningful safety information allows FDA to consider whether any changes in study conduct should be made beyond those initiated by the sponsor and allows investigators to make any needed changes to protect subjects. For these reasons, the draft guidance provides recommendations intended to help sponsors meet their obligations under § 312.32. We recommend that sponsors develop a safety assessment committee and a safety surveillance plan as key elements of a systematic approach to safety surveillance. A safety assessment committee would be a group of individuals chosen by the sponsor to review safety information in a development program and tasked with making a recommendation to the sponsor regarding whether the safety information must be reported in an IND safety report. A safety surveillance plan should describe processes and procedures for assessing serious adverse events and other important safety information.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on safety assessment for IND safety reporting. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

**II. Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the collection of information associated with this draft guidance, FDA invites comments on the following topics: (1) Whether the proposed information collected is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimated burden of the proposed information collected, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of information collected on the respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Title:* Safety Assessment for IND Safety Reporting.

*Description of Respondents:* The respondents to this collection of information are sponsors that conduct IND studies.

*Burden Estimate:* The draft guidance provides recommendations to sponsors on developing a systematic approach to IND safety reporting for human drugs and biological products developed under an IND. The draft guidance also provides recommendations on the following: (1) The composition and role of a safety assessment committee, (2) aggregate analyses for comparison of adverse event rates across treatment groups, (3) planned unblinding of safety data, (4) reporting thresholds for IND safety reporting, and (5) the development of a safety surveillance plan.

<sup>1</sup> The guidance is available on the Internet at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> (under Guidances [Drugs]).

**A. Proposed Reporting Burden Estimates for Developing and Submitting a Safety Surveillance Plan**

This draft guidance proposes the following new collections of information for reporting:

**Developing and Submitting a Safety Surveillance Plan:** The draft guidance recommends that a sponsor develop a safety surveillance plan that describes processes and procedures for assessing serious adverse events and other safety information. The draft guidance describes seven elements that should be included in a safety surveillance plan and recommends that the sponsor submit a portion of the safety surveillance plan to the IND.

Specifically, the sponsor should submit the list of anticipated serious adverse events and previously recognized serious adverse reactions and guiding principles for periodic aggregate safety reviews.

Based on information available to FDA, including burden estimates for collections of information approved under OMB control numbers 0910–0014 [covers § 312.23 (21 CFR 312.23) (IND content), portions of § 312.32 (IND safety reports), and § 312.66 (21 CFR 312.66) (investigator reporting to institutional review board)] and 0910–0733 (development of a comprehensive monitoring plan), we estimate that approximately 88 sponsors will develop approximately 111 safety surveillance

plans in accordance with the draft guidance and that the burden for each plan will be approximately 120 to 240 hours. This burden estimate includes the time sponsors will need to prepare safety surveillance plan amendments when appropriate. The average burden per response is estimated as a range to account for respondents that will make changes to a pre-existing premarket safety system and those that will develop a new premarket safety system. The average of this range (180 hours) was used to calculate the total hours estimated in table 1 of this document (a total of 19,980 hours).

FDA estimates the burden of this collection of information as follows:

**TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>**

Safety assessment for IND safety reporting	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Develop and submit a safety surveillance plan .....	88	1.26	111	180	19,980

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

**B. Proposed Recordkeeping Burden Estimates for Maintaining a Safety Surveillance Plan**

This draft guidance proposes the following new collections of information for recordkeeping:

The draft guidance recommends that a sponsor maintain the safety surveillance plan.

Based on information available to FDA, we estimate that approximately 88 sponsors will maintain approximately 3

records in accordance with the draft guidance and that the average burden per recordkeeping is 6 hours (a total of 1,584 hours).

FDA estimates the burden of this collection of information as follows:

**TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>**

Safety assessment for IND safety reporting	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintain a safety surveillance plan .....	88	3	264	6	1,584

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The draft guidance also refers to previously approved collections of information found in FDA regulations that have been approved under the OMB control numbers that follow.

- OMB control number 0910–0014 covers § 312.23 (IND content), portions of § 312.32 (IND safety reports), and § 312.66 (investigator reporting to institutional review board).
- OMB control number 0910–0116 covers 21 CFR 606.170(b) (adverse reaction file).
- OMB control number 0910–0230 covers 21 CFR 310.305 and 314.80 (postmarketing reporting of adverse drug experiences).
- OMB control number 0910–0308 covers 21 CFR 600.80 (postmarketing reporting of adverse experiences).
- OMB control number 0910–0672 covers more recent provisions of § 312.32 that are not already approved

under OMB control number 0910–0014 (for example, reporting to FDA in an IND safety report any clinically important increase in the rate of occurrence of serious suspected adverse reactions over that listed in the protocol or the investigator brochure).

**III. Electronic Access**

Persons with access to the Internet may obtain the document at <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <http://www.regulations.gov>.

Dated: December 11, 2015.

**Leslie Kux,**  
Associate Commissioner for Policy.  
[FR Doc. 2015–31690 Filed 12–16–15; 8:45 am]  
BILLING CODE 4164–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2011–D–0597]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Guidance for Industry on Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring**

**AGENCY:** Food and Drug Administration, HHS.



**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by January 19, 2016.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202-395-7285, or emailed to *oira\_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910-0733. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE-14526, Silver Spring, MD 20993-0002, *PRAStaff@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry: Oversight of Clinical Investigations: A Risk-Based Approach to Monitoring, OMB Control Number 0910-0733**

The guidance is intended to assist sponsors of clinical investigations in developing strategies for risk-based monitoring and plans for clinical investigations of human drug and biological products, medical devices,

and combinations thereof. The guidance describes strategies for monitoring activities performed by sponsors, or by contract research organizations (CROs), that focus on the conduct, oversight, and reporting of findings of an investigation by clinical investigators. The guidance also recommends strategies that reflect a risk-based approach to monitoring that focuses on critical study parameters and relies on a combination of monitoring activities to oversee a study effectively. The guidance specifically encourages greater reliance on centralized monitoring methods where appropriate.

Under parts 312 and 812 (21 CFR parts 312 and 812), sponsors are required to provide appropriate oversight of their clinical investigations to ensure adequate protection of the rights, welfare, and safety of human subjects and to ensure the quality and integrity of the resulting data submitted to FDA. As part of this oversight, sponsors of clinical investigations are required to monitor the conduct and progress of their clinical investigations. The regulations do not specify how sponsors are to conduct monitoring of clinical investigations and, therefore, are compatible with a range of approaches to monitoring. FDA currently has OMB approval for the information collection required under part 812 (OMB control number 0910-0078) and part 312, including certain provisions under subpart D (OMB control number 0910-0014).

The collection of information associated with this guidance that is approved under OMB control number 0910-0733 is as follows:

*Development of Comprehensive Monitoring Plan:* Section IV.D of the guidance recommends that sponsors develop a prospective, detailed

monitoring plan that describes the monitoring methods, responsibilities, and requirements for each clinical trial. The plan should provide adequate information to those involved with monitoring to effectively carry out their duties. All sponsor and CRO personnel who may be involved with monitoring (including those who review appropriate action, determine appropriate action, or both) regarding potential issues identified through monitoring, should review the monitoring plan. The components of a monitoring plan are described in the guidance, including monitoring plan amendments (*i.e.*, the review and revision of monitoring plans and processes for timely updates).

FDA understands that sponsors currently develop monitoring plans; however, not all monitoring plans contain all the elements described in the guidance. Therefore, the burden estimate provides the additional time that a sponsor would expend in developing a comprehensive monitoring plan based on the recommendations in the guidance. FDA estimates that approximately 88 sponsors will develop approximately 132 comprehensive monitoring plans in accordance with the guidance, and that the added burden for each plan will be approximately 4 hours to develop, including the time needed to prepare monitoring plan amendments when appropriate (a total of 528 hours).

In the **Federal Register** of July 14, 2015 (80 FR 41044), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment; however, it did not pertain to the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Development of Comprehensive Monitoring Plan .....	88	1.5	132	4	528

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 10, 2015.

**Leslie Kux,**  
Associate Commissioner for Policy.

[FR Doc. 2015-31695 Filed 12-16-15; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Food and Drug Administration**

[Docket No. FDA-2015-N-4667]

**Determination That Vancomycin Hydrochloride Injection Drug Products, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness****AGENCY:** Food and Drug Administration, HHS.**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that VANCOCIN (vancomycin hydrochloride (HCl)) injection, 500 milligrams (mg)/vial, 1 gram (g)/vial, 10 g/vial (“the VANCOCIN drug products”); VANCOLED (vancomycin HCl) injection, 500 mg/vial, 1 g/vial, 2 g/vial, 5 g/vial, and 10 g/vial (“the VANCOLED drug products”); and VANCOCIN HYDROCHLORIDE (vancomycin HCl) injection, 500 mg/vial and 1 g/vial (“the VANCOCIN HCl drug products”) (hereinafter collectively “these Vancomycin HCl drug products”), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for these Vancomycin HCl drug products if all other legal and regulatory requirements are met.

**FOR FURTHER INFORMATION CONTACT:** Robin Fastenau, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993-0002, 240-402-4510, [Robin.Fastenau@fda.hhs.gov](mailto:Robin.Fastenau@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.

355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

The VANCOCIN drug products are the subject of ANDA 62-812 held by ANI Pharmaceuticals, Inc., and were initially approved on November 17, 1987. The VANCOLED drug products are the subject of ANDA 62-682 held by Eurohealth International Sàrl and were initially approved on July 22, 1986. The VANCOCIN HCl drug products are the subject of ANDA 60-180 held by ANI Pharmaceuticals, Inc., and were initially approved on November 6, 1964. These Vancomycin HCl drug products are indicated for the treatment of serious or severe infections caused by susceptible strains of methicillin-resistant (beta-lactam-resistant) staphylococci. They are indicated for penicillin-allergic patients; for patients who cannot receive or who have failed to respond to other drugs, including the penicillins or cephalosporins; and for infections caused by vancomycin-susceptible organisms that are resistant to other antimicrobial drugs. They are indicated for initial therapy when methicillin-resistant staphylococci are suspected, but after susceptibility data are available, therapy should be adjusted accordingly.

These Vancomycin HCl drug products are currently listed in the “Discontinued Drug Product List” section of the Orange Book.

Strides Arcolab Limited submitted a citizen petition dated May 18, 2009 (Docket No. FDA-2009-P-0242), under § 10.30 (21 CFR 10.30), requesting that the Agency determine whether VANCOCIN (Vancomycin HCl) injection, 10 g/vial, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen

petition did not address the 500 mg/vial and 1 g/vial strengths, these strengths have also been discontinued. On our own initiative, we have also determined whether these strengths were withdrawn for safety or effectiveness reasons. Hospira submitted a citizen petition dated October 5, 2015 (Docket No. FDA-2015-P-3621), under § 10.30, requesting that the Agency determine whether VANCOLED (vancomycin HCl) injection, 10 g bulk packaging, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 500 mg/vial, 1 g/vial, 2 g/vial, and 5 g/vial strengths, these strengths have also been discontinued. On our own initiative, we have also determined whether these strengths were withdrawn from sale for reasons of safety or effectiveness. In addition, the VANCOCIN HCl (Vancomycin HCl), injection, 500 mg/vial, and 1 g/vial drug products have been discontinued from sale and FDA has determined whether these drug products were withdrawn from the market for safety or effectiveness reasons.

After considering the citizen petitions and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that these Vancomycin HCl drug products were not withdrawn for reasons of safety or effectiveness. The petitioners have identified no data or other information suggesting that these Vancomycin HCl drug products were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of these Vancomycin HCl drug products from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list these Vancomycin HCl drug products in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to these Vancomycin HCl drug products may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will

advise ANDA applicants to submit such labeling.

Dated: December 11, 2015.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2015–31689 Filed 12–16–15; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this Information Collection Request must be received no later than February 16, 2016.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or mail the HRSA Information Collection Clearance Officer, Room 10–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft

instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information request collection title for reference.

**Information Collection Request Title: Bureau of Health Workforce Performance Data Collection OMB No. 0915–0061—Revision**

**Abstract:** Over 40 Bureau of Health Workforce (BHW) programs award grants to health professions schools and training programs across the United States to develop, expand, and enhance training, and to strengthen the distribution of the health workforce. These programs are authorized by the Public Health Service Act (42 U.S.C. 201 *et seq.*), specifically Titles III, VII, and VIII. Performance information regarding these programs is collected in the HRSA Performance Report for Grants and Cooperative Agreements (PRGCA). Data collection activities consisting of an annual progress and annual performance report satisfy statutory and programmatic requirements for performance measurement and evaluation (including specific Title III, VII and VIII requirements), as well as Government Performance and Results Act (GPRA) requirements. The performance measures were last revised in 2013 to ensure they addressed programmatic changes, met evolving program management needs, and responded to emerging workforce concerns—especially as a result of the changes in the Affordable Care Act (Pub. L. 111–148). As these revisions were successful, BHW will continue with its current performance management strategy and measures and require annual progress and performance reporting.

**Need and Proposed Use of the Information:** The purpose of the

proposed data collection is to analyze and report grantee training activities and education, identify intended practice locations and report outcomes of funded initiatives. Data collected from these grant programs will also provide a description of the program activities of approximately 1,700 reporting grantees to better inform policymakers on the barriers, opportunities, and outcomes involved in health care workforce development. The proposed measures focus on five key outcomes: (1) Increasing the workforce supply of diverse well-educated practitioners, (2) increasing the number of practitioners that practice in underserved and rural areas, (3) enhancing the quality of education, (4) increasing the recruitment, training, and placement of under-represented groups in the health workforce, and (5) supporting educational infrastructure to increase the capacity to train more health professionals.

**Likely Respondents:** Respondents are awardees of BHW health professions grant programs.

**Burden Statement:** Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Program Aggregate Data Collection*	600	1	600	6	3,600
Individual-level Data Collection	1,100	1	1,100	2	2,200
Total	1,700	.....	1,700	.....	5,800

\* Program aggregate data collection will only be required for programs that do not provide direct financial support to all trainees.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2015-31641 Filed 12-16-15; 8:45 am]

BILLING CODE 4165-15-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5815-N-02]

### Statutorily Mandated Designation of Difficult Development Areas and Qualified Census Tracts: Revision of Effective Date for 2015 Designations

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** This document revises the effective date for designations of "Difficult Development Areas" (DDAs) and "Qualified Census Tracts" (QCTs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Internal Revenue Code (IRC) Section 42 (26 U.S.C. 42) published on October 3, 2014 (79 FR 59855). This Notice extends from 365 days to 730 days the period for which the 2015 lists of QCTs and DDAs are effective for projects located in areas not on the 2016 list of DDAs or QCTs, published November 24, 2015, at 80 FR 73201, but having submitted applications while the area was a 2015 QCT or DDA.

**FOR FURTHER INFORMATION CONTACT:** For questions on how areas are designated and on geographic definitions, contact Michael K. Hollar, Senior Economist, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8234, Washington, DC 20410-6000; telephone number (202) 402-5878, or send an email to [Michael.K.Hollar@hud.gov](mailto:Michael.K.Hollar@hud.gov). For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs and Special Industries, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224; telephone number (202) 317-

4137, fax number (202) 317-6731. For questions about the "HUB Zone" program, contact Mariana Pardo, Director, HUBZone Program, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street SW., Suite 8800, Washington, DC 20416; telephone number (202) 205-2985, fax number (202) 481-6443, or send an email to [hubzone@sba.gov](mailto:hubzone@sba.gov). A text telephone is available for persons with hearing or speech impairments at 800-877-8339. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at 800-245-2691 for a small fee to cover duplication and mailing costs.

*Copies Available Electronically:* This notice and additional information about DDAs and QCTs are available electronically on the Internet at <http://www.huduser.org/datasets/qct.html>.

#### SUPPLEMENTARY INFORMATION:

##### This Document

This notice extends from 365 days to 730 days the period for which the 2015 lists of QCTs and DDAs are effective for projects located in areas not on the 2016 list of DDAs or QCTs, published November 24, 2015, at 80 FR 73201, but having submitted applications while the area was a 2015 QCT or DDA for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The actual designations of 2015 QCTs and DDAs are not affected by this notice. HUD is revising the effective date of the 2015 QCTs and DDAs at this time to aid the transition to Small Difficult Development Areas as announced in a notice designating 2016 QCTs and DDAs published at 80 FR 73201 and otherwise ensure that LIHTC and bond-financed projects relying on 2015 QCT or DDA designations and not in areas designated as 2016 QCTs and DDAs, but unable to meet the 365-day requirement of the original effective date of the 2015 QCT and DDA designations, may still be completed within 730 days.

The sections entitled "Effective Date" and "Interpretive Examples of Effective Date" of the 2015 DDA and QCT designations as published October 3, 2014 at 79 FR 59855 are hereby revised to read as follows:

##### Effective Date

The 2015 lists of QCTs and DDAs are effective:

- (1) For allocations of credit after December 31, 2014; or
- (2) for purposes of IRC Section 42(h)(4), if the bonds are issued and the

building is placed in service after December 31, 2014.

If an area is not on a subsequent list of DDAs, the 2015 lists are effective for the area if:

(1) The allocation of credit to an applicant is made no later than the end of the 730-day period after the applicant submits a complete application to the LIHTC-allocating agency, and the submission is made before the effective date of the subsequent lists; or

(2) for purposes of IRC Section 42(h)(4), if:

(a) The bonds are issued or the building is placed in service no later than the end of the 730-day period after the applicant submits a complete application to the bond-issuing agency, and

(b) the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete by the credit-allocating or bond-issuing agency. A "complete application" means that no more than de minimis clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

In the case of a "multiphase project," the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the project received its first allocation of LIHTC. For purposes of IRC Section 42(h)(4), the DDA or QCT status of the site of the project that applies for all phases of the project is that which applied when the first of the following occurred: (a) The building(s) in the first phase were placed in service, or (b) the bonds were issued.

For purposes of this notice, a "multiphase project" is defined as a set of buildings to be constructed or rehabilitated under the rules of the LIHTC and meeting the following criteria:

(1) The multiphase composition of the project (*i.e.*, total number of buildings and phases in project, with a description of how many buildings are to be built in each phase and when each phase is to be completed, and any other information required by the agency) is made known by the applicant in the first application of credit for any building in the project, and that applicant identifies the buildings in the project for which credit is (or will be) sought;

(2) The aggregate amount of LIHTC applied for on behalf of, or that would eventually be allocated to, the buildings on the site exceeds the one-year limitation on credits per applicant, as defined in the Qualified Allocation Plan (QAP) of the LIHTC-allocating agency, or the annual per-capita credit authority of the LIHTC allocating agency, and is the reason the applicant must request multiple allocations over 2 or more years; and

(3) All applications for LIHTC for buildings on the site are made in immediately consecutive years.

Members of the public are hereby reminded that the Secretary of Housing and Urban Development, or the Secretary's designee, has legal authority to designate DDAs and QCTs, by publishing lists of geographic entities as defined by, in the case of DDAs, the Census Bureau, the several states and the governments of the insular areas of the United States and, in the case of QCTs, by the Census Bureau; and to establish the effective dates of such lists. The Secretary of the Treasury, through the IRS thereof, has sole legal authority to interpret, and to determine and enforce compliance with the IRC and associated regulations, including **Federal Register** notices published by HUD for purposes of designating DDAs and QCTs. Representations made by any other entity as to the content of HUD notices designating DDAs and QCTs that do not precisely match the language published by HUD should not be relied upon by taxpayers in determining what actions are necessary to comply with HUD notices.

#### **Interpretive Examples of Effective Date**

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples covering DDAs are equally applicable to QCT designations.

(Case A) Project A is located in a 2015 DDA that is NOT a designated DDA in 2016 or 2017. A complete application for tax credits for Project A is filed with the allocating agency on November 15, 2015. Credits are allocated to Project A on October 30, 2017. Project A is eligible for the increase in basis accorded a project in a 2015 DDA because the application was filed BEFORE January 1, 2016 (the effective date for the 2016 DDA lists), and because tax credits were allocated no later than the end of the 730-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project B is located in a 2015 DDA that is NOT a designated DDA in 2016, 2017, or 2018. A complete application for tax credits for Project B is filed with the allocating agency on December 1, 2015. Credits are allocated to Project B on March 30, 2018. Project B is NOT eligible for the increase in basis accorded a project in a 2015 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2016 (the effective date of the 2016 DDA lists), the tax credits were allocated later than the end of the 730-day period after the filing of the complete application.

(Case C) Project C is located in a 2015 DDA that was not a DDA in 2014. Project C was placed in service on November 15, 2014. A complete application for tax-exempt bond financing for Project C is filed with the bond-issuing agency on January 15, 2015. The bonds that will support the permanent financing of Project C are issued on September 30, 2015. Project C is NOT eligible for the increase in basis otherwise accorded a project in a 2015 DDA, because the project was placed in service BEFORE January 1, 2015.

(Case D) Project D is located in an area that is a DDA in 2015, but is NOT a DDA in 2016, 2017, or 2018. A complete application for tax-exempt bond financing for Project D is filed with the bond-issuing agency on October 30, 2015. Bonds are issued for Project D on April 30, 2017, but Project D is not placed in service until January 30, 2018. Project D is eligible for the increase in basis available to projects located in 2015 DDAs because: (1) One of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the IRC (the two events being bonds issued and buildings placed in service) took place on April 30, 2017, within the 730-day period after a complete application for tax-exempt bond financing was filed, (2) the application was filed during a time when the location of Project D was in a DDA, and (3) both the issuance of the bonds and placement in service of Project D occurred after the application was submitted.

(Case E) Project E is a multiphase project located in a 2015 DDA that is NOT a designated DDA in 2016. The first phase of Project E received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which describes the multiphase composition of the project. An application for tax credits for the second phase Project E is filed with the allocating agency by the same entity on March 15, 2016. The second phase of Project E is located on a contiguous site.

Credits are allocated to the second phase of Project E on October 30, 2016. The aggregate amount of credits allocated to the two phases of Project E exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP and is the reason that applications were made in multiple phases. The second phase of Project E is, therefore, eligible for the increase in basis accorded a project in a 2015 DDA, because it meets all of the conditions to be a part of a multiphase project.

(Case F) Project F is a multiphase project located in a 2015 DDA that is NOT a designated DDA in 2016. The first phase of Project F received an allocation of credits in 2015, pursuant to an application filed March 15, 2015, which does not describe the multiphase composition of the project. An application for tax credits for the second phase of Project F is filed with the allocating agency by the same entity on March 15, 2017. Credits are allocated to the second phase of Project F on October 30, 2017. The aggregate amount of credits allocated to the two phases of Project F exceeds the amount of credits that may be allocated to an applicant in one year under the allocating agency's QAP. The second phase of Project F is, therefore, NOT eligible for the increase in basis accorded a project in a 2015 DDA, since it does not meet all of the conditions for a multiphase project, as defined in this notice. The original application for credits for the first phase did not describe the multiphase composition of the project. Also, the application for credits for the second phase of Project F was not made in the year immediately following the first phase application year.

#### **Findings and Certifications**

##### *Environmental Impact*

This notice involves the establishment of fiscal requirements or procedures that are related to rate and cost determinations and do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

##### *Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that

has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates DDAs as required under IRC Section 42, as amended, for the use by political subdivisions of the states in allocating the LIHTC. This notice also details the technical method used in making such designations. As a result, this notice is not subject to review under the order.

Dated: December 10, 2015.

**Katherine M. O'Regan,**  
Assistant Secretary for Policy Development and Research.

[FR Doc. 2015-31766 Filed 12-16-15; 8:45 am]

BILLING CODE 4210-67-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R3-ES-2015-N201;  
FX3ES11130300000-167-FF03E00000]

**Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of One Listed Animal and Five Listed Plant Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of initiation of reviews; request for information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), for one animal and five plant species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we

are requesting submission of any such information that has become available since the last review for the species.

**DATES:** To ensure consideration, please send your written information by February 16, 2016. However, we will continue to accept new information about any listed species at any time.

**ADDRESSES:** For how to send comments or information for each species, see the table in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** To request information, contact the appropriate person in the table in the **SUPPLEMENTARY INFORMATION** section. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:** We are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), for one animal and five plant species: Illinois cave amphipod (*Gammarus acherondytes*), Michigan monkey flower (*Mimulus michiganensis*), Running buffalo clover (*Trifolium stoloniferum*), Minnesota dwarf trout lily (*Erythronium propullans*), Western prairie fringed orchid (*Platanthera praeclara*), and Prairie bush clover (*Lespedeza leptostachya*).

**Why do we conduct 5-year reviews?**

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those

species under active review. For additional information about 5-year reviews, go to <http://www.fws.gov/Endangered/what-we-do/recovery-overview.html>, scroll down to "Learn More about 5-Year Reviews," and click on our factsheet.

**What information do we consider in our review?**

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

- (A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;
- (B) Habitat conditions, including but not limited to amount, distribution, and suitability;
- (C) Conservation measures that have been implemented that benefit the species;
- (D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and
- (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

**What species are under review?**

This notice announces our active 5-year status reviews of the species in the following table.

Animals

Common name	Scientific name	Listing status	Where listed	Final listing rule ( <b>Federal Register</b> citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Illinois cave amphipod.	<i>Gammarus acherondytes</i> .	E .....	Illinois .....	63 FR 46900; September 3, 1988.	Kristin Lundh; <a href="mailto:Kristin_Lundh@fws.gov">Kristin_Lundh@fws.gov</a> ; 309-757-5800, x215.	USFWS; 1511 47th Avenue; Moline, IL 61265.

Plants

Scientific name	Common name	Listing status	Where listed	Final listing rule (Federal Register citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
<i>Mimulus michiganensis</i> .	Michigan monkey flower.	E .....	Michigan .....	55 FR 25596; June 21, 1990.	Barb Hosler; <i>Barbara_Hosler@fws.gov</i> ; 517-351-6326.	USFWS; 2651 Coolidge Road, Suite 101; East Lansing, MI 48823.
<i>Trifolium stoloniferum</i> .	Running buffalo clover.	E .....	Arkansas, Indiana, Kentucky, Missouri, Ohio, West Virginia.	52 FR 21481; June 5, 1987.	Jennifer Finfera; 614-416-8993, x13; <i>Jennifer_Finfera@fws.gov</i> .	USFWS; 4625 Morse Road, Suite 104; Columbus, OH 43230.
<i>Erythronium propullans</i> .	Minnesota dwarf trout lily.	E .....	Minnesota .....	73 FR 21643; March 26, 1986.	Phil Delphey; <i>Phil_Delphey@fws.gov</i> ; 612-725-3548, x2206.	USFWS; 4101 American Boulevard East; Bloomington, MN 55425.
<i>Platanthera praeclara</i> .	Western prairie fringed orchid.	T .....	Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota.	54 FR 39875; September 28, 1989.	Phil Delphey; <i>Phil_Delphey@fws.gov</i> ; 612-725-3548, x2206.	USFWS; 4101 American Boulevard East; Bloomington, MN 55425.
<i>Lespedeza leptostachya</i> .*	Prairie bush clover.	T .....	Iowa, Illinois, Minnesota, Wisconsin.	52 FR 781; June 9, 1987.	Phil Delphey; <i>Phil_Delphey@fws.gov</i> ; 612-725-3548, x2206.	USFWS; 4101 American Boulevard East; Bloomington, MN 55425.

\* Species' 5-year review was previously initiated, but that review was never completed. We are reinitiating here to ensure that we have the most up-to-date information to complete the review.

**Request for Information**

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See "What Information Do We Consider in Our Review?" for specific topics. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

**How do I ask questions or provide information?**

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800-877-8339 for TTY assistance.

**Public Availability of Submissions**

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

**Completed and Active Reviews**

A list of all completed 5-year reviews addressing species for which the Midwest Region of the Service has lead responsibility is available at [http://www.fws.gov/midwest/endangered/recovery/5yr\\_rev/completed5yrs.html](http://www.fws.gov/midwest/endangered/recovery/5yr_rev/completed5yrs.html).

**Authority**

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 23, 2015.

**Lynn M. Lewis,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2015-31725 Filed 12-16-15; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS-HQ-FAC-2015-N233; FF09F42300-FVWF97920900000-XXX]**

**Sport Fishing and Boating Partnership Council**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of teleconference.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This teleconference is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

**DATES:** *Teleconference:* Friday, January 8, 2016, 1:30 p.m. to 3:00 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see "Public Input" under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Brian Bohnsack, Council Coordinator, via U.S. mail at U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Mailstop FAC, Falls Church, VA 22041; via telephone at (703) 358-2435; via fax at (703) 358-2487; or via email at [brian\\_bohnsack@fws.gov](mailto:brian_bohnsack@fws.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a teleconference.

**Background**

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of

the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at <http://www.fws.gov/sfbpc>.

**Meeting Agenda**

The Council will hold a teleconference to:

- Consider and approve the Council’s Boating Infrastructure Grant Program Review Committee’s funding recommendations for fiscal year 2015 proposal;
- Discuss a proposed pilot project associated with permitting recreational projects;
- Schedule an upcoming spring meeting; and
- Consider other Council business.

The final agenda will be posted on the Internet at <http://www.fws.gov/sfbpc>.

**PUBLIC INPUT**

If you wish to:	You must contact the Council Coordinator (see FOR FURTHER INFORMATION CONTACT) no later than:
Listen to the teleconference .....	Monday, January 4, 2016.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	Monday, January 4, 2016.
Give an oral presentation during the teleconference .....	Monday, January 4, 2016.

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in “Public Input” under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may

submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

**Meeting Minutes**

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council’s Web site at <http://www.fws.gov/sfbpc>.

**Stephen Guertin,**  
*Acting Director.*

[FR Doc. 2015–31724 Filed 12–16–15; 8:45 am]

**BILLING CODE 4333–15–P**

**DEPARTMENT OF THE INTERIOR**

**Geological Survey**

**[GX16EE000101000]**

**Agency Information Collection**

**Activities: Request for Comments on the Doug D. Nebert NSDI Champion of the Year Award**

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of a new information collection, Doug D. Nebert NSDI Champion of the Year Award.

**SUMMARY:** We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the

Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. **DATES:** To ensure that your comments on this ICR are considered, OMB must receive them on or before January 19, 2016.

**ADDRESSES:** Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA\_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with ‘OMB Control Number 1028—NEW Doug D. Nebert NSDI Champion of the Year Award’. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info\_collections@usgs.gov* (email). Please reference ‘OMB Information Collection 1028—NEW: Doug D. Nebert NSDI Champion of the Year Award in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Brigitta Urban-Mathieux, Federal Geographic Data Committee Office of the Secretariat, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 590, Reston, VA 20192 (mail); 703–648–5175 (phone); or *burbanma@usgs.gov*



(email). You may also find information about this ICR at [www.reginfo.gov](http://www.reginfo.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Nominations for Doug D. Nebert NSDI Champion of the Year Award are accepted from the public and private sector individuals, teams, organizations, and professional societies that are from the United States of America. Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the development of an outstanding, innovative, and operational tool, application, or service capability that directly supports the spatial data infrastructures. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement. The award consists of a citation and plaque, which are presented to the recipient at an appropriate public forum by the FGDC Chair. The name of the recipient is also inscribed on a permanent plaque, which are displayed by the FGDC.

The Doug D. Nebert NSDI Champion of the Year Award honors a respected colleague, technical visionary, and recognized U.S. national leader in the establishment of spatial data infrastructures that significantly enhance the understanding of our physical and cultural world. The award is sponsored by the Federal Geographic Data Committee (FGDC) and its purpose is to recognize an individual or a team representing Federal, State, Tribal, regional, and (or) local government, academia, or non-profit and professional organization that has developed an outstanding, innovative, and operational tool, application, or service capability used by multiple organizations that furthers the vision of the National Spatial Data Infrastructure (NSDI).

**II. Data**

*OMB Control Number:* 1028—NEW.  
*Title:* Doug D. Nebert NSDI Champion of the Year Award.

*Type of Request:* Approval of new information collection.

*Respondent Obligation:* Required to obtain benefit.

*Frequency of Collection:* This is an annual offer.

*Description of Respondents:* State, local, and tribal governments; academia, and non-profit organizations.

*Estimated Total Number of Annual Responses:* 10.

*Estimated Time per Response:* We estimate that it will take 10 hour(s) per nomination to complete the award nomination process.

*Estimated Annual Burden Hours:* 100 hours.

*Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:* There are no "non-hour cost" burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*Comments:* On September 9, 2015, we published a **Federal Register** notice (80 FR 54309) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on November 9, 2015. We did receive one comment from the public; however, the comment was not directly related to this project but rather a rejection of all government data collection.

**III. Request for Comments**

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

**Ivan DeLoatch,**

*Executive Director, Federal Geographic Data Committee, Core Science Systems.*

[FR Doc. 2015-31746 Filed 12-16-15; 8:45 am]

**BILLING CODE 4338-11-P**

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

[167D0102DM/DS64600000/  
DLSN00000.000000/DX.64601]

**Notice of Senior Executive Service Performance Review Board Appointments**

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Senior Executive Service (SES) Performance Review Board.

**DATES:** These appointments are effective upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Raymond Limon, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240, Telephone Number: (202) 208-5310.

**SUPPLEMENTARY INFORMATION:** The members of the Department of the Interior SES Performance Review Board are as follows:

ANDERSON, ALLYSON K.  
ANDREW, JONATHAN M.  
ANDROFF, BLAKE J.  
APPEGATE, JAMES D. R.  
ARAGON, JOSE RAMON  
ARROYO, BRYAN  
AUSTIN, STANLEY J.  
BAIL, KRISTIN MARA  
BALES, JERAD D.  
BARCHENGER, ERVIN J.  
BATHRICK, MARK L.  
BEALL, JAMES W.  
BEAN, MICHAEL J.  
BEARPAW, GEORGE WATIE  
BEAUDREAU, TOMMY P.  
BECK, RICHARD T.  
BELIN, ALLETTA D.  
BERRIGAN, MICHAEL J.  
BERRY, DAVID A.  
BIRDSONG, BRET CREECH  
BLACK, MICHAEL S.  
BLAIR, JOHN WATSON  
BLANCHARD, MARY JOSIE  
BLEDSOE DOWNES, ANN MARIE  
BOLING, EDWARD A.  
BOLTON, HANNIBAL  
BOWKER, BRYAN L.  
BRANUM, LISA A.  
BROWN, LAURA B.  
BROWN, WILLIAM Y  
BRZEZINSKI, MARK F.  
BUFFA, NICOLE  
BURCH, MELVIN E.  
BURCKMAN, JAMES N.  
BURDEN, JOHN W.

BURKETT, VIRGINIA  
BURNS, SYLVIA W.  
CALDWELL, MICHAEL A.  
CARDINALE, RICHARD T.  
CARL, LEON M.  
CARTER-PFISTERER, CAROLE  
CASH, CASSIUS M.  
CLARK, HORACE G.  
CLEMENT, JOEL P.  
COLANDER, BRANDI ADELE  
CONNELL, JAMIE E.  
CORDOVA-HARRISON, ELIZABETH  
CRAFF, ROBERT C.  
CRIBLEY, BUD C.  
CRUICKSHANK, WALTER D.  
CRUZAN, DARREN A.  
CUMMINGS, JODY ALLEN  
DARNELL, JOSEPH D.  
DAVIS, MARK H.  
DEARMAN, TONY L.  
DEERINWATER, DANIEL J.  
DOHNER, CYNTHIA  
DOUGLAS, JAMES C.  
DREHER, ROBERT GEOFFREY  
DUMONTIER, DEBRA L.  
DUNTON, RONALD L.  
DUTSCHKE, AMY L.  
EDSALL, DONNA LYNN  
ELLIS, STEVEN A  
ESTENOZ, SHANNON A.  
ETHRIDGE, MAX M.  
FAETH, LORRAINE V.  
FARBER, MICHAEL D.  
FERRERO, RICHARD C.  
FERRITER, OLIVIA B.  
FLANAGAN, DENISE A.  
FORD, JEROME E.  
FORREST, VICKI L.  
FRAZER, GARY D.  
FREEMAN, SHAREE M.  
FREIHAGE, JASON E.  
FROST, HERBERT C.  
FULP, TERRANCE J.  
GALLAGHER, KEVIN T.  
GIDNER, JEROLD L.  
GIMBEL, JENNIFER L.  
GLENN, DOUGLAS A.  
GLOMB, STEPHEN J.  
GOKLANY, INDUR M.  
GONZALES-SCHREINER, ROSEANN  
GOULD, GREGORY J.  
GREENBERGER, SARAH D.  
GUERTIN, STEPHEN D.  
HAMLEY, JEFFREY L.  
HANNA, JEANETTE D.  
HART, PAULA L.  
HARTLEY, DEBORAH J.  
HAUGRUD, KEVIN JACK  
HAWBECKER, KAREN S.  
HERBST, LARS T.  
HILDEBRANDT, BETSY J.  
HOPPER, ABIGAIL ROSS  
HOSKINS, DAVID WILLIAM  
HUMBERT, HARRY L.  
HYUN, KAREN H.  
ISEMAN, THOMAS M.  
JAMES JR., JAMES D.  
JOHNSTON, MICHAEL J.  
JOSEPHSON, CLEMENTINE  
KEABLE, EDWARD T.  
KELLY, FRANCIS P.  
KELLY, KATHERINE P.  
KENDALL JR., JAMES J.  
KIMBALL, SUZETTE M.  
KINSINGER, ANNE E.  
KLEIN, ELIZABETH A.  
KNOX, VICTOR W.  
KROPP, RAMSEY LAURSOO  
KURTH, JAMES W.  
LA COUNTE II, DARRYL D.  
LAIRD, JOSHUA RADBILL  
LANCE, LINDA L.  
LAPOINTE, TIMOTHY L.  
LAROUCHE, DARRELL WILLIAM  
LAURO, SALVATORE R.  
LEE, LORRI J.  
LEHNERTZ, CHRISTINE S.  
LEITER, AMANDA C.  
LIMON, RAYMOND A.  
LODGE, CYNTHIA LOUISE  
LOFTIN, MELINDA J.  
LOHOEFENER, RENNE R.  
LORDS, DOUGLAS A.  
LOUDERMILK, WELDON B.  
LUEBKE, THOMAS A.  
LUEDERS, AMY L.  
LYONS, JAMES R.  
MABRY, SCOTT L.  
MARTINEZ, CYNTHIA T.  
MASICA, SUE E.  
MAYTUBBY, BRUCE W.  
MCCAFFERY, JAMES G.  
MCDOWALL, LENA E.  
MCKEOWN, MATTHEW J.  
MEHLHOFF, JOHN J.  
MELIUS, THOMAS O.  
MILAKOFSKY, BENJAMIN E.  
MONACO, JENNIFER ROMERO  
MORRIS, DOUGLAS W.  
MOSS, ADRIANNE L.  
MULLER JR., BRUCE C.  
MURILLO, DAVID G.  
MURPHY, TIMOTHY M.  
MUSSENDEN, PAUL A.  
NEDD, MICHAEL D.  
NEIMEYER, SARAH C.  
NEUBACHER, DONALD L.  
OBERNESSER, RICHARD  
O'DELL, MARGARET G.  
OLSEN, MEGAN C.  
ONEILL, KEITH JAMES  
ORR, L. RENEE  
ORTIZ, HANKIE P.  
OWENS, GLENDA HUDSON  
PALUMBO, DAVID M.  
PAYNE, GRAYFORD F.  
PEREZ, JEROME E.  
PETERSON, PENNY LYNN  
PFEIFFER, TAMARAH  
PIERRE-LOUIS, ALESIA J.  
PINTO, SHARON ANN  
PLETCHER, MARY F.  
PULA, NIKOLAO IULI  
QUINLAN, MARTIN J.  
QUINT, ROBERT J.  
RAMOS, PEDRO M.  
RAUCH, PAUL A.  
REYNOLDS, MICHAEL T.  
REYNOLDS, THOMAS G.  
RHEES, BRENT B.  
RICHARDSON, LIZETTE  
RIDEOUT JR., STERLING J.  
RIGGS, HELEN  
ROBERSON, EDWIN L.  
ROBERTS, LAWRENCE SCOTT  
ROESSEL, CHARLES M.  
ROSEN, DIANE K.  
ROSS, JOHN W.  
RUGEN, CATHERINE E.  
RUHS, JOHN F.  
RYAN, DENISE E.  
RYAN, MICHAEL J.  
SALERNO, BRIAN M.  
SALOTTI, CHRISTOPHER P.  
SARRI, KRISTEN JOAN  
SAUVAJOT, RAYMOND MARC  
SCHNEIDER, MARGARET N.  
SCHOCK, JAMES H.  
SHEEHAN, DENISE E.  
SHEPARD, ERIC N.  
SHOLLY, CAMERON H.  
SHOPE, THOMAS D.  
SIMMONS, SHAYLA F.  
SINGER, MICHELE F.  
SLACK, JAMES J.  
SMILEY, KARLA J.  
SMITH, MICHAEL R.  
SOGGE, MARK K.  
SONDERMAN, DEBRA E.  
SOUZA, PAUL  
SPEAKS, STANLEY M.  
STEWART, JAMES D.  
STREATER, EDDIE R.  
SUAZO, RAYMOND  
TABER, TERESA RENEE  
TAYLOR, WILLIE R.  
TEITZ, ALEXANDRA ELIZABETH  
THOMPSON, DIONNE E.  
THOMPSON, THOMAS D.  
THORNHILL, ALAN D.  
THORSON, ROBYN  
TOOTHMAN, STEPHANIE S.  
TUGGLE, BENJAMIN N.  
UBERUAGA, DAVID V.  
VELA, RAYMOND DAVID  
VELASCO, JANINE M.  
VIETZKE, GAY E.  
VOGEL, ROBERT A.  
WAINMAN, BARBARA W.  
WALKER, WILLIAM T.  
WALSH, NOREEN E.  
WASHBURN, ELIZABETH R  
WASHBURN, JULIA L.  
WAYSON, THOMAS C.  
WEAVER, JESS D.  
WEBER, WENDI  
WELCH, RUTH L.  
WENK, DANIEL N.  
WERKHEISER, WILLIAM H.  
WHITE, JOHN ETHAN

Authority: 5 CFR 430.311(a)(4).

**Raymond Limon,**

*Director, Office of Human Resources.*

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

[OMB Control Number 1010-0176]

**Information Collection: Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf; Proposed Collection for OMB Review; Comment Request**

**ACTION:** 60-day notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Ocean Energy Management (BOEM) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under “Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.”

**DATES:** Submit written comments by February 16, 2016.

**ADDRESSES:** Please send your comments on this ICR to the BOEM Information Collection Clearance Officer, Kye Mason, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166 (mail); or *kye.mason@boem.gov* (email); or (703) 787-1209 (fax). Please reference ICR 1010-0176 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Kye Mason, Office of Policy, Regulations, and Analysis at (703) 787-1025 to request additional information about this ICR or copies of the referenced forms.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1010-0176.

*Title:* 30 CFR 585, Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf.

*Forms:* BOEM-0002, BOEM-0003, BOEM-0004, BOEM-0005, BOEM-0006.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to issue leases, easements, or rights-of-way on the OCS for activities that produce or support production, transportation, or transmission of energy from sources other than oil and gas (renewable energy). Specifically, subsection 8(p) of the OCS Lands Act, as amended (43 U.S.C. 1337(p)), directs the Secretary of the Interior to issue any necessary regulations to carry out the OCS renewable energy program. The Secretary delegated this authority to the Bureau of Ocean Energy Management (BOEM). The BOEM has issued regulations for OCS renewable energy activities at 30 CFR part 585; this notice concerns the reporting and recordkeeping elements required by these regulations.

Respondents operate commercial and noncommercial technology projects that include installation, construction, operation and maintenance, and decommissioning of offshore facilities, as well as possible onshore support facilities. The BOEM must ensure that these activities and operations on the OCS are performed in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Therefore, BOEM needs information concerning the proposed activities, facilities, safety equipment, inspections and tests, and natural and manmade hazards near the site, as well as assurance of fiscal responsibility.

The BOEM uses forms to collect some information to ensure proper and efficient administration of OCS renewable energy leases and grants and

to document the financial responsibility of lessees and grantees. Forms BOEM-0002, BOEM-0003, BOEM-0004, and BOEM-0006 are used by renewable energy entities on the OCS to assign a lease interest, designate an operator, and to assign or relinquish a lease or grant. Form BOEM-0005 was designed to guarantee the performance of sureties with respect to bonds issued on behalf of OCS renewable energy lessees, grantees, and operators. The BOEM maintains the submitted forms as official lease and grant records pertaining to operating responsibilities, ownership, and financial responsibility.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 585.113, addressing disclosure of data and information to be made available to the public and others. No items of a sensitive nature are collected. Responses are mandatory or required to obtain a benefit.

*Frequency:* On occasion or annually.

*Description of Respondents:* Companies interested in renewable energy-related uses on the OCS and holders of leases and grants under 30 CFR part 585.

*Estimated Reporting and Recordkeeping Hour Burden:* We estimate the burden for this information collection to be 25,688 hours. The following table details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

**BURDEN TABLE**

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
<b>Subpart A—General Provisions</b>				
102; 105; 110 .....	These sections contain general references to submitting comments, requests, applications, plans, notices, reports, and/or supplemental information for BOEM approval—burdens covered under specific requirements			0
102(e) .....	State and local governments enter into task force or joint planning or coordination agreement with BOEM.	1 .....	2 agreements .....	2
103; 904; .....	Request general departures not specifically covered elsewhere in part 585.	2 .....	6 requests .....	12
105(c) .....	Make oral requests or notifications and submit written follow up within 3 business days not specifically covered elsewhere in part 585.	1 .....	5 requests .....	5
106; 107; 213(e); 230(f); 302(a); 408(b)(7); 409(c); 1005(d); 1007(c); 1013(b)(7).	Submit evidence of qualifications to hold a lease or grant; submit required supporting information (electronically if required).	2 .....	20 submissions ....	40

BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
106(b)(1) .....	Request exception from exclusion or disqualification from participating in transactions covered by Federal non-procurement debarment and suspension system.	1 .....	1 exception .....	1
106(b)(2), 118(c), 225(b); 436; 437; 527(c); 705(c)(2); 1016.	Request reconsideration and/or hearing .....	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
108; 530(b) .....	Notify BOEM within 3 business days after learning of any action filed alleging respondent is insolvent or bankrupt.	1 .....	1 notice .....	1
109 .....	Notify BOEM in writing of merger, name change, or change of business form no later than 120 days after earliest of either the effective date or filing date.	Requirement not considered IC under 5 CFR 1320.3(h)(1).		0
111 .....	Within 30 days of receiving bill, submit processing fee payments for BOEM document or study preparation to process applications and other requests.	.5 .....	4 submissions .....	2
4 payments × \$4,000 = \$16,000				
111(b)(2), (3) .....	Submit comments on proposed processing fee or request approval to perform or directly pay contractor for all or part of any document, study, or other activity, to reduce BOEM processing costs.	2 .....	4 requests .....	8
111(b)(3) .....	Perform, conduct, develop, etc., all or part of any document, study, or other activity; and provide results to BOEM to reduce BOEM processing fee.	19,000 .....	1 submission .....	19,000
111(b)(3) .....	Pay contractor for all or part of any document, study, or other activity, and provide results to BOEM to reduce BOEM processing costs.	3 contractor payments × \$950,000 = \$2,850,000		
111(b)(7); 118(a); 436(c) .....	Appeal BOEM estimated processing costs, decisions, or orders pursuant to 30 CFR 590.	Exempt under 5 CFR 1320.4(a)(2), (c).		0
113(b) .....	Respond to the Freedom of Information Act release schedule .....	4 .....	1 agreement .....	4
115(c) .....	Request approval to use later edition of a document incorporated by reference or alternative compliance.	1 .....	1 request .....	1
116 .....	The Director may occasionally request information to administer and carry out the offshore renewable energy program via <b>Federal Register</b> Notices.	4 .....	25 submissions .....	100
118(c); 225(b) .....	Within 15 days of bid rejection, request reconsideration of bid decision or rejection.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal .....			71 responses .....	19,176
\$2,866,000 non-hour costs				

Subpart B—Issuance of OCS Renewable Energy Leases

200; 224; 231; 235; 236; 238 .....	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585			0
210; 211(a–c); 212 thru 216 .....	Submit nominations and general comments in response to <b>Federal Register</b> notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and Notices of Sale. Includes industry, State & local governments.	Not considered IC as defined in 5 CFR 1320.3(h)(4)		0
210; 211(a–c); 212 thru 216 .....	Submit comments and required information in response to <b>Federal Register</b> notices on Request for Interest in OCS Leasing, Call for Information and Nominations (Call), Area Identification, and Notices of Sale. Includes industry, State & local governments.	4 .....	30 comments .....	120
211(d); 216; 220 thru 223; 231(c)(2) .....	Submit bid, payments, and required information in response to <b>Federal Register</b> Final Sale Notice.	5 .....	12 bids .....	60
224 .....	Within 10 business days, execute 3 copies of lease form and return to BOEM with required payments, including evidence that agent is authorized to act for bidder; if applicable, submit information to support delay in execution—competitive leases.	1 .....	2 lease executions	2
230; 231(a) .....	Submit unsolicited request and acquisition fee for a commercial or limited lease.	5 .....	2 requests .....	10
231(b) .....	Submit comments in response to <b>Federal Register</b> notice re interest of unsolicited request for a lease.	4 .....	4 comments .....	16
231(g) .....	Within 10 business days of receiving lease documents, execute lease; file financial assurance and supporting documentation—noncompetitive leases.	2 .....	2 leases .....	4
231(g) .....	Within 45 days of receiving lease copies, submit rent and rent information.	Burdens covered by information collections approved for ONRR 30 CFR Chapter XII.		0

BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
235(b); 236(b) .....	Request additional time to extend preliminary or site assessment term of commercial or limited lease, including revised schedule for SAP, COP, or GAP submission.	1 .....	3 requests .....	3
237(b) .....	Request lease be dated and effective 1st day of month in which signed.	1 .....	1 request .....	1
238 .....	Submit other renewable energy research activities .....	Burden covered under SAPs & GAPS §585.600(a), (c).		0
Subtotal .....			56 responses .....	216

**Subpart C—ROW Grants and RUE Grants for Renewable Energy Activities**

306; 309; 315; 316 .....	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585			0
302(a); 305; 306 .....	Submit copies of a request for a new or modified ROW or RUE and required information, including qualifications to hold a grant, in format specified.	5 .....	1 request .....	5
307; 308(a)(1) .....	Submit information in response to <b>Federal Register</b> notice of proposed ROW or RUE grant area or comments on notice of grant auction.	4 .....	2 comments .....	8
308(a)(2), (b); 315; 316 .....	Submit bid and payments in response to <b>Federal Register</b> notice of auction for a ROW or RUE grant.	5 .....	1 bid .....	5
309 .....	Submit decision to accept or reject terms and conditions of non-competitive ROW or RUE grant.	2 .....	1 submission .....	2
Subtotal .....			5 responses .....	20

**Subpart D—Lease and Grant Administration**

400; 401; 402; 405; 409; 416, 433 ..	These sections contain references to information submissions, approvals, requests, applications, plans, payments, etc., the burdens for which are covered elsewhere in part 585			0
401(b) .....	Take measures directed by BOEM in cessation order and submit reports in order to resume activities.	100 .....	1 report .....	100
405(d) .....	Submit written notice of change of address .....	Requirement not considered IC under 5 CFR 1320.3(h)(1)		0
405(e); Form BOEM-0006 .....	If designated operator (DO) changes, notify BOEM and identify new DO for BOEM approval.	1 .....	1 notice .....	1
408 thru 411; Forms BOEM-0002 and BOEM-0003.	Within 90 days after last party executes a transfer agreement, submit copies of a lease or grant assignment application, including originals of each instrument creating or transferring ownership of record title, eligibility and other qualifications; and evidence that agent is authorized to execute assignment, in format specified.	1 (30 minutes per form × 2 forms = 1 hour).	2 requests/submissions.	2
415(a)(1); 416; 420(a), (b); 428(b) ..	Submit request for suspension and required information/payment no later than 90 days prior to lease or grant expiration.	10 .....	1 request .....	10
417(b) .....	Conduct, and if required pay for, site-specific study to evaluate cause of harm or damage; and submit copies of study and results, in format specified.	100 .....	1 study/submission	100
		1 study × \$950,000 = \$950,000		
425 thru 428; 652(a); 235(a), (b) ....	Request lease or grant renewal no later than 180 days before termination date of your limited lease or grant, or no later than 2 years before termination date of operations term of commercial lease. Submit required information.	6 .....	1 requests .....	6
435; 658(c)(2); Form BOEM-0004 ..	Submit copies of application to relinquish lease or grant, in format specified.	1 .....	1 submission .....	1
436; 437 .....	Provide information for reconsideration of BOEM decision to contract or cancel lease or grant area.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
Subtotal .....			8 responses .....	220
			\$950,000 non-hour costs	

**Subpart E—Payments and Financial Assurance Requirements**

An *	indicates the primary cites for providing bonds or other financial assurance, and the burdens include any previous or subsequent references throughout part 585 to furnish, replace, or provide additional bonds, securities, or financial assurance (including riders, cancellations, replacements). This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585. In the future BOEM may require electronic filings of certain submissions.			0
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BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
500 thru 509; 1011 .....	Submit payor information, payments and payment information, and maintain auditable records according to ONRR regulations or guidance.	Burdens covered by information collections approved for ONRR 30 CFR Chapter XII.		0
506(c)(4) .....	Submit documentation of the gross annual generation of electricity produced by the generating facility on the lease—use same form as authorized by the EIA. (Burden covered under DOE/EIA OMB Control Number 1905–0129 to gather info and fill out form. BOEM's burden is for submitting a copy).	15 min .....	2 submissions .....	.5
510; 506(c)(3) .....	Submit application and required information for waiver or reduction of rental or other payment.	1 .....	1 submission .....	1
* 515; 516; 525(a) thru (f) .....	Execute and provide \$100,000 minimum lease-specific bond or other approved security; or increase bond level if required.	1 .....	2 bonds .....	2
* 516(a)(2), (3), (b), (c); 517; 525(a) thru (f).	Execute and provide commercial lease supplemental bonds in amounts determined by BOEM.	1 .....	2 bonds .....	2
516(a)(4); 521(c) .....	Execute and provide decommissioning bond or other financial assurance; schedule for providing the appropriate amount.	1 .....	1 bond .....	1
517(c)(1) .....	Submit comments on proposed adjustment to bond amounts .....	1 .....	1 submission .....	1
517(c)(2) .....	Request bond reduction and submit evidence to justify .....	5 .....	1 request .....	5
* 520; 521; 525(a) thru (f); Form BOEM–0005.	Execute and provide \$300,000 minimum limited lease or grant-specific bond or increase financial assurance and required information.	1 .....	1 bond .....	1
525(g) .....	Surety notice to lessee or ROW/RUE grant holder and BOEM within 5 business days after initiating surety insolvency or bankruptcy proceeding, or Treasury decertifies surety.	1 .....	1 surety notice .....	1
* 526 Form BOEM–0005 .....	In lieu of surety bond, pledge other types of securities, including authority for BOEM to sell and use proceeds and submit required information (1 hour for form).	2 .....	1 pledge .....	2
526(c) .....	Provide annual certified statements describing the nature and market value, including brokerage firm statements/reports.	1 .....	1 statement .....	1
* 527; 531 .....	Demonstrate financial worth/ability to carry out present and future financial obligations, annual updates, and related or subsequent actions/records/reports, etc.	10 .....	1 demonstration ...	10
528 .....	Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation/agreements.	10 .....	1 submission .....	10
528(c)(6); 532(b) .....	Guarantor/Surety requests BOEM terminate period of liability and notifies lessee or ROW/RUE grant holder, etc.	1 .....	1 request .....	1
* 529 .....	In lieu of surety bond, request authorization to establish decommissioning account, including written authorizations and approvals associated with account.	2 .....	1 request .....	2
530 .....	Notify BOEM promptly of lapse in bond or other security/action filed alleging lessee, surety or guarantor et al is insolvent or bankrupt.	1 .....	1 notice .....	1
533(a)(2) (ii), (iii) .....	Provide agreement from surety issuing new bond to assume all or portion of outstanding liabilities.	3 .....	1 submission .....	3
536(b) .....	Within 10 business days following BOEM notice, lessee, grant holder, or surety agrees to and demonstrates to BOEM that lease will be brought into compliance.	16 .....	1 demonstration every 2 years.	8
Subtotal .....			21 responses .....	52.5

Subpart F—Plans and Information Requirements

Two ** indicate the primary cites for Site Assessment Plans (SAPs), Construction and Operations Plans (COPs), and General Activities Plans (GAPs); and the burdens include any previous or subsequent references throughout part 585 to submission and approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585				0
** 600(a); 601(a), (b); 605 thru 614; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of SAP, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, certifications, requests, etc., in format specified.	240 .....	2 SAPs .....	480
** 600(b); 601(c), (d)(1); 606(b); 618; 620 thru 629; 632; 633; 810.	If requesting an operations term for commercial lease, within time specified before the end of site assessment term, submit copies of COP, or FERC license application, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, surveys and/or their results, reports, certifications, project easements, supporting data and information, requests, etc., in format specified.	1,000 .....	2 COPs .....	2,000
** 600(c); 601(a), (b); 640 thru 648; 651; 238; 810.	Within time specified after issuance of a competitive lease or grant, or within time specified after determination of no competitive interest, submit copies of GAP, including required information to assist BOEM to comply with NEPA/CZMA such as hazard info, air quality, SEMS, and all required information, surveys and reports, certifications, project easements, requests, etc., in format specified.	240 .....	2 GAP .....	480
** 601(d) (2); 622; 628(f); 632; 634; 658(c)(3); 907.	Submit revised or modified COPs, including project easements, and all required additional information.	50 .....	1 revised or modified COP.	50

BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
602 <sup>2</sup>	Until BOEM releases financial assurance, respondents must maintain, and provide to BOEM if requested, all data and information related to compliance with required terms and conditions of SAP, COP, or GAP.	2	9 records/submissions.	18
**613(a), (d), (e); 617	Submit revised or modified SAPs and required additional information ..	50	1 revised or modified SAP.	50
612; 647	Submit copy of SAP or GAP consistency certification and supporting documentation, including noncompetitive leases.	1	2 leases	2
615(a)	Notify BOEM in writing within 30 days of completion of construction and installation activities under SAP.	1	2 notices	2
615(b)	Submit annual report summarizing findings from site assessment activities.	30	4 reports	120
615(c)	Submit annual, or at other time periods as BOEM determines, SAP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	40	4 certifications	160
617(a)	Notify BOEM in writing before conducting any activities not approved, or provided for, in SAP; provide additional information if requested.	10	1 notice	10
627(c)	Submit oil spill response plan as required by BSEE 30 CFR part 254 ..	Burden covered under BSEE 1014-0007.		0
631	Request deviation from approved COP schedule .....	2	1 request	2
633(b)	Submit annual, or at other time periods as BOEM determines, COP compliance certification, effectiveness statement, recommendations, reports, supporting documentation, etc.	50	9 certifications	450
634(a)	Notify BOEM in writing before conducting any activities not approved or provided for in COP, and provide additional information if requested.	10	1 notice	10
635	Notify BOEM any time commercial operations cease without an approved suspension.	1	1 notice	1
636(a)	Notify BOEM in writing no later than 30 days after commencing activities associated with placement of facilities on lease area.	1	2 notices	2
636(b)	Notify BOEM in writing no later than 30 days after completion of construction and installation activities.	1	2 notices	2
636(c)	Notify BOEM in writing at least 7 days before commencing commercial operations.	1	1 notices	1
**642(b); 648; 655; 658(c)(3)	Submit revised or modified GAPs and required additional information ..	50	1 revised or modified GAP.	50
651	Before beginning construction of OCS facility described in GAP, complete survey activities identified in GAP and submit initial findings. [This only includes the time involved in submitting the findings; it does not include the survey time as these surveys would be conducted as good business practice.]	30	2 surveys/reports ..	60
653(a)	Notify BOEM in writing within 30 days of completing installation activities under the GAP.	1	2 notices	2
653(b)	Submit annual report summarizing findings from activities conducted under approved GAP.	30	4 reports	120
653(c)	Submit annual, or at other time periods as BOEM determines, GAP compliance certification, recommendations, reports, etc.	40	4 certifications	160
655(a)	Notify BOEM in writing before conducting any activities not approved or provided for in GAP, and provide additional information if requested.	10	1 notice	10
656	Notify BOEM any time approved GAP activities cease without an approved suspension.	1	1 notice	1
658(c)(1)	If after construction, cable or pipeline deviate from approved COP or GAP, notify affected lease operators and ROW/RUE grant holders of deviation and provide BOEM evidence of such notices.	3	1 notice/evidence	3
659	Determine appropriate air quality modeling protocol, conduct air quality modeling, and submit 3 copies of air quality modeling report and 3 sets of digital files as supporting information to plans.	70	5 reports/information.	350
Subtotal			68 responses	4,596

Subpart G—Facility Design, Fabrication, and Installation

Three *** indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 585 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585.				0
***700(a)(1), (b), (c); 701	Submit Facility Design Report, including copies of the cover letter, certification statement, and all required information (1-3 paper or electronic copies as specified).	200	1 report	200
***700(a)(2); (b), (c); 702	Submit copies of a Fabrication and Installation Report, certification statement and all required information, in format specified.	160	1 report	160
705(a)(3); 707; 712	Certified Verification Agent (CVA) conducts independent assessment of the facility design and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	100	1 interim report	100
		100	1 final report	100

BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
705(a)(3); 708; 709; 710; 712 .....	CVA conducts independent assessments/inspections on the fabrication and installation activities, informs lessee or grant holder if procedures are changed or design specifications are modified; and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	100 .....	1 interim report .....	100
*** 703; 705(a)(3); 712; 815 .....	CVA/project engineer monitors major project modifications and repairs and submits copies of all reports/certifications to lessee or grant holder and BOEM—interim reports if required, in format specified.	100 ..... 20 .....	1 final report ..... 1 interim report .....	100 20
705(c) .....	Request waiver of CVA requirement in writing; lessee must demonstrate standard design and best practices.	15 ..... 40 .....	1 final report ..... 1 waiver .....	15 40
706 .....	Submit for approval with SAP, COP, or GAP, initial nominations for a CVA or new replacement CVA nomination, and required information.	16 .....	2 nominations .....	32
708(b)(2) .....	Lessee or grant holder notify BOEM if modifications identified by CVA/project engineer are accepted.	1 .....	1 notice .....	1
709(a) (14); 710(a)(2), (e) <sup>2</sup> .....	Make fabrication quality control, installation towing, and other records available to CVA/project engineer for review (retention required by § 585.714).	1 .....	3 records retention	3
713 .....	Notify BOEM within 10 business days after commencing commercial operations.	1 .....	1 notice .....	1
714 <sup>2</sup> .....	Until BOEM releases financial assurance, compile, retain, and make available to BOEM and/or CVA the as-built drawings, design assumptions/analyses, summary of fabrication and installation examination records, inspection results, and records of repairs not covered in inspection report. Record original and relevant material test results of all primary structural materials; retain records during all stages of construction.	100 .....	1 lessee .....	100
Subtotal .....			17 responses .....	972

**Subpart H—Environmental and Safety Management, Inspections, and Facility Assessments for Activities Conducted Under SAPs, COPs, and Gaps**

801(c), (d) .....	Notify BOEM if endangered or threatened species, or their designated critical habitat, may be in the vicinity of the lease or grant or may be affected by lease or grant activities.	1 .....	2 notices .....	2
801(e), (f) .....	Submit information to ensure proposed activities will be conducted in compliance with the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA); including agreements and mitigating measures designed to avoid or minimize adverse effects and incidental take of endangered species or critical habitat.	6 .....	2 submissions .....	12
802; 902(e) .....	Notify BOEM of archaeological resource within 72 hours of discovery ..	3 .....	1 notice .....	3
802(b), (c) .....	If requested, conduct further archaeological investigations and submit report/information.	10 .....	1 report .....	10
802(d) .....	If applicable, submit payment for BOEM costs in carrying out National Historic Preservation Act responsibilities.	.5 .....	1 payment .....	.5
803 .....	If required, conduct additional surveys to define boundaries and avoidance distances and submit report.	15 .....	2 survey/report .....	30
*** 810; 614; 627; 632(b); 651 .....	Submit safety management system description with the SAP, COP, or GAP.	35 .....	2 submissions .....	70
813(b)(1) .....	Report within 24 hours when any required equipment taken out of service for more than 12 hours; provide written confirmation if reported orally.	.5 ..... 1 .....	2 reports ..... 1 written confirmation.	1 1
813(b)(3) .....	Notify BOEM when equipment returned to service; provide written confirmation if reported orally.	.5 .....	2 notices .....	1
815(c) .....	When required, analyze cable, P/L, or facility damage or failures to determine cause and as soon as available submit comprehensive written report.	2 .....	1 report .....	2
816 .....	Submit plan of corrective action report on observed detrimental effects on cable, P/L, or facility within 30 days of discovery; take remedial action and submit report of remedial action within 30 days after completion.	2 .....	1 plan/report .....	2
822(a)(2)(iii), (b) .....	Maintain records of design, construction, operation, maintenance, repairs, and investigation on or related to lease or ROW/RUE area; make available to BOEM for inspection.	1 .....	4 records retention	4
823 .....	Request reimbursement within 90 days for food, quarters, and transportation provided to BOEM reps during inspection.	2 .....	1 request .....	2
824(a) <sup>2</sup> .....	Develop annual self-inspection plan covering all facilities; retain with records, and make available to BOEM upon request.	24 .....	2 plans .....	48
824(b) .....	Conduct annual self-inspection and submit report by November 1 .....	36 .....	2 reports .....	72
825 .....	Based on API RP 2A—WSD, perform assessment of structures, initiate mitigation actions for structures that do not pass assessment process, retain information, and make available to BOEM upon request.	60 .....	2 assessments/actions.	120
830(a), (c); 831 thru 833 .....	Immediately report incidents to BOEM via oral communications, submit written follow-up report within 15 business days after the incident, and submit any required additional information.	Oral .5 .....	2 incidents .....	1



BURDEN TABLE—Continued

Section(s) in 30 CFR 585	Reporting and recordkeeping requirement <sup>1</sup>	Hour burden	Non-hour cost burdens	
			Average number of annual responses	Annual burden hours
830(d)	Report oil spills as required by BSEE 30 CFR 254	Written 4	1 incident	4
		Burden covered under BSEE 1014-0007		0
Subtotal			32 responses	385.5

Subpart I—Decommissioning

Four\*\*\*\* indicate the primary cites for the reports discussed in this subpart, and the burdens include any previous or subsequent references throughout part 585 to submitting and obtaining approval. This subpart contains references to other information submissions, approvals, requests, applications, plans, etc., the burdens for which are covered elsewhere in part 585.

**** 902; 905, 906; 907; 908(c); 909	Submit for approval, in format specified, copies of the SAP, COP, or GAP decommissioning application and site clearance plan at least 2 years before decommissioning activities begin, 90 days after completion of activities, or 90 days after cancellation, relinquishment, or other termination of lease or grant. Include documentation of coordination efforts w/States/CZMA agencies, local or tribal governments, requests that certain facilities remain in place for other activities, be converted to an artificial reef, or be toppled in place. Submit additional information/evidence requested or modify and resubmit application.	20	1 application	20
902(d); 908;	Notify BOEM at least 60 days before commencing decommissioning activities.	1	1 notice	1
910	Within 60 days after removing a facility, verify to BOEM that site is cleared.	1	1 verification	1
912	Within 60 days after removing a facility, cable, or pipeline, submit a written report.	8	1 report	8

BOEM does not anticipate decommissioning activities for at least 5 years so the requirements have been given a minimal burden.

Subtotal			4 responses	30
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Subpart J—RUEs for Energy- and Marine-Related Activities Using Existing OCS Facilities

1004, 1005, 1006	Contact owner of existing facility and/or lessee of the area to reach preliminary agreement to use facility and obtain concurring signatures; submit request to BOEM for an alternative use RUE, including all required information/modifications.	1	1 request	1
1007(a), (b), (c)	Submit indication of competitive interest in response to <b>Federal Register</b> notice.	4	1 submission	4
1007(c)	Submit description of proposed activities and required information in response to <b>Federal Register</b> notice of competitive offering.	5	1 submission	5
1007(f)	Lessee or owner of facility submits decision to accept or reject proposals deemed acceptable by BOEM.	1	1 submission	1
1010(c)	Request renewal of Alternate Use RUE	6	1 request	6
1012; 1016(b)	Provide financial assurance as BOEM determines in approving RUE for an existing facility, including additional security if required.	1	1 submission	1
1013	Submit request for assignment of an alternative use RUE for an existing facility, including all required information.	1	1 request	1
1015	Request relinquishment of RUE for an existing facility	1	1 request	1
Subtotal			8 responses	20
Total Burden			290 responses	25,688
			\$3,816,000 Non-Hour Cost Burdens	

<sup>1</sup> In the future, BOEM may require electronic filing of certain submissions.

<sup>2</sup> Retention of these records is usual and customary business practice; the burden is primarily to make them available to BOEM and CVAs.

**Estimated Reporting and Recordkeeping Non-Hour Cost Burden:** We have identified three non-hour cost burdens for this collection totaling \$3,816,000 (refer to the table above). These non-hour cost burdens consist of service fees for BOEM document/study preparation, costs for paying a contractor instead of BOEM, and costs for a site-specific study and report to evaluate the cause of harm to natural resources.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

**Comments:** We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including

whether or not the information will have practical utility;

- The accuracy of our burden estimates;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden on respondents.

If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup costs or annual

operation, maintenance, and purchase of service costs. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (a) Before October 1, 1995; (b) to comply with requirements not associated with the information collection; (c) for reasons other than to provide information or keep records for the Government; or (d) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

**Public Availability of Comments:** Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 10, 2015.

**Deanna Meyer-Pietruszka,**  
Chief, Office of Policy, Regulations, and Analysis.

[FR Doc. 2015-31707 Filed 12-16-15; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

[RR83550000, 167R5065C6,  
RX.59389832.1009676]

#### Change in Discount Rate for Water Resources Planning

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of change.

**SUMMARY:** The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2016 is 3.125 percent.

Discounting is to be used to convert future monetary values to present values.

**DATES:** This discount rate is to be used for the period October 1, 2015, through and including September 30, 2016.

**FOR FURTHER INFORMATION CONTACT:** Max Millstein, Bureau of Reclamation, Reclamation Law Administration Division, Denver, Colorado 80225; telephone: 303-445-2853.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 3.125 percent for fiscal year 2016.

This rate has been computed in accordance with Section 80(a), Public Law 93-251 (88 Stat. 34), and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 2.6511 percent. This rate, rounded to the nearest one-eighth percent, is 2.625 percent, which is a change of more than the allowable one-quarter of 1 percent. Therefore, the fiscal year 2016 rate is 3.125 percent.

The rate of 3.125 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: October 16, 2015.

**Roseann Gonzales,**  
Director, Policy and Administration.

[FR Doc. 2015-31717 Filed 12-16-15; 8:45 am]

**BILLING CODE 4332-90-P-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-975]

### Certain Computer Cables, Chargers, Adapters, Peripheral Devices and Packaging Containing the Same; Institution of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 12, 2015, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Belkin International, Inc. of Playa Vista, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain computer cables, chargers, adapters, peripheral devices and packaging containing the same by reason of infringement of U.S. Trademark Registration No. 2,339,459 (“the ‘459 mark”); U.S. Trademark Registration No. 2,339,460 (“the ‘460 mark”); U.S. Trademark Registration No. 4,168,379 (“the ‘379 mark”); and U.S. Trademark Registration No. 4,538,212 (“the ‘212 mark”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <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>.

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S.

International Trade Commission, on December 11, 2015, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain computer cables, chargers, adapters, peripheral devices and packaging containing the same by reason of infringement of one or more of the '459 mark; the '460 mark; the '379 mark; and the '212 mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Belkin International, Inc., 12045 E. Waterfront Drive, Playa Vista, CA 90094.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dongguan Pinte Electronic Co., Ltd., No. 2, Xingguang Road, Shijie Town, Dongguan City, Guangdong, China; Dongguan Shijie Fresh Electronic Products Factory, 1st Industrial Zone, Xi'nan, Shijie Town, Dongguan City, Guangdong, China.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this

notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 14, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-31727 Filed 12-16-15; 8:45 am]

**BILLING CODE 7020-02-P**

## **INTERNATIONAL TRADE COMMISSION**

**[Investigation No. CAFTA-DR-103-028]**

### **Probable Economic Effects of Certain Modifications to the CAFTA-DR Rules of Origin**

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and notice of opportunity to provide written comments.

**SUMMARY:** Following receipt on November 24, 2015, of a request from the U.S. Trade Representative (USTR), under authority delegated by the President and pursuant to section 104 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (19 U.S.C. 4014), the Commission instituted investigation No. CAFTA-DR-103-028, *Probable Economic Effects of Certain Modifications to the CAFTA-DR Rules of Origin*.

**DATES:** January 25, 2016: Deadline for filing written submissions. May 24, 2016: Transmittal of Commission report to USTR.

**ADDRESSES:** All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

**FOR FURTHER INFORMATION CONTACT:** Project leader Philip Stone (202-205-3424 or [philip.stone@usitc.gov](mailto:philip.stone@usitc.gov)) or

deputy project leader Brian Allen (202-205-3034 or [brian.allen@usitc.gov](mailto:brian.allen@usitc.gov)) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091 or [william.gearhart@usitc.gov](mailto:william.gearhart@usitc.gov)). The media should contact Margaret O'Laughlin, Office of External Relations (202-205-1819 or [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). 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.

*Background:* In his request letter (received November 24, 2015), the USTR stated that U.S. negotiators have recently reached agreement in principle with representatives of the CAFTA-DR governments on certain modifications to the rules of origin in Annex 4.1 of the Dominican Republic-Central America-United States Free Trade Agreement. The USTR noted that section 203(o)(3)(A) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act authorizes the President, subject to the consultation and layover requirements of section 104 of the Act, to proclaim such modifications to rules of origin provisions included in Annex 4.1 of the Agreement in the Harmonized Tariff Schedule of the United States (HTS), other than with respect to goods of HTS chapters 50 through 63. He noted that one of the requirements set out in section 104 is that the President obtain advice regarding the proposed action from the U.S. International Trade Commission. In the request letter, the USTR asked that the Commission provide advice on the probable economic effects of the proposed modifications in rules of origin on U.S. trade under the Agreement, on total U.S. trade, and on domestic producers of the affected articles. The products identified in the proposal are fishing lures, gaming machines, polyvinyl chloride, and certain products of the chemical or allied industries. The request letter and the complete list of proposed modifications are available on the Commission's Web site at [http://www.usitc.gov/research\\_and\\_analysis/what\\_we\\_are\\_working\\_on.htm](http://www.usitc.gov/research_and_analysis/what_we_are_working_on.htm). As

requested, the Commission will provide its advice to USTR by May 24, 2016.

**Written Submissions:** No public hearing is planned. However, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and all such submissions should be received not later than 5:15 p.m., January 25, 2016. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of this investigation in the report it sends to the USTR and the President. As requested, the Commission will issue a public version of its report, with any confidential business information deleted, shortly after it transmits its report.

**Summaries of Written Submissions:** The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be

easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will identify the name of the organization furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.  
Dated: December 14, 2015.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2015-31734 Filed 12-16-15; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-392]

**Manufacturer of Controlled Substances Registration: Austin Pharma LLC**

**ACTION:** Notice of registration.

**SUMMARY:** Austin Pharma LLC applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Austin Pharma LLC registration as a manufacturer of those controlled substances.

**SUPPLEMENTARY INFORMATION:** By notice dated August 10, 2015, and published in the **Federal Register** on August 18, 2015, 80 FR 50043, Austin Pharma LLC, 811 Paloma Drive, Suite C, Round Rock, Texas 78665-2402 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Austin Pharma LLC to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR

1301.33, the above-named company is granted registration as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I

The company plans to manufacture bulk synthetic active pharmaceutical ingredients (APIs) for product development and distribution to its customers. No other activity for these drug codes are authorized for this registration.

Dated: December 9, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015-31667 Filed 12-16-15; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA-392]

**Bulk Manufacturer of Controlled Substances Application: Johnson Matthey, Inc.**

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 16, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrisette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant

Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 3, 2015, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Schedule
Gamma Hydroxybutyric Acid (2010)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Dated: December 9, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015–31665 Filed 12–16–15; 8:45 am]

**BILLING CODE 4410–09–P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA–392]

**Importer of Controlled Substances Application: Fisher Clinical Services, Inc.**

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before January 19, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before January 19, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrisette Drive, Springfield, Virginia 22152. Request for hearings should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on August 26, 2015, Fisher Clinical Services, Inc. 7554 Schantz Road, Allentown, Pennsylvania 18106 applied to be registered as an importer of the following basic classes of controlled substances:

Controlled substance	Schedule
Methylphenidate (1724)	II
Levorphanol (9220)	II
Noroxymorphone (9668)	II
Tapentadol (9780)	II

The company plans to import the listed substances for analytical research, testing, and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol for distribution to its customers. Placement of these (this) drug code (s) onto the company’s registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: December 9, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015–31672 Filed 12–16–15; 8:45 am]

**BILLING CODE 4410–09–P**

**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

[Docket No. DEA–392]

**Bulk Manufacturer of Controlled Substances Application: National Center for Natural Products Research (NIDA MPROJECT)**

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before February 16, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrisette Drive, Springfield, Virginia 22152. Request for hearing should be sent to: Drug Enforcement Administration, Attention: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with

respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control (“Deputy Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on October 27, 2015, National Center for Natural Products Research (NIDA MPROJECT), University of Mississippi, 135 Coy Waller Complex, P.O. Box 1848, University, Mississippi 38677-1848 applied to be registered as a bulk manufacturer of the following basic classes controlled substances:

Controlled substance	Schedule
Marihuana (7360) .....	I
Tetrahydrocannabinols (7370) .....	I

The company plans to cultivate marihuana in support of the National Institute on Drug Abuse for research approved by the Department of Health and Human Services.

Dated: December 9, 2015.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2015-31669 Filed 12-16-15; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1140-0092]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosive Materials**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until February 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments

especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226 at email: *Anita.Scheddel@atf.gov*.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

• Technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection 1140-0092:

1. *Type of Information Collection* (check justification or form 83): Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): Not Applicable.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Agencies/Entities Who Store Explosive Materials.

Other (if applicable): None.

Abstract: Primary: Agencies/Entities Who Store Explosive Materials. Other: None. The purpose of the form is to

identify the number and locations of public explosives storage facilities (magazines), including those facilities used by State and local law enforcement.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will take 30 minutes to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 500 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3E-405B, Washington, DC 20530.

Dated: December 14, 2015.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-31705 Filed 12-16-15; 8:45 am]

**BILLING CODE 4410-FY-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1121-NEW]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Body Worn Camera Supplement (BWCS) to the Law Enforcement Management and Administrative Statistics (LEMAS) Survey**

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 80 FR 52512, on August 31, 2015, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for an additional 30 days until January 19, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public

burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact please contact Alexia Cooper, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (email: [Alexia.Cooper@usdoj.gov](mailto:Alexia.Cooper@usdoj.gov); telephone: 202-307-0582). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to [OIRA\\_submissions@omb.eop.gov](mailto:OIRA_submissions@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *The Title of the Form/Collection:* Body Worn Camera Supplement (BWCS) to the Law Enforcement Management and Administrative Statistics (LEMAS) Survey

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No agency form number at this time. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief*

*abstract:* Respondents will be general purpose state and local law enforcement agencies (LEAs), including police departments, sheriff's offices, and state law enforcement agencies. **Abstract:** Since 1987, BJS has collected information about the personnel, policies, and practices of law enforcement agencies via the Law Enforcement Management and Administrative Statistics (LEMAS) survey. This core survey, which has been administered every 4 to 6 years, has been used to produce nationally representative estimates of the functions and responsibilities of law enforcement agencies and the staff serving in those organizations. In addition to core management and administrative information, BJS will also begin using the LEMAS platform for topical supplemental surveys, fielded periodically, to collect data on key issues in contemporary policing. The body worn camera supplement (BWC) is the first of these topical supplements. Specifically, the BWCS survey will focus on LEAs use of body-worn media and will ask agencies about their experiences with body-worn cameras, factors that influence the choice to acquire the technology, and considerations that guide policies for the use of these technologies. This survey will build on the existing LEMAS program and provide key information on an issue that is of particular interest to the law enforcement community and the communities they serve.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An agency-level survey will be sent to approximately 5,063 LEA respondents with the goal of obtaining 3,122 completed surveys. The expected burden placed on these respondents is about 23 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 1,884 burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: December 14, 2015.

**Jerri Murray,**  
*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2015-31744 Filed 12-16-15; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Comment Request for the Extension With No Revisions of the Information Collection for Petition and Investigative Data Collection Requirements for the Trade Act of 1974, as Amended (OMB Control Number 1205-0342)

**AGENCY:** Employment and Training Administration (ETA), Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension, with no revisions, of data collections using the ETA 9042A, Petition for Trade Adjustment Assistance (1205-0342), its Spanish translation ETA 9042a (1205-0342), and its On-Line version ETA 9042A-1 (1205-0342); ETA 9043a, Business Data Request—Article (1205-0342); ETA 9043b, Business Data Request—Service (1205-0342); ETA 8562a, Business Customer Survey (1205-0342); ETA 8562a, Business Customer Survey (1205-0342); ETA 85622a-1, Business Second Tier Customer Survey (1205-0342); ETA-8562b, Business Bid Survey (1205-0342); and ETA 9118, Business Information Request (1205-0342). The current expiration date is March 31, 2016.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before February 16, 2016.

**ADDRESSES:** Submit written comments to Susan Worden, Office of Trade Adjustment Assistance, Room N-5428, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone

number: 202-963-3560 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-3584. Email: [worden.susan@dol.gov](mailto:worden.susan@dol.gov). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 221(a) of Title II, Chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, one-stop operators or one-stop partners. ETA Form 9042A, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, its Spanish translation, ETA Form 9042A, Solicitud De Asistencia Para Ajuste, and the On-Line Petition for Trade Adjustment Assistance, ETA Form 9042A-1, establish a format that may be used for filing such petitions.

Sections 222, 223 and 249 of the Trade Act of 1974, as amended, require the Secretary of Labor to issue a determination for groups of workers as to their eligibility to apply for Trade Adjustment Assistance (TAA). After reviewing all of the information obtained for each petition for Trade Adjustment Assistance filed with the Department, a determination is issued as to whether the statutory criteria for certification are met. The information collected in ETA Form 9043a, Business Data Request—Article, ETA Form 9043b, Business Data Request—Service, ETA Form 9118, Business Information Request, ETA Form 8562a, Business Customer Survey, ETA form 85622a-1, Business Second Tier Customer Survey, ETA form 8562b, Business Bid Survey, will be used by the Secretary to determine to what extent, if any, increased imports or shifts in either service or production have impacted the petitioning worker group.

##### II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

##### III. Current Actions

*Type of Review:* Extension with no revisions.

*Title:* Investigative Data Collections for the Trade Act of 1974, as amended.

*OMB Number:* 1205-0342.

*Affected Public:* Individuals or Households, Businesses, State, Local or Tribal Governments.

*Form(s):* ETA 9042A, Petition for Trade Adjustment Assistance (1205-0342), its Spanish translation ETA 9042a (1205-0342), and its On-Line version ETA 9042A-1 (1205-0342); ETA 9043a, Business Data Request—Article (1205-0342); ETA 9043b, Business Data Request—Service (1205-0342); ETA 8562a, Business Customer Survey (1205-0342); ETA 85622a-1, Business Second Tier Customer Survey (1205-0342); ETA-8562b, Business Bid Survey (1205-0342); and ETA 9118, Business Information Request (1205-0342).

*Total Annual Respondents:* 6,916.

*Annual Frequency:* Once.

*Total Annual Responses:* 85,675.

*Average Time per Response:* 2.22 Hours.

*Estimated Total Annual Burden Hours:* 18,642.

*Total Annual Burden Cost for Respondents:* \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2015-31656 Filed 12-16-15; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Comment Request for Information Collection for Occupational Code Assignment (OMB 1205-0137), Extension With Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data using the Occupational Code Assignment Form (ETA 741), which expires on May 31, 2016. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: <http://www.onetcenter.org/ombclearance.html>.

**DATES:** Written comments must be submitted to the office listed in the addresses section below, on or before February 16, 2016.

**ADDRESSES:** Submit written comments to Alexander Nallin, Office of Workforce Investment, Employment and Training Administration, Mail Stop C-4526, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202-693-3938. Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-3015. Email: [Nallin.Alexander@dol.gov](mailto:Nallin.Alexander@dol.gov). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Occupational Code Assignment form (ETA 741) was developed as a



public service to the users of the Occupational Information Network (O\*NET), in an effort to help them in obtaining occupational codes and titles for jobs that they are unable to locate in O\*NET. The O\*NET system classifies nearly all jobs in the United States economy. However, new occupational specialties are continually evolving and emerging. The use of the OCA is voluntary and is provided: (1) As a uniform format to the public and private sector to submit information in order to receive assistance in identifying an occupational code; (2) to assist the O\*NET system in identifying potential occupations that may need to be included in future O\*NET data collection efforts; and (3) to provide input to a database of alternative (lay) titles to facilitate searches for occupational information on the O\*NET Web sites including O\*NET OnLine (<http://online.onetcenter.org>), My Next Move ([www.MyNextMove.gov](http://www.MyNextMove.gov)), My Next Move for Veterans ([www.MyNextMove.org/vets](http://www.MyNextMove.org/vets)), O\*NET Code Connector ([www.onetcodeconnector.org](http://www.onetcodeconnector.org)), as well as CareerOneStop ([www.careeronestop.org](http://www.careeronestop.org)). Minor changes were made to the previous form

to remove two questions that were not needed and minor wording changes to clarify existing questions. The OCA process is designed to help the occupational information user relate an occupational specialty or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O\*NET system. The O\*NET-SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. Additionally, O\*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including knowledge, skills, abilities, tasks and work activities. Since the O\*NET-SOC system is based on the SOC system, identifying an O\*NET-SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates.

**II. Review Focus**

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* extension with changes.  
*Title:* Occupational Code Assignment.  
*OMB Number:* 1205-0137.  
*Affected Public:* Federal government, state, and local government, business or other for-profit/non-profit institutions, and individuals.  
*Form(s):* ETA-741.  
*Total Annual Respondents:* 14.  
*Annual Frequency:* On occasion.

**SUMMARY OF ANNUAL BURDEN FOR THE OCCUPATIONAL CODE ASSIGNMENT**

Form	Requests per year <sup>1</sup>	Hours/request <sup>2</sup>	Hours burden used	Salary expenditure used <sup>3</sup> (hours × hourly income)
OCA—Part A .....	14	.5	7.0	\$384.16

<sup>1</sup> Estimate based on average for January 2013 through October 2015

<sup>2</sup> Estimates on OCA form—Part A = 30 minutes

<sup>3</sup> Salary based on Occupational Employment Statistics data for Human Resource Manager, median wage as of May 2014 = \$54.88/hour

*Total Burden Cost (capital/startup):* 0.  
*Total Burden Cost (operating/maintaining):* 0.  
*Average Time per Response:* 30 minutes for the OCA Part A; 40 minutes for the OCA Part A and OCA Request for Additional Information combined.

*Estimated Total Burden Hours:* 7.0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, U.S. Department of Labor.*

[FR Doc. 2015-31710 Filed 12-16-15; 8:45 am]

**BILLING CODE 4510-FN-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Guam Military Base Realignment Contractor Recruitment Standards—Revised**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final notice.

**SUMMARY:** The U.S. Department of Labor (Department), Employment and Training Administration (ETA), is issuing this notice to revise recruitment standards that construction contractors are required to follow when recruiting United States (U.S.) workers for Guam military base realignment projects authorized by the National Defense Authorization Act (NDAA) for Fiscal Year 2010.

**DATES:** This notice is effective upon publication in the **Federal Register**.  
**FOR FURTHER INFORMATION CONTACT:** Donald Haughton, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4526, Washington, DC 20210. Telephone (202) 693-2784 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD), fax: (202) 693-3015, email: [Haughton.donald.w@dol.gov](mailto:Haughton.donald.w@dol.gov).

**SUPPLEMENTARY INFORMATION:** Section 2834(a) of the NDAA for Fiscal Year 2010 (Pub. L. 111-84, enacted October 28, 2009) amended Section 2824(c) of the Military Construction Authorization Act (division B of Public Law 110-417;

10 U.S.C. 2687 note) by adding a new subsection (6). This provision prohibits contractors engaged in construction projects related to the realignment of U.S. military forces from Okinawa to Guam from hiring workers holding H-2B visas under the Immigration and Nationality Act, 8 U.S.C.

1101(a)(15)(H)(ii)(b), unless the Governor of Guam (Governor), in consultation with the Secretary of Labor (Secretary), certifies that:

(1) There is an insufficient number of U.S. workers that are able, willing, qualified, and available to perform the work; and

(2) the employment of workers holding H-2B visas will not have an adverse effect on either the wages or the working conditions of workers in Guam.

In order to allow the Governor to make this certification, NDAA requires contractors to recruit workers in the U.S., including in Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Virgin Islands, and Puerto Rico, according to the terms of a recruitment plan developed and approved by the Secretary. That recruitment plan is reproduced in full in Section I below ("Contractor Recruitment Instructions").

The Department developed the Contractor Recruitment Instructions in full consultation with, and with the approval of, the Guam Department of Labor (GDOL). Although the Department developed the recruitment standards, it has assigned oversight of the Contractor Recruitment Standards and the NDAA-required consultation with the Governor to GDOL through a Memorandum of Understanding between the Department and GDOL, effective November 22, 2011, (the MOU can be found on the [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) Web site).

Under NDAA, no Guam base realignment construction project work may be performed by a person holding an H-2B visa under the Immigration and Nationality Act until the contractor complies with the Department's Contractor Recruitment Standards, and the Governor of Guam issues the certification noted above.

### **I. Guam Military Base Realignment Contractor Recruitment Instructions**

Guam military base realignment contractors must take the following actions to recruit U.S. workers.

1. At least 60 days before the start date of workers under a base realignment contract, contractors must:

a. Submit a job posting via a completed Job Order (Guam Form GES 514) in person at the Guam Employment Service office, which is open Monday

through Friday (except holidays) 8 a.m. to 5 p.m., at 710 Marine Corps Drive, Suite 301, Bell Tower Plaza, Hagatna (for assistance please call (671)-475-7000).

The job posting must be posted on the GDOL Job Bank for at least 21 consecutive days;

b. Submit a job posting with the state workforce agency's Internet job boards, for the Commonwealth of the Northern Mariana Islands at <https://marianaslabor.net/employer.asp>, and in the following states:

- i. Alaska ([www.jobs.state.ak.us](http://www.jobs.state.ak.us));
- ii. California ([www.caljobs.ca.gov](http://www.caljobs.ca.gov));
- iii. Hawaii ([www.hirenethawaii.com](http://www.hirenethawaii.com));
- iv. Oregon ([www.emp.state.or.us/jobs](http://www.emp.state.or.us/jobs)); and
- v. Washington (<https://fortress.wa.gov/esd/worksource/Employment.aspx>).

c. Post a help wanted ad in the local newspaper for American Samoa and have a notice posted in the American Samoa Human Resources agency office. For assistance with these tasks, please see the American Samoa Human Resource agency contacts listed at [www.jobbankinfo.org](http://www.jobbankinfo.org).

For contractors needing assistance with job postings, additional contact information and a link to the required Guam form GES 514 are listed at [www.jobbankinfo.org](http://www.jobbankinfo.org).

Each job posting must be posted for at least 21 consecutive days.

d. Submit a job posting with an Internet-based job bank that:

- i. Is national in scope, including the entire U.S., Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Commonwealth of Puerto Rico;
- ii. allows job postings for all occupations; and
- iii. is free of charge for job seekers and their intermediaries in American Job Centers (also known as One-Stop Career Centers) and the U.S. workforce investment system nationwide.

e. Where the occupation or industry is customarily unionized, contact the local union in Guam in writing to seek U.S. workers who are qualified and who will be available for the job opportunity.

2. Each job posting in (A)(1) through (5) must include, at a minimum, the following information:

- a. The contractor's name and appropriate contact information for applicants to inquire about the job opportunity, or to send applications and/or resumes directly to the employer;
- b. The geographic area of employment, with enough specificity to apprise applicants of any travel requirements and where applicants will

likely have to reside to perform the services or labor;

c. A statement indicating whether or not the employer will pay for the worker's transportation to Guam;

d. If the employer provides transportation, include a statement that daily transportation to and from the worksite(s) will be provided by the employer;

e. A description of the job opportunity with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties, the minimum education and experience requirements, the work hours and days, and the anticipated start and end dates of the job opportunity;

f. If the employer makes On-the-Job Training (OJT) available, a statement that it will be provided to the worker;

g. If required by law, a statement that overtime will be available to the worker and the wage offer for working any overtime hours;

h. The wage offer, and the benefits, if any, offered;

i. A statement that the position is temporary;

j. The total number of job openings the employer intends to fill; and

k. If the employer provides the worker with the option of board, lodging, or other facilities, including fringe benefits, or intends to assist workers to secure such lodging, a statement disclosing the provision and cost of the board, lodging, or other facilities, including fringe benefits or assistance to be provided.

3. During the 28-day recruitment period, which begins on the earliest job posting date, contractors must interview all qualified and available Guam and U.S. construction workers who have applied for the employment opportunity.

4. After the close of the recruitment period, and no later than 30 days before the start date of workers under a contract, the contractor must provide a report including the following information via email to GDOL at [ndaa.recruitment@dol.guam.gov](mailto:ndaa.recruitment@dol.guam.gov), documenting its efforts to recruit U.S. workers from the U.S. and all U.S. territories.

a. Indicate all the recruitment approaches used to recruit workers, including an identification of the Internet job banks where the postings occurred, the occupation or trade, a description of wages and other terms and conditions of employment, the dates of each posting, and the job order or requisition number;

b. A copy of each job posting;

c. How each job posting and response was handled, including:

i. The number of job applications received;

ii. the name of each applicant;

iii. the position applied for;

iv. the final employment determination for each applicant or job candidate; and

v. for each U.S. job applicant not hired, a description of the specific, lawful, job-related reason for rejecting the applicant for employment, which includes a comparison of the job applicant's skills and experience against the terms listed in the original job posting.

Contractors may provide much of this information in the form of a table or spreadsheet, so that instead of a narrative style the contractor need only check an appropriate box or provide a phrase, number or date (e.g., to indicate whether an individual reported for an interview or not, or lacked specific qualifications).

## II. Public Burden Statement

The Office of Management and Budget (OMB) has approved the Department's request to extend the information collection (OMB Control Number 1205-0484) for three years, expiring October 31, 2018.

Persons are not required to respond to this collection of information unless it displays a valid OMB control number (1205-0484). The public reporting burden for this collection of information is estimated at three hours per job order, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Further information on this ICR can be accessed using control number 1205-0484 at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). To do this, use the following instructions:

1. Go to the first "Select Agency" box and click on the drop-down arrow, and then select "Department of Labor." Then, click on the "Submit" button to the right of the box.

2. Each entry lists the OMB Control Number at the top of the entry. Scroll down the screen until 1205-0484 appears (the entries are in numerical order).

3. Once you reach 1205-0484, click on the number immediately below that, the ICR Reference Number (not the Control Number itself).

4. To see the Information Collection notices themselves, click on "View Information Collection (IC) List" near the top of the page on the left. To see the Report to Congress, the MOU, the ICR Supporting Statement and other relevant documents, click on "View

Supporting Statement and Other Documents" near the top of the page on the right.

**Portia Wu,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 2015-31713 Filed 12-16-15; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Comment Request for Information Collection for Equal Employment Opportunity in Apprenticeship Programs, Extension Without Revisions

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)] (PRA). The PRA helps ensure that respondents can provide requested data in the desired format with minimal reporting burden (time and financial resources), collection instruments are clearly understood and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the information collection request (ICR) to collect data about title 29 CFR 30, Equal Employment Opportunity in Apprenticeship Programs, Complaint Form—Equal Employment Opportunity in Apprenticeship Programs, ETA—9030, which expires on May 31, 2016.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0224.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before February 16, 2016.

**ADDRESSES:** Submit written comments to Greg Wilson, Office of Apprenticeship, Room C-5317, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202-693-2954 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-3799. Email: [wilson.greg1@dol.gov](mailto:wilson.greg1@dol.gov). To obtain a free copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden, please contact the person listed above.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The National Apprenticeship Act of 1937 (Act), section 50 (29 U.S.C. 50), authorizes and directs the Secretary of Labor (Secretary) "to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with state agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with Section 17 of Title 20." Section 50a of the Act authorizes the Secretary to "publish information relating to existing and proposed labor standards of apprenticeship," and to "appoint national advisory committees \* \* \*" (29 U.S.C. 50a).

Title 29 CFR part 30 sets forth policies and procedures to promote the equality of opportunity in apprenticeship programs registered with the Department and recognized State Apprenticeship Agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. The procedures provide for registering apprenticeship programs, for reviewing apprenticeship programs, for processing complaints, and for deregistering non-complying apprenticeship programs. This part also provides policies and procedures for continuation or withdrawal of recognition of state agencies which

registered apprenticeship programs for Federal purposes.

The Complaint Form—Equal Employment Opportunity in Apprenticeship Programs, ETA Form 9039, is used by applicants and/or apprentices to file a complaint of discrimination with the Department. Since this form expires on May 31, 2016, ETA is seeking an extension of this form without revisions.

## II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
  - Enhance the quality, utility, and clarity of the information to be collected; and
  - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

## III. Current Actions

- *Agency:* DOL–ETA.
- *Type of Review:* Extension without changes of currently approved collection.
  - *Title of Collection:* Title 29 CFR part 30, Equal Employment Opportunity in Apprenticeship Programs.
  - *Form:* Complaint Form—Equal Employment Opportunity in Apprenticeship Programs, ETA Form 9039.
    - *OMB Control Number:* 1205–0224.
    - *Affected Public:* Applicants, Apprentices, Sponsors, State Apprenticeship Agencies, and Tribal Governments.
      - *Estimated Number of Respondents:* 19,277 (19,200 program sponsors + 27 State Apprenticeship Agencies + 50 Applicants/Apprentices).
      - *Frequency:* 1-time basis.
      - *Total Estimated Annual Responses:* 34,490.
      - *Estimated Average Time per Response:* 30 minutes for applicants/apprentices to complete and submit the complaint form.
        - *Estimated Total Annual Burden Hours:* 3,219 hours.

▪ *Total Estimated Annual Other Cost Burden:* \$0.00.

We will summarize and/or include in the request for OMB approval of the ICR, the comments received in response to this comment request; they will also become a matter of public record.

**Portia Wu,**

*Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2015–31712 Filed 12–16–15; 8:45 am]

BILLING CODE 4510–FR–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA–2012–0031]

#### The Standard on 4, 4'—Methylenedianiline (MDA) in Construction; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on 4,4'—Methylenedianiline (MDA) in Construction (29 CFR 1926.60).

**DATES:** Comments must be submitted (postmarked, sent, or received) by February 16, 2016.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0031, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2012–0031) for this Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA)(44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden

upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the 4',4'—Methylenedianiline Standard for Construction (the "MDA Standard") (29 CFR 1926.60) protect employees from the adverse health effects that may result from their exposure to MDA, including cancer, liver and skin disease. The major paperwork requirements specify that employers must perform initial, periodic, and additional exposure monitoring; notify each worker in writing of their results as soon as possible but no longer than 5 days after receiving exposure monitoring results; and routinely inspect the hands, face, and forearms of each worker potentially exposed to MDA for signs of dermal exposure to MDA. Employers must also: establish a written compliance program; institute a respiratory protection program in accord with 29 CFR 1910.134 (OSHA's Respiratory Protection Standard); and develop a written emergency plan for any construction operation that could have an MDA emergency (*i.e.*, an unexpected and potentially hazardous release of MDA).

Employers must label any material or products containing MDA, including containers used to store MDA-contaminated protective clothing and equipment. They also must inform personnel who launder MDA-contaminated clothing of the requirement to prevent release of MDA, and personnel who launder or clean MDA-contaminated protective clothing or equipment must receive information about the potentially harmful effects of MDA. In addition, employers must post warning signs at entrances or access ways to regulated areas, as well as train workers exposed to MDA at the time of their initial assignment, and at least annually thereafter.

Other paperwork provisions of the MDA Standard require employers to provide workers with medical examinations, including initial, periodic, emergency and follow-up examinations. As part of the medical-surveillance program, employers must ensure that the examining physician receives specific written information, and that they obtain from the physician a written opinion regarding the worker's medical results and exposure limitations.

The MDA Standard also specifies that employers are to establish and maintain exposure-monitoring and medical-surveillance records for each worker

who is subject to these requirements, make any required record available to OSHA compliance officers and the National Institute for Occupational Safety and Health (NIOSH) for examination and copying, and provide exposure-monitoring and medical-surveillance records to workers and their designated representatives.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

The Agency is requesting an adjustment decrease of 43 burden hours to 986 burden hours. The decrease is a result of removing burden hours for training because the Agency, upon further consideration, does not believe that training is covered by the PRA.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the MDA Standard.

*Type of Review:* Extension of a currently approved collection.

*Title:* 4, 4'—Methylenedianiline in Construction Standard (29 CFR 1926.60).

*OMB Control Number:* 1218–0183.

*Affected Public:* Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

*Frequency:* On occasion.

*Average Time per Response:* Varies from 5 minutes (.08 hour) for employers to provide information to the physician to 2 hours for initial monitoring.

*Estimated Total Burden Hours:* 986.

*Number of Respondents:* 2,469.

*Total Number of Responses:* 2,558.

*Estimated Cost (Operation and Maintenance):* \$0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2012–0031) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY) (877) 889–5627.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (*e.g.*, copyrighted material) is not publicly available to read or download from this Web site.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44

U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 14, 2015.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2015–31753 Filed 12–16–15; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA–2012–0034]

#### Hexavalent Chromium Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).

**DATES:** Comments must be submitted (postmarked, sent, or received) by February 16, 2016.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0034, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA

docket number (OSHA–2012–0034) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:**

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

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing collection of information requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those

operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collections of information in the Hexavalent Chromium (Cr(VI)) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126) (the “Standards”) protect workers from the adverse health effects that may result from occupational exposure to hexavalent chromium. The major collections of information in these Standards include conducting worker exposure monitoring, notifying workers of their chromium exposures, implementing medical surveillance of workers, providing examining physicians with specific information, implementing a respiratory protection program, notifying laundry personnel of chromium hazards and maintaining workers' exposure monitoring and medical surveillance records for specific periods.

#### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the collection of information requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

#### III. Proposed Actions

The Agency is requesting an adjustment decrease of 47,615 burden hours (from 541,582 to 493,967 burden hours). The decrease in burden hours is due to an estimated decrease of exposed workers and a reduction in the number of plants in specific industry sectors. There is also an estimated increase in operation and maintenance costs of \$123,015, from \$46,589,912 to \$46,712,927. The increase in operation and maintenance costs is due to the increase in exposure monitoring air sampling costs, medical exam and testing costs, and costs of materials for qualitative fit testing.

*Type of Review:* Extension of a currently approved collection.

*Title:* Hexavalent Chromium (Cr(VI)) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).

*OMB Control Number:* 1218-0252.

*Affected Public:* Businesses or other for-profits.

*Number of Respondents:* 75,684.

*Frequency of Response:* On occasion; Quarterly; Semi-annually; Annually.

*Total Responses:* 994,834.

*Average Time per Response:* Time per response ranges from 5 minutes (.08 hour) to provide a copy of a written medical opinion to a worker to 4 hours for a worker to receive a comprehensive medical examination.

*Estimated Total Burden Hours:* 493,967.

*Estimated Cost (Operation and Maintenance):* \$46,712,927.

#### IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA-2012-0034) for this ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as their social security number and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to

read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

#### V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1-2012 (77 FR 3912).

Signed at Washington, DC, on December 14, 2015.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2015-31752 Filed 12-16-15; 8:45 am]

**BILLING CODE 4510-26-P**

#### NATIONAL CREDIT UNION ADMINISTRATION

##### Sunshine Act Meeting

Matter to be added to the agenda of an agency meeting. **Federal Register** citation of previous announcement: December 14, 2015 (80 FR 77379)

**TIME AND DATE:** 11:00 a.m., Thursday, December 17, 2015.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314-3428.

**STATUS:** Closed.

##### ADDITIONAL MATTER TO BE CONSIDERED:

3. Briefing on Supervisory Matter. Closed pursuant to Exemptions (8), (9)(i)(B) and (9)(ii).

##### FOR FURTHER INFORMATION CONTACT:

Gerard Poliquin, Secretary of the Board, Telephone: 703-518-6304

**Gerard Poliquin,**

*Secretary of the Board.*

[FR Doc. 2015-31871 Filed 12-15-15; 4:15 pm]

**BILLING CODE 7535-01-P**

#### NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271; NRC-2015-0111]

##### Entergy Nuclear Operations, Inc.; Vermont Yankee Nuclear Power Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is granting exemptions in response to a request from Entergy Nuclear Operations, Inc. (ENO or the licensee) regarding certain emergency planning (EP) requirements. The exemptions will eliminate the requirements to maintain formal offsite radiological emergency plans and reduce the scope of the onsite EP activities at the Vermont Yankee Nuclear Power Station (VY), based on the reduced risks of accidents that could result in an offsite radiological release at the decommissioning nuclear power reactor. Provisions would still exist for offsite agencies to take protective actions, using a comprehensive emergency management plan (CEMP) to protect public health and safety, if protective actions were needed in the event of a very unlikely accident that could challenge the safe storage of spent fuel.

**ADDRESSES:** Please refer to Docket ID NRC-2015-0111 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-2015-0111. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each

document referenced (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:**

James Kim, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; telephone: 301-415-4125; email: [James.Kim@nrc.gov](mailto:James.Kim@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The VY facility is a decommissioning power reactor located in the town of Vernon, Windham County, Vermont. The licensee, ENO, is the holder of Renewed Facility Operating License No. DPR-28 for VY. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

By letter dated January 12, 2015 (ADAMS Accession No. ML15013A426), ENO submitted, to the NRC, a certification in accordance with sections 50.82(a)(1)(i) and 50.82(a)(1)(ii) of title 10 of the *Code of Federal Regulations* (10 CFR), indicating that it had permanently ceased power operations at VY and had permanently defueled the VY reactor vessel, respectively. The licensee has not operated the VY plant since December 29, 2014. As a permanently shutdown and defueled facility, and pursuant to 10 CFR 50.82(a)(2), ENO is no longer authorized to operate the VY reactor or emplace fuel into the VY reactor vessel, but is still authorized to possess and store irradiated nuclear fuel at the site. Irradiated fuel is currently stored onsite at VY in a spent fuel pool (SFP) and in an independent spent fuel storage installation.

During normal power reactor operations, the forced flow of water through the reactor coolant system (RCS) removes heat generated by the reactor by generating steam. The steam system, operating at high temperatures and pressures, transfers this heat to the main turbine generator to produce electricity. Many of the accident scenarios postulated in the updated safety analysis reports for operating power reactors involve failures or malfunctions of systems, which could affect the fuel in the reactor core, which in the most severe postulated accidents, would involve the release of large quantities of fission products. With the permanent cessation of reactor

operations at VY and the permanent removal of the fuel from the reactor vessel, such accidents are no longer possible. The reactor, RCS, steam system, turbine generator, and supporting systems are no longer in operation and have no function related to the storage of the spent fuel. Therefore, EP provisions for postulated accidents involving failure or malfunction of the reactor, RCS, steam system, turbine generator, or supporting systems are no longer applicable.

Since VY is permanently shutdown and defueled, the only design basis accident that could potentially result in an offsite radiological release at VY is the fuel handling accident (FHA). Analysis performed by ENO showed that 17 days after shutdown, the radiological consequence of the FHA would not exceed the limits established by the U.S. Environmental Protection Agency's (EPA's) Protective Action Guidelines (PAGs) at the exclusion area boundary. Based on the time that VY has been permanently shutdown (approximately 11 months), there is no longer any possibility of an offsite radiological release from a design basis accident that could exceed the EPA PAGs.

The EP requirements of 10 CFR 50.47, "Emergency plans," and appendix E to 10 CFR part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," continue to apply to nuclear power reactors that have permanently ceased operation and have removed all fuel from the reactor vessel. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that is permanently shut down and defueled from those for a reactor that is authorized to operate. To reduce or eliminate EP requirements that are no longer necessary due to the decommissioning status of the facility, ENO must obtain exemptions from those EP regulations. Only then can ENO modify the VY emergency plan to reflect the reduced risk associated with the permanently shutdown and defueled condition of VY.

**II. Request/Action**

By letter dated March 14, 2014 (ADAMS Accession No. ML14080A141), "Request for Exemptions from Portions of 10 CFR 50.47 and 10 CFR part 50, appendix E," ENO requested exemptions from certain EP requirements of 10 CFR part 50 for VY. More specifically, ENO requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency plans for nuclear power

reactors; from certain requirements in 10 CFR 50.47(c)(2) that require establishment of plume exposure and ingestion pathway emergency planning zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, which establish the elements that make up the content of emergency plans. In letters dated August 29, 2014 and October 21, 2014 (ADAMS Accession Nos. ML14246A176, and ML14297A159, respectively), ENO provided responses to the NRC staff's requests for additional information concerning the proposed exemptions.

The information provided by ENO included justifications for each exemption requested. The exemptions requested by ENO would eliminate the requirements to maintain formal offsite radiological emergency plans, reviewed by the Federal Emergency Management Agency (FEMA) under the requirements of 44 CFR part 350, and reduce the scope of onsite EP activities. The licensee stated that the application of all of the standards and requirements in 10 CFR 50.47(b), 10 CFR 50.47(c), and 10 CFR part 50, appendix E is not needed for adequate emergency response capability, based on the substantially lower onsite and offsite radiological consequences of accidents still possible at the permanently shutdown and defueled facility, as compared to an operating facility. If offsite protective actions were needed for a very unlikely accident that could challenge the safe storage of spent fuel at VY, provisions exist for offsite agencies to take protective actions using a CEMP under the National Preparedness System to protect the health and safety of the public. A CEMP in this context, also referred to as an emergency operations plan (EOP), is addressed in FEMA's Comprehensive Preparedness Guide 101, "Developing and Maintaining Emergency Operations Plans." Comprehensive Preparedness Guide 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decision-making and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An EOP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be



coordinated. A CEMP is often referred to as a synonym for “all-hazards planning.”

### III. Discussion

In accordance with 10 CFR 50.12, “Specific exemptions,” the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

As noted previously, the current EP regulations contained in 10 CFR 50.47(b) and appendix E to 10 CFR part 50 apply to both operating and shutdown power reactors. The NRC has consistently acknowledged that the risk of an offsite radiological release at a power reactor that has permanently ceased operations and removed fuel from the reactor vessel is significantly lower, and the types of possible accidents are significantly fewer, than at an operating power reactor. However, current EP regulations do not recognize that once a power reactor permanently ceases operation, the risk of a large radiological release from a credible emergency accident scenario is reduced. The reduced risk is largely the result of the low frequency of credible events that could challenge the SFP structure, and the reduced decay heat and reduced short-lived radionuclide inventory due to decay. The NRC’s NUREG/CR-6451, “A Safety and Regulatory Assessment of Generic BWR [Boiling Water Reactor] and PWR [Pressurized Water Reactor] Permanently Shutdown Nuclear Power Plants,” dated August 31, 1997 (ADAMS Accession No. ML082260098) and NUREG-1738, “Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,” dated February 28, 2001 (ADAMS Accession No. ML010430066), confirmed that for permanently shutdown and defueled power reactors that are bounded by the assumptions and conditions in the reports, the risk of offsite radiological release is significantly less than that for an operating power reactor.

In the past, EP exemptions similar to those requested by ENO, have been granted to licensees of permanently

shutdown and defueled power reactors. However, the exemptions did not relieve the licensees of all EP requirements. Rather, the exemptions allowed the licensees to modify their emergency plans commensurate with the credible site-specific risks that were consistent with a permanently shutdown and defueled status. Specifically, for previous permanently shutdown and defueled power reactors, the basis for the NRC staff’s approval of the exemptions from certain EP requirements was based on the licensee’s demonstration that: (1) The radiological consequences of design-basis accidents would not exceed the limits of the U.S. Environmental Protection Agency’s (EPA) PAGs at the exclusion area boundary, and (2) in the unlikely event of a beyond-design-basis accident resulting in a loss of all modes of heat transfer from the fuel stored in the SFP, there is sufficient time to initiate appropriate mitigating actions, and if needed, for offsite authorities to implement offsite protective actions using a CEMP approach to protect the health and safety of the public.

With respect to design-basis accidents at VY, the licensee provided analysis demonstrating that 17 days following permanent shutdown, the radiological consequences of the only remaining design-basis accident with potential for offsite radiological release (the FHA) will not exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, because VY has been permanently shutdown for approximately 11 months, there is no longer any design-basis accident that would warrant an offsite radiological emergency plan meeting the requirements of 10 CFR Part 50.

With respect to beyond design-basis accidents at VY, the licensee analyzed a drain down of the spent fuel pool water that would effectively impede any decay heat removal. The analysis demonstrates that at 15.4 months after shutdown, there would be at least 10 hours after the assemblies have been uncovered until the limiting fuel assembly (for decay heat and adiabatic heatup analysis) reaches 900 degrees Celsius, the temperature used to assess the potential onset of fission product release. The analysis conservatively assumed the heat up time starts when the spent fuel pool has been completely drained, although it is likely that site personnel will start to respond to an incident when drain down starts. The analysis also does not consider the period of time from the initiating event causing loss of SFP water inventory until cooling is lost.

Based on precedent exemptions, the site-specific analysis should show that there is sufficient time following a loss of SFP coolant inventory until the onset of fuel damage to implement onsite mitigation of the loss of SFP coolant inventory and if necessary, to implement offsite protective actions. To meet this criterion, the staff accepted, in precedent exemptions, that the time should exceed 10 hours from the loss of coolant until the fuel temperature reaches 900 degrees Celsius (°C), assuming no air cooling.

The NRC staff reviewed the licensee’s justification for the requested exemptions against the criteria in 10 CFR 50.12(a) and determined, as described below, that the criteria in 10 CFR 50.12(a) are met, and that the exemptions should be granted. An assessment of the ENO EP exemptions is described in SECY-14-0125, “Request by Entergy Nuclear Operations, Inc. for Exemptions from Certain Emergency Planning Requirements,” dated November 14, 2014 (ADAMS Accession No. ML14227A711). The Commission approved the NRC staff’s recommendation to grant the exemptions in the staff requirements memorandum to SECY-14-0125, dated March 2, 2015 (ADAMS Accession No. ML15061A516). Descriptions of the specific exemptions requested by ENO and the NRC staff’s basis for granting each exemption are provided in SECY-14-0125 and summarized in a table at the end of this document. The staff’s detailed review and technical basis for the approval of the specific EP exemptions, requested by ENO, are provided in the NRC staff’s safety evaluation, which is enclosed in an NRC letter dated December 10, 2015 (ADAMS Accession No. ML15180A054).

#### A. Authorized by Law

The licensee has proposed exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, which would allow ENO to revise the VY Emergency Plan to reflect the permanently shutdown and defueled condition of the station. As stated above, in accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee’s proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC’s regulations. Therefore, the exemptions are authorized by law.

### *B. No Undue Risk to Public Health and Safety*

ENO provided analyses that show the radiological consequences of design-basis accidents will not exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, formal offsite radiological emergency plans required under 10 CFR part 50 are no longer needed for protection of the public beyond the exclusion area boundary, based on the radiological consequences of design-basis accidents that are still possible at VY.

Although very unlikely, there is one postulated beyond-design-basis accident that might result in significant offsite radiological releases. However, NUREG-1738 confirms that the risk of beyond-design-basis accidents is greatly reduced at permanently shutdown and defueled reactors. The NRC staff's analyses in NUREG-1738 conclude that the event sequences important to risk, at permanently shutdown and defueled power reactors, are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to operating power reactors, where typically a large number of different sequences make significant contributions to risk. Per NUREG-1738, relaxation of offsite EP requirements, under 10 CFR part 50, a few months after shutdown resulted in only a small change in risk. The report further concludes that the change in risk, due to relaxation of offsite EP requirements, is small because the overall risk is low, and because even under current EP requirements for operating power reactors, EP was judged to have marginal impact on evacuation effectiveness in the severe earthquakes that dominate SFP risk. All other sequences including cask drops (for which offsite radiological emergency plans are expected to be more effective) are too low in likelihood to have a significant impact on risk.

Therefore, granting exemptions to eliminate the requirements of 10 CFR part 50 to maintain offsite radiological emergency plans and to reduce the scope of onsite EP activities will not present an undue risk to the public health and safety.

### *C. Consistent With the Common Defense and Security*

The requested exemptions by ENO only involve EP requirements under 10 CFR part 50 and will allow ENO to revise the VY Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. Physical security measures at VY are not affected by the requested EP

exemptions. The discontinuation of formal offsite radiological emergency plans and the reduction in scope of the onsite EP activities at VY will not adversely affect ENO's ability to physically secure the site or protect special nuclear material. Therefore, the proposed exemptions are consistent with the common defense and security.

### *D. Special Circumstances*

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purposes of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, are to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite radiological emergency plans. The standards and requirements in these regulations were developed by considering the risks associated with the operation of a power reactor at its licensed full-power level. These risks include the potential for a reactor accident with offsite radiological dose consequences.

As discussed previously in Section III of this document, because VY is permanently shutdown and defueled, there is no longer a risk of offsite radiological release from a design-basis accident; and the risk of a significant offsite radiological release from a beyond-design-basis accident is greatly reduced, when compared to the risk at an operating power reactor. The NRC staff has confirmed the reduced risks at VY, by comparing the generic risk assumptions in the analyses in NUREG-1738 to site-specific conditions at VY; and has determined that the risk values in NUREG-1738 bound the risks presented by VY. As indicated by the results of the research conducted for NUREG-1738 and more recently, for NUREG-2161, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor" (ADAMS Accession No. ML14255A365), while other consequences can be extensive, accidents from SFPs with significant decay time have little potential to cause offsite early fatalities, even if the formal offsite radiological EP requirements were relaxed. The licensee's analysis of a beyond-design-basis accident involving a complete loss of SFP water

inventory, based on an adiabatic heatup analysis of the limiting fuel assembly for decay heat, shows that within 15.4 months after shutdown, the time for the limiting fuel assembly to reach 900 degrees Celsius is 10 hours after the assemblies have been uncovered.

The only analyzed beyond-design-basis accident scenario that progresses to a condition where a significant offsite release might occur, involves the very unlikely event where the SFP drains in such a way that all modes of cooling or heat transfer are assumed to be unavailable, which is postulated to result in an adiabatic heatup of the spent fuel. The licensee's analysis of this beyond-design-basis accident shows that within 15.4 months after shutdown, more than 10 hours would be available between the time the fuel is initially uncovered (at which time adiabatic heatup is conservatively assumed to begin), until the fuel cladding reaches a temperature of 1652 degrees Fahrenheit (900 degrees C), which is the temperature associated with rapid cladding oxidation and the potential for a significant radiological release. This analysis conservatively does not include the period of time from the initiating event causing a loss of SFP water inventory until all cooling means are lost.

The NRC staff has verified ENO's analyses and its calculations. The analyses provide reasonable assurance that in granting the requested exemptions to ENO, there is no design-basis accident that will result in an offsite radiological release exceeding the EPA PAGs at the exclusion area boundary. In the unlikely event of a beyond-design-basis accident affecting the SFP that results in a complete loss of heat removal via all modes of heat transfer, there will be well over 10 hours available before an offsite release might occur and, therefore, at least 10 hours to initiate appropriate mitigating actions to restore a means of heat removal to the spent fuel. If a radiological release were projected to occur under this unlikely scenario, a minimum of 10 hours is considered sufficient time for offsite authorities to implement protective actions using a CEMP approach to protect the health and safety of the public.

Exemptions from the offsite EP requirements in 10 CFR part 50 have previously been approved by the NRC when the site-specific analyses show that at least 10 hours are available following a loss of SFP coolant inventory accident with no air cooling (or other methods of removing decay heat) until cladding of the hottest fuel assembly reaches the zirconium rapid

oxidation temperature. The NRC staff concluded in its previously granted exemptions, as it does with the ENO-requested EP exemptions, that if a minimum of 10 hours are available to initiate mitigative actions consistent with plant conditions, or if needed, for offsite authorities to implement protective actions using a CEMP approach, then formal offsite radiological emergency plans, required under 10 CFR part 50, are not necessary at permanently shutdown and defueled power reactors.

Additionally, in its letter to the NRC dated March 14, 2014, ENO described the SFP makeup strategies that could be used in the event of a catastrophic loss of SFP inventory. The multiple strategies for providing makeup water to the SFP include: Using existing plant systems for inventory makeup; an internal strategy that relies on installed fire water pumps (one motor-driven and one diesel-driven) and service water; or an external strategy that uses an engine-driven emergency makeup pump to provide makeup to the SFP from the Cooling Tower No. 2 deep basin. ENO further provides that designated on-shift staff is trained to implement such strategies and they have plans in place to mitigate the consequences of an event involving a catastrophic loss-of-water inventory concurrently from the VY SFP. ENO will maintain its License Condition 3.N, "Mitigation Strategy License Condition," for VY. This license condition requires VY to maintain its SFP inventory makeup strategies as discussed above. Considering the very

low probability of beyond-design-basis accidents affecting the SFP, these diverse strategies provide defense-in-depth and time to provide additional makeup or spray water to the SFP before the onset of any postulated offsite radiological release.

For all the reasons stated above, the NRC staff concludes that application of certain requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, as summarized in the table at the end of this document, is not necessary to achieve the underlying purpose of these regulations and, therefore, satisfies the special circumstances in 10 CFR 50.12(a)(2)(ii). The staff further concludes that the exemptions granted by this action will maintain an acceptable level of emergency preparedness at VY and provide reasonable assurance that adequate offsite protective measures, if needed, can and will be taken by State and local government agencies using a CEMP approach, in the unlikely event of a radiological emergency at the VY facility. Since the underlying purposes of the rules, as exempted, would continue to be achieved, even with the elimination of the requirements under 10 CFR part 50 to maintain formal offsite radiological emergency plans and the reduction in the scope of the onsite EP activities at VY, the special circumstances required by 10 CFR 50.12(a)(2)(ii) exist.

*E. Environmental Considerations*

In accordance with 10 CFR 51.31(a), the Commission has determined that the

granting of this exemption will not have a significant effect on the quality of the human environment, as discussed in the NRC staff's Environmental Assessment and Finding of No Significant Impact, which was published on August 10, 2015 (80 FR 47960).

**IV. Conclusions**

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that ENO's request for exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, and as summarized in the table at the end of this document, are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants ENO exemptions from certain EP requirements of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, as discussed and evaluated, in detail, in the staff's safety evaluation dated December 10, 2015. The exemptions are effective as of April 15, 2016.

Dated at Rockville, Maryland, this 10th day of December, 2015.

For the Nuclear Regulatory Commission.

**George A. Wilson,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

TABLE OF EXEMPTIONS GRANTED TO ENTERGY NUCLEAR OPERATIONS, INC.

	NRC staff basis for exemption
<p>10 CFR 50.47 10 CFR 50.47(b). The U.S. Nuclear Regulatory Commission (NRC) is granting exemption from portions of the rule language that would otherwise require offsite emergency response plans.</p>	<p>In the Statement of Considerations (SOC) for the final rule for emergency planning (EP) requirements for independent spent fuel storage installations (ISFSIs) and for monitor retrievable storage (MRS) facilities (60 FR 32430; June 22, 1995), the Commission responded to comments concerning offsite EP for ISFSIs or an MRS and concluded that, "the offsite consequences of potential accidents at an ISFSI or an MRS would not warrant establishing Emergency Planning Zones."</p>

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
<p>10 CFR 50.47(b)(1). The NRC is granting exemption from portions of the rule language that would otherwise require the need for Emergency Planning Zones (EPZs).</p>	<p>In a nuclear power reactor's permanently defueled state, the accident risks are more similar to an ISFSI or an MRS than an operating nuclear power plant. The EP program would be similar to that required for an ISFSI under section 72.32(a) of Title 10 of the <i>Code of Federal Regulations</i> (10 CFR) when fuel stored in the spent fuel pool (SFP) has more than 5 years of decay time and would not change substantially when all the fuel is transferred from the SFP to an on-site ISFSI. Exemptions from offsite EP requirements have previously been approved when the site-specific analyses show that at least 10 hours are available from a partial drain-down event where cooling of the spent fuel is not effective until the hottest fuel assembly reaches the zirconium ignition temperature of 900 degrees Celsius (°C). The technical basis that underlies the approval of the exemption request is based partly on the analysis of a time period in which spent fuel stored in the SFP is unlikely to reach the zirconium ignition temperature in less than 10 hours. This time period is based on a heatup calculation, which uses several simplifying assumptions. Some of these assumptions are conservative (adiabatic conditions), while others are non-conservative (no oxidation below 900 °C). Weighing the conservatisms and non-conservatisms, the NRC staff judges that this calculation reasonably represents conditions that may occur in the event of an SFP accident.</p> <p>The NRC staff concluded that if 10 hours were available to initiate mitigative actions, or if needed, offsite protective actions using a comprehensive emergency management plan (CEMP), formal offsite radiological emergency plans are not necessary for these permanently defueled nuclear power reactor licensees.</p> <p>As supported by the licensee's SFP analysis, the NRC staff believes an exemption from the requirements for formal offsite radiological emergency plans is justified for a zirconium fire scenario, considering the low likelihood of this event together with time available to take mitigative or protective actions between the initiating event and before the onset of a postulated fire.</p> <p>The Entergy Nuclear Operations, Inc. (ENO or the licensee) analysis has demonstrated that 17 days after shutdown the radiological consequences of design-basis-accidents (DBAs) will not exceed the limits of the U.S. Environmental Protection Agency's (EPA's) Protective Action Guides (PAGs) at the exclusion area boundary. This analysis also shows that 15.4 months after shutdown for an unlikely event of a beyond-DBA where the hottest fuel assembly adiabatic heatup occurs, 10 hours are available to take mitigative or, if needed, offsite protective actions, using a CEMP from the time the fuel is uncovered until it reaches the auto-ignition temperature of 900 °C.</p> <p>ENO furnished information concerning its SFP inventory makeup strategies. Several sources of makeup to the pool are available, such as the service water (SW) system, which has redundant pumping capability and power supplies to ensure alternative fuel pool makeup function. The SW system runs continuously, thus allowing for constant monitoring. Additionally, there are electric-driven and diesel-driven fire pumps that can supply makeup water to the SFP via the SW system or the fire water system. All sources discussed above take suction from the Connecticut River. The Vermont Yankee Nuclear Power Station (VY) also has an engine-driven emergency makeup pump capable of taking suction from the Cooling Tower No. 2 deep basin to provide an alternate source of makeup water to the SFP.</p> <p>ENO further provides that designated on-shift staff is trained to implement such strategies and they have plans in place to mitigate the consequences of an event involving a catastrophic loss-of-water inventory concurrently from the VY SFP. ENO will maintain its License Condition 3.N, "Mitigation Strategy License Condition," for VY. This license condition requires VY to maintain its SFP inventory makeup strategies as discussed above.</p> <p>Refer to basis for 10 CFR 50.47(b).</p>

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
10 CFR 50.47(b)(3). The NRC is granting exemption from portions of the rule language that would otherwise require the need for an emergency operations facility (EOF).	Decommissioning power reactors present a low likelihood of any credible accident resulting in a radiological release together with the time available to take mitigative or, if needed, offsite protective actions using a CEMP between the initiating event and before the onset of a postulated fire. As such, an EOF would not be required. The “nuclear island,” control room, or other onsite location can provide for the communication and coordination with offsite organizations for the level of support required.
10 CFR 50.47(b)(4). The NRC is granting exemption from portions of the rule language that would otherwise require reference to formal offsite radiological emergency response plans.	Also refer to basis for 10 CFR 50.47(b). Decommissioning power reactors present a low likelihood of any credible accident resulting in a radiological release together with the time available to take mitigative or, if needed, offsite protective actions using a CEMP between the initiating event and before the onset of a postulated fire. As such, formal offsite radiological emergency response plans are not required. The Nuclear Energy Institute (NEI) document NEI 99–01, “Development of Emergency Action Levels for Non-Passive Reactors” (Revision 6), was found to be an acceptable method for development of emergency action levels (EALs) and was endorsed by the NRC in a letter dated March 28, 2013 (ADAMS Accession No. ML12346A463). NEI 99–01 provides EALs for non-passive operating nuclear power reactors, permanently defueled reactors and ISFSIs. The ENO requested a license amendment to revise its EAL scheme to NEI 99–01, Revision 6 in a letter dated June 12, 2014, “Vermont Yankee Permanently Defueled Emergency Plan and Emergency Action Level Scheme” (ADAMS Accession No. ML14168A302).
10 CFR 50.47(b)(5). The NRC is granting exemption from portions of the rule language that would otherwise require early notification of the public and a means to provide instructions to the public within the plume exposure pathway EPZ.	Also refer to basis for 10 CFR 50.47(b). Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(6). The NRC is granting exemption from portions of the rule language that would otherwise require prompt communications with the public.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(7). The NRC is granting exemption from portions of the rule language that would otherwise require information to be made available to the public on a periodic basis about how they will be notified and what their initial protective actions should be.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(9). The NRC is granting exemption from portions of the rule language that would otherwise require the capability for monitoring offsite consequences.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(10). The NRC is granting exemption from portions of the rule language that would reduce the range of protective actions developed for emergency workers and the public. Consideration of evacuation, sheltering, or the use of potassium iodide will no longer be necessary. Evacuation time estimates (ETEs) will no longer need to be developed or updated. Protective actions for the ingestion exposure pathway EPZ will not need to be developed.	In the unlikely event of a SFP accident, the iodine isotopes, which contribute to an offsite dose from an operating reactor accident, are not present, so potassium iodide distribution would no longer serve as an effective or necessary supplemental protective action. In the SOC for the final rule for EP requirements for ISFSIs and for MRS facilities (60 FR 32430), the Commission responded to comments concerning site-specific EP that includes evacuation of surrounding population for an ISFSI not at a reactor site, and concluded, “The Commission does not agree that as a general matter emergency plans for an ISFSI must include evacuation planning.” The Commission also concluded that, “the offsite consequences of potential accidents at an ISFSI or an MRS would not warrant establishing Emergency Planning Zones.” (60 FR 32435).
10 CFR 50.47(c)(2). The NRC is granting exemption from portions of the rule language that would otherwise require the establishment of a 10-mile radius plume exposure pathway EPZ and a 50-mile radius ingestion pathway EPZ.	Also refer to basis for 10 CFR 50.47(b). Refer to basis for 10 CFR 50.47(b)(10).

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
<p>10 CFR Part 50, Appendix E, Section IV</p> <p>10 CFR part 50, appendix E, section IV.1. The NRC is granting exemption from portions of the rule language that would otherwise require onsite protective actions during hostile action.</p>	<p>The EP rule published in the <b>Federal Register</b> (76 FR 72560; November 23, 2011) amended certain requirements in 10 CFR part 50. Among the changes, the definition of “hostile action” was added as an act directed toward a nuclear power plant or its personnel. This definition is based on the definition of “hostile action” provided in NRC Bulletin 2005–02, “Emergency Preparedness and Response Actions for Security-Based Events,” dated July 18, 2005 (ADAMS Accession No. ML051740058). NRC Bulletin 2005–02 is not applicable to nuclear power reactors that have permanently ceased operations and have certified that fuel has been removed from the reactor vessel. ENO certified that it had permanently ceased operations at VY and that all fuel had been removed from the reactor vessel. Therefore, the enhancements for hostile actions required by the 2011 EP Final Rule are not necessary for VY in its permanently shutdown and defueled status.</p> <p>Additionally, the NRC excluded non-power reactors from the definition of “hostile action” at the time of the 2011 rulemaking because, as defined in 10 CFR 50.2, a non-power reactor is not considered a nuclear power reactor and a regulatory basis had not been developed to support the inclusion of non-power reactors in the definition of “hostile action.” Similarly, a decommissioning power reactor or ISFSI is not a “nuclear reactor,” as defined in the NRC’s regulations. Like a non-power reactor, a decommissioning power reactor also has a lower likelihood of a credible accident resulting in radiological releases requiring offsite protective measures, than does an operating reactor.</p>
<p>10 CFR part 50, appendix E, section IV.2. The NRC is granting exemption from portions of the rule language that would otherwise require time analyses within the plume exposure pathway EPZ for the licensee’s initial application.</p>	<p>Although this analysis provides a justification for exempting VY from “hostile action” related requirements, some EP requirements for security-based events are maintained. The classification of security-based events, notification of offsite authorities and coordination with offsite agencies under a CEMP concept are still required.</p> <p>Refer to basis for 10 CFR 50.47(b)(10).</p>
<p>10 CFR part 50, appendix E, section IV.3. The NRC is granting exemption from portions of the rule language that would otherwise require use of NRC-approved ETEs and updates to State and local governments when developing protective action strategies.</p>	<p>Refer to basis for 10 CFR part 50, appendix E, section IV.2.</p>
<p>10 CFR part 50, appendix E, section IV.4. The NRC is granting exemption from portions of the rule language that would otherwise require licensees to update ETEs based on the most recent census data and submit the ETE analysis to the NRC prior to providing it to State and local governments for developing protective action strategies.</p>	<p>Refer to basis for 10 CFR part 50, appendix E, section IV.2.</p>
<p>10 CFR part 50, appendix E, section IV.5. The NRC is granting exemption from portions of the rule language that would otherwise require licensees to estimate the EPZ permanent resident population changes once a year between decennial censuses.</p>	<p>Refer to basis for 10 CFR part 50, appendix E, section IV.2.</p>
<p>10 CFR part 50, appendix E, section IV.6. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to submit an updated ETE analysis to the NRC based on changes in the resident population that result in exceeding specific evacuation time increase criteria.</p>	<p>Refer to basis for 10 CFR part 50, appendix E, section IV.2.</p>
<p>10 CFR part 50, appendix E, section IV.A.1. The NRC is granting exemption from the word “operating” in the requirement to describe the normal plant organization.</p>	<p>Based on the permanently shutdown and defueled status of the VY reactor, a decommissioning reactor is not authorized to operate under 10 CFR 50.82(a). Because the licensee cannot operate the reactor, the licensee does not have a “plant operating organization.”</p>
<p>10 CFR part 50, appendix E, section IV.A.3. The NRC is granting exemption from the requirement to describe the licensee’s headquarters personnel sent to the site to augment the onsite emergency response organization.</p>	<p>The number of staff at decommissioning sites is generally small but is commensurate with the need to safely store spent fuel at the facility, in a manner that is protective of public health and safety. Decommissioning sites typically have a level of emergency response that does not require response by the licensee’s headquarters personnel.</p>

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
10 CFR part 50, appendix E, section IV.A.4. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to identify a position and function within its organization, which will carry the responsibility for making offsite dose projections.	Although the likelihood of events that would result in doses in excess of the EPA PAGs to the public beyond the exclusion area boundary is extremely low based on the permanently shutdown and defueled status of the reactor, the licensee is still required to determine if a radiological release is occurring. If a release is occurring, then the licensee staff should promptly communicate that information to offsite authorities for their consideration. The offsite organizations are responsible for deciding what, if any, protective actions should be taken based on a CEMP.
10 CFR part 50, appendix E, section IV.A.5. The NRC is granting exemption from the requirement for the licensee to identify individuals with special qualifications, both licensee employees and non-employees, for coping with emergencies.	Also refer to basis for 10 CFR 50.47(b). VY has performed an on-shift staffing analysis, addressing SFP mitigating strategies, including review of collateral duties. The specific event scenario utilized for the staffing analysis involves a catastrophic loss-of-water inventory in the SFP.
10 CFR part 50, appendix E, section IV.A.7. The NRC is granting exemption from portions of the rule language that would otherwise require a description of the assistance expected from State, local, and Federal agencies for coping with a hostile action.	Also refer to basis for 10 CFR 50.47(b). Refer to basis for 10 CFR part 50, appendix E, section IV.1.
10 CFR part 50, appendix E, section IV.A.8. The NRC is granting exemption from the requirement to identify the State and local officials for ordering protective actions and evacuations.	Offsite emergency measures are limited to support provided by local police, fire departments, and ambulance and hospital services, as appropriate. Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, protective actions such as evacuation should not be required, but could be implemented at the discretion of offsite authorities using a CEMP.
10 CFR part 50, appendix E, section IV.A.9. The NRC is granting exemption from the requirement for the licensee to provide an analysis demonstrating that on-shift personnel are not assigned responsibilities that would prevent performance of their assigned emergency plan functions.	Also refer to basis for 10 CFR 50.47(b)(10). The duties of the on-shift personnel at a decommissioning reactor facility are not as complicated and diverse as those for an operating power reactor. Responsibilities should be well defined in the emergency plan and procedures, regularly tested through drills and exercises audited and inspected by the licensee and the NRC.
10 CFR part 50, appendix E, section IV.B.1. The NRC is granting exemption from portions of the rule language that would otherwise require offsite EALs and offsite protective measures and associate offsite monitoring for the emergency conditions.	The NRC staff considered the similarity between the staffing levels at a permanently shutdown and defueled reactor and staffing levels at an operating power reactor site. The minimal systems and equipment needed to maintain the spent nuclear fuel in the SFP or in a dry cask storage system in a safe condition require minimal personnel and is governed by Technical Specifications. In the EP final rule published in the <b>Federal Register</b> (76 FR 72560; November 23, 2011), the NRC concluded that the staffing analysis requirement was not necessary for non-power reactor licensees due to the small staffing levels required to operate the facility.
In addition, the NRC is granting exemption from portions of the rule language that would otherwise require EALs based on hostile action.	The NRC staff also examined the actions required to mitigate the very low probability of beyond-design-basis events for the SFP. In a letter dated April 24, 2014, "Technical Specification Proposed Changes No. 309, Defueled Technical Specifications and Revised License Conditions for Permanently Defueled Condition—Supplement 1" (ADAMS Accession No. ML14119A101), ENO withdrew the proposed changes to the Mitigating Strategies License Condition 3.N. This license condition requires VY to maintain its SFP inventory makeup strategies as discussed above.
	VY has performed an on-shift staffing analysis, addressing SFP mitigating strategies, including review of collateral duties. The specific event scenario utilized for the staffing analysis involves a catastrophic loss-of-water inventory in the SFP.
	Also refer to basis for 10 CFR part 50, appendix E, section IV.1.
	NEI 99–01 was found to be an acceptable method for the development of EALs. No offsite protective actions are anticipated to be necessary, so classification above the alert level is no longer required, which is consistent with ISFSI facilities.
	As discussed previously, ENO requested a license amendment to revise its EAL scheme to NEI 99–01, Revision 6, in a letter dated June 12, 2014, "Vermont Yankee Permanently Defueled Emergency Plan and Emergency Action Level Scheme" (ADAMS Accession No. ML14168A302). Before ENO can amend its EAL scheme to reflect the risk commensurate with power reactor that has been permanently shut down and defueled, ENO needs an exemption from the requirement for the site area emergency and general emergency classifications.
	Also refer to basis for 10 CFR part 50, appendix E, section IV.1.

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
<p>10 CFR part 50, appendix E, section IV.C.1. The NRC is granting exemption from portions of the rule language that would otherwise require EALs based on operating reactor concerns, such as offsite radiation monitoring, pressure in containment, and the response of the emergency core cooling system.</p> <p>In addition, the NRC is striking language that would otherwise require offsite EALs of a site area emergency and a general emergency.</p>	<p>Containment parameters do not provide an indication of the conditions at a defueled facility and emergency core cooling systems are no longer required. Other indications, such as SFP level or temperature, can be used at site where there is spent fuel in the SFP.</p> <p>In the SOC for the final rule for EP requirements for ISFSIs and for MRS facilities (60 FR 32430), the Commission responded to comments concerning a general emergency at an ISFSI and MRS, and concluded that, “. . . an essential element of a General Emergency is that a release can be reasonably expected to exceed EPA PAGs exposure levels off site for more than the immediate site area.”</p> <p>The probability of a condition at a defueled facility reaching the level above an emergency classification of alert is very low. In the event of an accident at a defueled facility that meets the conditions for exemption from formal EP requirements, there will be available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP.</p> <p>NEI 99-01 was found to be an acceptable method for development of EALs. No offsite protective actions are anticipated to be necessary, so classification above the alert level is no longer required.</p>
<p>10 CFR part 50, appendix E, section IV.C.2. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to assess, classify, and declare an emergency condition within 15 minutes.</p>	<p>In the EP rule published in the November 23, 2011, <b>Federal Register</b> (76 FR 72560), nuclear power reactor licensees were required to assess, classify and declare an emergency condition within 15 minutes. Non-power reactors do not have the same potential impact on public health and safety as do power reactors, and as such, non-power reactor licensees do not require complex offsite emergency response activities and are not required to assess, classify and declare an emergency condition within 15 minutes. An SFP and an ISFSI are also not nuclear power reactors, as defined in the NRC's regulations and do not have the same potential impact on public health and safety, as do power reactors. A decommissioning power reactor has a low likelihood of a credible accident resulting in radiological releases requiring offsite protective measures. For these reasons, the NRC staff concludes that a decommissioning power reactor should not be required to assess, classify and declare an emergency condition within 15 minutes.</p>
<p>10 CFR part 50, appendix E, section IV.D.1. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to reach agreement with local, State, and Federal officials and agencies for prompt notification of protective measures or evacuations.</p> <p>In addition, the NRC is granting exemption from identifying the associated titles of officials to be notified for each agency within the EPZs.</p>	<p>Refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10).</p>
<p>10 CFR part 50, appendix E, section IV.D.2. The NRC is granting exemption from the requirement for the licensee to annually disseminate general information on EP and evacuations within the plume exposure pathway EPZ.</p> <p>In addition, the NRC is granting exemption for the need for signage or other measures to address transient populations in the event of an accident.</p>	<p>Refer to basis for 10 CFR part 50, appendix E, section IV.D.1.</p>
<p>10 CFR part 50, appendix E, section IV.D.3. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have the capability to make notifications to State and local government agencies within 15 minutes of declaring an emergency.</p>	<p>While the capability needs to exist for the notification of offsite government agencies within a specified time period, previous exemptions have allowed for extending the State and local government agencies' notification time up to 60 minutes, based on the site-specific justification provided.</p> <p>ENO's license amendment request to approve its Permanently Defueled Emergency Plan (PDEP) dated June 12, 2014, (ADAMS Accession No. ML14168A302), provides that VY will make notifications to the State of Vermont within 60 minutes of declaration of an event. Considering the very low probability of beyond-design-basis events affecting the SFP, and with the time available to initiate mitigative actions consistent with plant conditions or, if needed, for offsite authorities to implement appropriate protective measures using a CEMP (all-hazards) approach between the loss of both water and air cooling to the spent fuel and the onset of a postulated zirconium cladding fire, formal offsite radiological response plans are not needed. Therefore, decommissioning reactors are not required to notify State and local governmental agencies within 15 minutes. For similar reasons, the requirement for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ using an alert and notification system is not required.</p> <p>Also refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10).</p>



## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
10 CFR part 50, appendix E, section IV.D.4. The NRC is granting exemption from the requirement for the licensee to obtain U.S. Federal Emergency Management Agency (FEMA) approval of its backup alert and notification capability.	Refer to basis for 10 CFR part 50, appendix E, section IV.D.3 regarding the alert and notification system requirements.
10 CFR part 50, appendix E, section IV.E.8.a.(i). The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have an onsite technical support center (TSC) and EOF.	Due to the low probability of DBAs or other credible events to exceed the EPA PAGs at the site boundary, the available time for event mitigation at a decommissioning power reactor and, if needed, to implement offsite protective actions using a CEMP, an EOF would not be required to support offsite agency response. In addition, an onsite TSC with part 50, appendix E requirements would not be needed. ENO proposes in its PDEP that onsite actions would be directed from the control room.
10 CFR part 50, appendix E, section IV.E.8.a.(ii). The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have an onsite operational support center (OSC).	NUREG-0696, "Functional Criteria for Emergency Response Facilities," provides that the OSC is an onsite area separate from the control room and the TSC, where licensee operations support personnel will assemble in an emergency. For a decommissioning power reactor, an OSC is no longer required to meet its original purpose of an assembly area for plant logistical support during an emergency. The OSC function can be incorporated into the control room, as proposed by ENO.
10 CFR part 50, appendix E, section IV.E.8.b. and subpart sections IV.E.8.b.(1)–E.8.b.(5). The NRC is granting exemption from the requirements related to an offsite EOF location, space and size, communications capability, access to plant data and radiological information, and access to copying and office supplies.	Refer to basis for 10 CFR 50.47(b)(3).
10 CFR part 50, appendix E, section IV E.8.c. and sections IV E.8.c.(1)–E.8.c.(3). The NRC is granting exemption from the requirements to have an EOF with the capabilities to obtain and display plant data and radiological information; the capability to analyze technical information and provide briefings; and the capability to support events occurring at more than one site (if the emergency operations center supports more than one site).	Refer to basis for 10 CFR 50.47(b)(3).
10 CFR part 50, appendix E, section IV E.8.d. The NRC is granting exemption from the requirements to have an alternate facility that would be accessible even if the site is under threat of or experiencing hostile action, to function as a staging area for augmentation of emergency response staff.	Refer to basis for 10 CFR part 50, appendix E, section IV.1 regarding hostile action.
10 CFR part 50, appendix E, section IV.E.8.e. The NRC is granting exemption from the requirement regarding the need for the licensee to comply with paragraph 8.b of this section.	Refer to basis for 10 CFR 50.47(b)(3).
10 CFR part 50, appendix E, section IV.E.9.a. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have communications with contiguous State and local governments that are within the plume exposure pathway EPZ (which is no longer required by the exemption granted to 10 CFR 50.47(b)(10)).	Refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10). The State and the local governments in which the nuclear facility is located need to be informed of events and emergencies, therefore, lines of communication are required to be maintained.
10 CFR part 50, appendix E, section IV.E.9.c. The NRC is granting exemption from the requirements for communication and testing provisions between the control room, the onsite TSC, State/local emergency operations centers, and field assessment teams.	Because of the low probability of DBAs or other credible events that would be expected to exceed the EPA PAGs and the available time for event mitigation and, if needed, implementation of offsite protective actions using a CEMP, there is no need for the TSC, EOF, or offsite field assessment teams. Also refer to justification for 10 CFR 50.47(b)(3). Communication with State and local emergency operations centers is maintained to coordinate assistance on site if required.
10 CFR part 50, appendix E, section IV.E.9.d. The NRC is granting exemption from portions of the rule language that would otherwise require provisions for communications from the control room, onsite TSC, and EOF with NRC Headquarters and appropriate Regional Operations Center.	The functions of the control room, EOF, TSC, and OSC may be combined into one or more locations at a permanently shutdown and defueled facility due to its smaller facility staff and the greatly reduced required interaction with State and local emergency response facilities, as compared to an operating reactor. Also refer to basis for 10 CFR 50.47(b).

## TABLE OF EXEMPTIONS GRANTED TO ENERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
10 CFR part 50, appendix E, section IV.F.1. and section IV F.1.viii. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to provide training and drills for the licensee's headquarters personnel, Civil Defense personnel, or local news media.	Decommissioning power reactor sites typically have a level of emergency response that does not require additional response by the licensee's headquarters personnel. Therefore, the NRC staff considers exempting licensee's headquarters personnel from training requirements to be reasonable. Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, offsite emergency measures are limited to support provided by local police, fire departments, and ambulance and hospital services, as appropriate. Local news media personnel no longer need radiological orientation training since they will not be called upon to support the formal Joint Information Center. The term "Civil Defense" is no longer commonly used; references to this term in the examples provided in the regulation are, therefore, not needed.
10 CFR part 50, appendix E, section IV.F.2. The NRC is granting exemption from portions of the rule language that would otherwise require testing of a public alert and notification system.	Because of the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs and the available time for event mitigation and, if necessary, offsite protective actions from a CEMP, the public alert and notification system will not be used and, therefore, requires no testing. Also refer to basis for 10 CFR 50.47(b).
10 CFR part 50, appendix E, section IV.F.2.a. and sections IV.F.2.a.(i) through IV.F.2.a.(iii). The NRC is granting exemption from the requirements for full participation exercises and the submittal of the associated exercise scenarios to the NRC.	Due to the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs, the available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP, no formal offsite radiological response plans are required. Therefore, the need for the licensee to exercise onsite and offsite plans with full participation by each offsite authority having a role under the radiological response plan is not required. The intent of submitting exercise scenarios at an operating power reactor site is to check that licensees utilize different scenarios in order to prevent the preconditioning of responders at power reactors. For decommissioning power reactor sites, there are limited events that could occur and, as such, the previously routine progression to general emergency in an operating power reactor site scenario is not applicable. The licensee would be exempt from 10 CFR part 50, appendix E, section IV.F.2.a.(i)-(iii) because the licensee would be exempt from the umbrella provision of 10 CFR part 50, appendix E, section IV.F.2.a.
10 CFR part 50, appendix E, section IV.F.2.b. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to submit scenarios for its biennial exercises of its onsite emergency plan. In addition, the NRC is granting exemption from portions of the rule language that requires assessment of offsite releases, protective action decision making, and references to the TSC, OSC, and EOF.	Refer to basis for 10 CFR part 50, appendix E, section IV.F.2.a. The low probability of DBAs or other credible events that would exceed the EPA PAGs, the available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP, render a TSC, OSC, and EOF unnecessary. The principal functions required by regulation can be performed at an onsite location that does not meet the requirements of the TSC, OSC or EOF.
10 CFR part 50, appendix E, section IV.F.2.c. and sections IV F.2.c.(1) through F.2.c.(5). The NRC is granting exemption from the requirements regarding the need for the licensee to exercise offsite plans biennially with full participation by each offsite authority having a role under the radiological response plan. The NRC is also granting exemptions from the conditions for conducting these exercises (including hostile action exercises) if two different licensees have facilities on the same site or on adjacent, contiguous sites, or share most of the elements defining co-located licensees.	Refer to basis for 10 CFR part 50, appendix E, section IV.F.2.a.
10 CFR part 50, appendix E, section IV.F.2.d. The NRC is granting exemption from the requirements to obtain State participation in an ingestion pathway exercise and a hostile action exercise, with each State that has responsibilities, at least once per exercise cycle.	Refer to basis for 10 CFR part 50, appendix E, section IV.2.
10 CFR part 50, appendix E, section IV.F.2.e. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to allow participation exercise in licensee drills by any State and local government in the plume exposure pathway EPZ when requested.	Refer to basis for 10 CFR part 50, appendix E, section IV.2.
10 CFR part 50, appendix E, section IV.F.2.f. The NRC is granting exemption from portions of the rule language that would otherwise require FEMA to consult with the NRC on remedial exercises. The NRC is granting exemption from portions of the rule language that discuss the extent of State and local participation in remedial exercises.	FEMA is responsible for evaluating the adequacy of offsite response during an exercise. Because the NRC is granting exemptions from the requirements regarding the need for the licensee to exercise onsite and offsite plans with full participation by each offsite authority having a role under the radiological response plan, FEMA will no longer evaluate the adequacy of offsite response during remedial or other exercises.

## TABLE OF EXEMPTIONS GRANTED TO ENTERGY NUCLEAR OPERATIONS, INC.—Continued

	NRC staff basis for exemption
10 CFR part 50, appendix E, section IV.F.2.i. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to drill and exercise scenarios that include a wide spectrum of radiological release events and hostile action.	No action is expected from State or local government organizations in response to an event at a decommissioning power reactor site other than firefighting, law enforcement and ambulance/medical services support. A memorandum of understanding should be in place for those services. Offsite response organizations will continue to take actions on a comprehensive EP basis to protect the health and safety of the public as they would at any other industrial site.
10 CFR part 50, appendix E, section IV.F.2.j. The NRC is granting exemption from the requirements regarding the need for the licensee's emergency response organization to demonstrate proficiency in key skills in the principal functional areas of emergency response. In addition, the NRC is granting exemption during an eight calendar year exercise cycle, from demonstrating proficiency in the key skills necessary to respond to such scenarios as hostile actions, unplanned minimal radiological release, and scenarios involving rapid escalation to a site area emergency or general emergency.	Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, the available time for event mitigation and, if needed, implementation of offsite protective actions using a CEMP, the previously routine progression to general emergency in power reactor site scenarios is not applicable to a decommissioning site. Therefore, the licensee is not expected to demonstrate response to a wide spectrum of events.
10 CFR part 50, appendix E, section IV.I. The NRC is granting exemption from the requirements regarding the need for the licensee to develop a range of protective actions for onsite personnel during hostile actions.	Also refer to basis for 10 CFR part 50, appendix E, section IV.1 regarding hostile action. Refer to basis for 10 CFR part 50, appendix E, section IV.F.2.  Refer to basis for 10 CFR part 50, appendix E, section IV.E.8.d.

[FR Doc. 2015–31808 Filed 12–16–15; 8:45 am]

BILLING CODE 7590–01–P

**POSTAL REGULATORY COMMISSION****[Docket Nos. MC2016–32 and CP2016–38; Order No. 2863]****New Postal Product****AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Express Contract 30 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.**DATES:** *Comments are due:* December 18, 2015.**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

**I. Introduction**

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Express Contract 30 to the competitive product list.<sup>1</sup>

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.

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Express Contract 30 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 10, 2015 (Request).

**II. Notice of Commission Action**

The Commission establishes Docket Nos. MC2016–32 and CP2016–38 to consider the Request pertaining to the proposed Priority Mail Express Contract 30 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 18, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

**III. Ordering Paragraphs***It is ordered:*

1. The Commission establishes Docket Nos. MC2016–32 and CP2016–38 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 18, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble**,  
Secretary.

[FR Doc. 2015-31648 Filed 12-16-15; 8:45 am]

**BILLING CODE 7710-FW-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-33 and CP2016-39;  
Order No. 2868]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of First-Class Package Service Contract 38 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 21, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### 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 First-Class Package Service Contract 38 to the competitive product list.<sup>1</sup>

<sup>1</sup> Request of the United States Postal Service to Add First-Class Package Service Contract 38 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 11, 2015 (Request). The Postal Service requests to add "First-Class Package Service Contract 37" to the competitive product list. Request at 1. However, other parts of the Request and attachments refer to "First-Class Package Service Contract 38." First-Class Package Service Contract 37 was added to the competitive product list on September 10, 2014. Docket Nos. MC2014-42 and CP2014-75, Order No. 2179, Order Adding First-Class Package Service

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. MC2016-33 and CP2016-39 to consider the Request pertaining to the proposed First-Class Package Service Contract 38 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 21, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

#### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016-33 and CP2016-39 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin 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 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble**,  
Secretary.

[FR Doc. 2015-31802 Filed 12-16-15; 8:45 am]

**BILLING CODE 7710-FW-P**

Contract 37 to the Competitive Product List, September 10, 2014. The Commission considers the Request to pertain to First-Class Package Service Contract 38.

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016-31 and CP2016-37;  
Order No. 2865]

### 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 162 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 18, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### 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 162 to the competitive product list.<sup>1</sup>

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.

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 162 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 10, 2015 (Request).

## II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–31 and CP2016–37 to consider the Request pertaining to the proposed Priority Mail Contract 162 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 18, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Katalin K. Clendenin to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–31 and CP2016–37 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin 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 18, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015–31650 Filed 12–16–15; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–30 and CP2016–36; Order No. 2864]

### 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 161 negotiated service agreement to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* December 18, 2015.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit

comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. Notice of Commission Action
- III. Ordering Paragraphs

#### 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 161 to the competitive product list.<sup>1</sup>

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. MC2016–30 and CP2016–36 to consider the Request pertaining to the proposed Priority Mail Contract 161 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 18, 2015. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Kenneth R. Moeller to serve as Public Representative in these dockets.

#### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–30 and CP2016–36 to

consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller is appointed to serve as an officer of the Commission to represent the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than December 18, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2015–31649 Filed 12–16–15; 8:45 am]

**BILLING CODE P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Effective date:* December 17, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 11, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 38 to Competitive Product List*. Documents are available at [www.prc.gov](http://www.prc.gov), Docket Nos. MC2016–33, CP2016–39.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2015–31819 Filed 12–16–15; 8:45 am]

**BILLING CODE 7710–12–P**

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 161 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 10, 2015 (Request).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76630; File No. SR-NYSEArca-2015-76]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Global Currency Gold Fund Under NYSE Arca Equities Rule 8.201

December 11, 2015.

On August 28, 2015, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the Global Currency Gold Fund under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on September 16, 2015.<sup>3</sup> On September 29, 2015, the Exchange submitted Amendment No. 1 on the proposed rule change.<sup>4</sup> On October 28, 2015, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission has not received any comments on the proposal, as modified by Amendment No. 1. This order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 75900 (September 11, 2015), 80 FR 55674 (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange: (1) Identified weightings of each currency referenced in the Index; (2) supplemented its description of the method of calculation for the Spot Rate; (3) clarified when the Fund may suspend the right of redemption or postpone the redemption settlement date. Amendment No. 1 is available at: <http://www.sec.gov/rules/sro/nysearca/2015/34-75900-amendment1.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 75945, 80 FR 57645 (Sept. 24, 2015). The Commission designated a longer period within which to take action on the proposed rule change and designated December 15, 2015, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

### I. The Exchange’s Description of Proposal<sup>8</sup>

The Exchange proposes to list and trade (“Shares”) of the Global Currency Gold Fund (the “Fund”),<sup>9</sup> a series of the Global Gold Currency Trust (Trust”), under NYSE Arca Equities Rule 8.201, which governs the listing and trading of Commodity-Based Trust Shares.<sup>10</sup>

The Sponsor of the Fund and the Trust will be WGC USA Asset Management Company, LLC (the “Sponsor”). BNY Mellon Asset Servicing, a division of The Bank of New York Mellon, will be the Fund’s administrator (“Administrator”), transfer agent (“Transfer Agent”) and custodian (“Custodian”) and will not be affiliated with the Trust, the Fund or the Sponsor.

Although investors will purchase Shares with U.S. dollars, the Fund is designed to provide investors with the economic effect of holding gold in terms of a specific basket of major, non-U.S. currencies, such as the euro, Japanese yen and British pound (each, a “Reference Currency”), rather than the U.S. dollar. Specifically, the Fund will seek to track the performance of the Global Gold Index (ex-USD), less Fund expenses. The Global Gold Index (ex-USD), or the “Index”, represents the daily performance of a long position in physical gold and a short position in each of the Reference Currencies, and is designed to measure daily gold bullion returns as though an investor had invested in Gold<sup>11</sup> in terms of the Reference Currencies reflected in the Index.

The Fund is a passive investment vehicle and is designed to track the performance of the Index. The Fund’s holdings generally will consist entirely of Gold, and substantially all of the Fund’s Gold holdings will be delivered by authorized participants in exchange for Shares. The Fund will not hold any of the Reference Currencies, and generally will not hold U.S. dollars

<sup>8</sup> A complete description of the proposal can be found in the Notice. See Notice, *supra* note 3 (available at: <http://www.sec.gov/rules/sro/nysearca/2015/34-75900.pdf>).

<sup>9</sup> On August 28, 2015, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (“1933 Act”) relating to the Fund (File No. 333-206640) (“Registration Statement”). The Fund will not be registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. 15 U.S.C. 80a-1.

<sup>10</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>11</sup> “Gold” means gold bullion meeting the requirements of London Good Delivery Standards.

(except from time to time in very limited amounts to pay expenses).

The Administrator will determine the net asset value (“NAV”) of the Shares each Business Day, unless there is a market disruption or extraordinary event.<sup>12</sup> The NAV of the Shares represents the aggregate value of the Fund’s assets (which include gold payable, but not yet delivered, to the Fund) less its liabilities (which include accrued but unpaid fees and expenses). The NAV of the Fund will be calculated based on the price of Gold per ounce applied against the number of ounces of Gold owned by the Fund. The number of ounces of Gold held by the Fund is adjusted up or down on a daily basis to reflect the U.S. dollar value of currency gains or losses based on changes in the value of the Reference Currencies against the U.S. dollar. The number of ounces of Gold held by the Fund also reflects the amount of Gold delivered into (or out of) the Fund on a daily basis by authorized participants creating and redeeming Shares. In determining the Fund’s NAV, the Administrator generally will value the Gold held by the Fund based on the LBMA Gold Price PM<sup>13</sup> for an ounce of Gold (though other sources may be used if the LBMA Gold Price PM is delayed or unavailable). Although the Fund will not hold the Reference Currencies, the Gold Delivery Provider<sup>14</sup> generally will value the Reference Currencies based on the rates in effect as of the WMR FX Fixing Time.<sup>15</sup> Unless there is a market

<sup>12</sup> See Notice, *supra* note 3 at 55678.

<sup>13</sup> The Index values Gold on a daily basis using the “Gold Price.” The Gold Price generally is the LBMA Gold Price PM (though other sources may be used if the LBMA Gold Price PM is delayed or unavailable). The “LBMA Gold Price” means the price per troy ounce of Gold stated in U.S. dollars as set via an electronic auction process run twice daily at 10:30 a.m. and 3:00 p.m., London time each Business Day as calculated and administered by ICE Benchmark Administration Limited (“IBA”) and published by LBMA on its Web site. The “LBMA Gold Price PM” is the 3:00 p.m. LBMA Gold Price. IBA, an independent specialist benchmark administrator, provides the price platform, methodology and the overall administration and governance for the LBMA Gold Price. *Id.*

<sup>14</sup> The Fund will deliver Gold to, or receive Gold from, the Gold Delivery Provider each Business Day. The amount of Gold transferred will be equivalent to the Fund’s profit or loss as if the Fund had exchanged the Reference Currencies, in the proportion in which they are reflected in the Index, for U.S. dollars in an amount equal to the Fund’s declared holdings of Gold on such day. The Fund does not intend to enter into any other Gold transactions other than with the Gold Delivery Provider (except that the Fund may sell Gold to cover Fund expenses), and the Fund does not intend to hold any Reference Currency or enter into any currency transactions. See Notice, *supra* note 3 at 55675.

<sup>15</sup> The “WMR FX Fixing Time” is the time the Reference Currency prices are published, which generally is at 4:00 p.m., London Time.

disruption or extraordinary event, NAV generally will be calculated as of 4:00 p.m., London time.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities.<sup>16</sup> The Fund will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares. A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.<sup>17</sup>

Trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>18</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>19</sup>

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>20</sup>

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through equity trading permit holders ("ETP Holders") acting as registered market makers, in connection with such ETP Holders' proprietary or customer

trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

## II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca-2015-76 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>22</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission questions whether: (1) The Exchange has sufficiently demonstrated in its filing that the Index is not susceptible to manipulation; and (2) the existing provisions of the Exchange's listing rule are adequate to allow it to surveil for and investigate potential manipulation by ETP Holders registered as market makers. Therefore, the Commission is instituting proceedings to allow for the submission of additional analysis regarding the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>23</sup>

## III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission

invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.<sup>24</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 7, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 21, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>25</sup> in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on the following:

1. In general, do commenters believe that the proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, 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?

2. What are commenters' views regarding the susceptibility of the price of the Shares to manipulation?

3. The Exchange states that Index values generally are calculated using the published WMR Spot Rate ("Spot Rate") as of 4:00 p.m., London time associated with each Reference Currency, subject to certain adjustments, and notes that other rates may be used if the Spot Rate is delayed or unavailable. The Exchange does not state, however, how the Spot Rate and any replacement rate ("Currency Rates") are calculated.

<sup>24</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>25</sup> *Supra* note 3.

<sup>16</sup> See Notice, *supra* note 3 at 55681.

<sup>17</sup> *Id.*

<sup>18</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> *Id.*

<sup>23</sup> 15 U.S.C. 78f(b)(5).

a. Are the Currency Rates calculated using arm's length transactions and, if so, are such transactions verified, and how? If quotes are used to calculate the Currency Rates, are those arm's length quotes firm?

b. What concerns, if any, do commenters have regarding the Index's susceptibility to manipulation?

4. Are the requirements of NYSE Arca Equities Rule 8.201(g) adequate to allow the Exchange to fulfill its regulatory obligations or, in light of the Shares' exposure to the Reference Currencies, should those requirements be expanded to also apply to market makers' trading accounts for all of the applicable non-U.S. currencies, options, futures or options on futures on such currencies, or any other derivatives based on such currencies?

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-76 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 Numbers SR-NYSEArca-2015-76. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-76 and should be submitted on or before January 7, 2016. Rebuttal comments should be submitted by January 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31680 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-76621; File No. SR-C2-2015-025]**

### **Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Relating to Complex Orders as Modified by Amendment No. 1**

December 11, 2015.

#### **I. Introduction**

On October 13, 2015, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) Amend the rule provisions regarding the initiation of a complex order auction ("COA"), (2) add rule provisions regarding the impact of certain incoming orders and changes in the leg markets on an ongoing COA, and (3) amend the rule provision related to the size of COA responses. On October 26, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 2, 2015.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

<sup>26</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No.76274 (October 27, 2015), 80 FR 67446 ("Notice").

## **II. Description of the Proposed Rule Change**

The Exchange proposes to amend C2 Rule 6.13 and Interpretation and Policy .02 regarding the initiation of a COA. Currently, C2 Participants must affirmatively request that their incoming COA-eligible orders be COA'd.<sup>4</sup> The Exchange proposes to amend C2 Rule 6.13(c)(2) to provide that COA-eligible orders be COA'd by default.<sup>5</sup> Under the proposed rule, Participants would be permitted to request that a COA-eligible order not COA (referred to as a "do-not-COA" request) on an order-by-order basis.<sup>6</sup> The Exchange believes that allowing Participants to make a "do-not-COA" request on an order-by-order basis will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders. An order with a "do-not-COA" request, however, may still be COA'd after it has rested on the Complex Order Book ("COB") pursuant to Interpretation and Policy .02.<sup>7</sup>

The Exchange notes that an order with a "do-not-COA" request will still have execution opportunities. The Exchange explains that a "do-not-COA" order may execute automatically upon entry into the System against the leg markets or complex orders on the COB to the extent marketable (in accordance with allocation rules set forth in Rule 6.13).<sup>8</sup> Further, the Exchange notes that an order on the opposite side of, and marketable against, a COA-eligible order may trade against the COA-eligible order if the System receives the order while a COA is ongoing.<sup>9</sup>

Second, the Exchange proposes to add subparagraphs (c)(8)(D) and (E) to C2 Rule 6.13 to describe additional circumstances that will cause a COA to end early.<sup>10</sup> Proposed subparagraph (c)(8)(D) will provide that if an order with a "do-not-COA" request or an order that is not COA-eligible is received prior to the expiration of the Response Time Interval for the original COA and is on the same side of the

<sup>4</sup> See Notice, *supra* note 3, at 67446. The Exchange represents that all Participants have requested that all of their COA-eligible orders process through COA upon entry into the System.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* In light of this proposed change, the Exchange proposes to delete the language in Interpretation and Policy .02(a) that indicates Participants may request that complex orders be processed by COA on a class-by-class basis, as it is no longer necessary. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 67447.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The proposed rule change makes corresponding changes to the heading and introductory paragraph of subparagraph (c)(8). *Id.*



market and at a price better than or equal to the starting price, then the original COA will end.<sup>11</sup> Proposed subparagraph (c)(8)(E) will provide that if the leg markets were not marketable against a COA-eligible order when the order entered the System (and thus prior to the initiation of a COA) but became marketable with the COA-eligible order prior to the expiration of the Response Time Interval, it will cause the COA to end.<sup>12</sup> The Exchange believes that these provisions prevent an order that was entered after the initiation of a COA from trading ahead of an order with the same price that may have executed or entered the COB if it did not COA.<sup>13</sup> Similarly, the Exchange believes it is fair for a COA-eligible order that was entered at a better price than an order that was resting in the COB prior to initiation of the COA to execute against leg markets that become marketable against the COA-eligible order and resting order during the COA, because the Participant who entered the COA-eligible order was willing to pay a better price than that of the resting order.<sup>14</sup>

Third, the Exchange proposes to amend subparagraph (c)(3)(A) of C2 Rule 6.13 to delete the provision that states that RFR responses are limited to the size of the COA-eligible order for allocation purposes.<sup>15</sup> The Exchange explains that it is proposing this change because if the allocation algorithm for complex orders in a class is pro-rata, the System is unable to block RFR responses that are larger than the size of the COA-eligible order.<sup>16</sup> The Exchange notes the pursuant to C2 Rule 6.13(c)(7), RFR responses are firm with respect to the COA-eligible order for which the responses are submitted, provided that responses that exceed the size of a COA-eligible order are also eligible to trade with other incoming COA-eligible orders that are received during the Response Time Interval.<sup>17</sup>

Finally, the Exchange proposes to make technical and other nonsubstantive changes, which are described in the Notice.<sup>18</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is

consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>19</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>20</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for C2 to require that incoming two-legged COA-eligible orders be COA'd by default unless a Participant requests, on an order-by-order basis, that such orders not COA. The Commission notes that, should a Participant not wish its orders to be COA'd, the proposed rule will allow the Participant to request that its orders not be COA'd on an order-by-order basis. In addition, the Commission notes that the rules of another options exchange provide that certain complex orders be routed to a complex order auction unless a member designates that such orders not initiate a complex order auction on that exchange.<sup>21</sup>

The Commission also believes that it is reasonable for the Exchange to add new provisions regarding how incoming orders with "do-not-COA" requests or that are not COA-eligible, as well as how changes in the leg markets, may impact ongoing COAs. Such additions enhance the description of current COA functionality and the circumstances that may cause a COA to end early to help ensure investors understand how "do-not-COA" orders may impact a COA. As noted above, these rules provide that if entry of a "do-not-COA" order causes a COA to end, any executions that occur following the COA will occur in accordance with allocation principles in place, subject to an exception that the original COA-eligible order will receive time priority.

Finally, the Commission believes it is reasonable for C2 to delete the provision in its Rules limiting the size of RFR responses to the size of the COA-eligible order. The Commission notes that other

options exchanges do not limit the size of responses to the auctioned order sized.<sup>22</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-C2-2015-025), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-31681 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76626; File No. SR-CBOE-2015-100]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Options That Overlie a Reduced Value of the FTSE 100 Index

December 11, 2015.

#### I. Introduction

On October 30, 2015, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade options that overlie a reduced value of the FTSE 100 Index. The proposed rule change was published for comment in the **Federal Register** on November 10, 2015.<sup>3</sup> On December 10, 2015, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order grants approval of

<sup>22</sup> See *id.* and NYSE MKT Rule 6.80NY(e).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76353 (November 4, 2015), 80 FR 69751 ("Notice").

<sup>4</sup> Amendment No. 1 makes certain technical modifications to Exhibit 5 to reflect the current CBOE rulebook and to remove a reference to "(1/10th)" that was inadvertently included. It also revises rule text to make additional technical edits. As the changes made by Amendment No. 1 are technical in nature and do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 67447-8.

<sup>13</sup> *Id.* at 67449.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 67448.

<sup>16</sup> *Id.* The Exchange represents that this proposed rule change will result in the rule regarding RFR responses more accurately reflecting current System functionality. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> See NASDAQ OMX PHLX LLC ("PHLX") Rule 1080, Commentary .07(a)(viii) and (e) (describing the complex order live auction ("COLA") process and "do not auction" orders).

the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade A.M. cash-settled, European-style options on the FTSE 100 Index.<sup>5</sup> According to the Exchange, the FTSE 100 Index is a free float-adjusted market capitalization index that is designed to measure the performance of the 100 largest companies traded on the London Stock Exchange and valued in the British pound (“GBP”).<sup>6</sup> The Exchange states that the index is monitored and maintained by FTSE International Limited (“FTSE”).<sup>7</sup> Adjustments to the index could be made on a daily basis with respect to corporate events and dividends, and FTSE reviews the index quarterly.

According to the Exchange, the FTSE 100 Index is calculated and published in GBP on a real-time basis during United Kingdom and United States trading hours.<sup>8</sup> The methodology used to calculate the FTSE 100 Index is similar to the methodology used to calculate the value of other benchmark market-capitalization weighted indexes.<sup>9</sup> Real-time data is distributed at least every 15 seconds while the index is being calculated using FTSE’s real-time calculation engine to Bloomberg L.P. (“Bloomberg”), Thomson Reuters (“Reuters”) and other major vendors. End of day data is distributed daily to

clients through FTSE as well as through major quotation vendors, including Bloomberg and Reuters.

The Exchange proposes that trading hours for FTSE 100 Index options would be from 8:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time).

The Exchange proposes that FTSE 100 Index options would expire on the third Friday of the expiration month.<sup>10</sup> The exercise settlement value would be one-tenth (1/10th) of the value of the FTSE 100 Index calculated via an intra-day auction on the London Stock Exchange that is held on the morning of the expiration date (generally a Friday). The exercise settlement amount would be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier (\$100).<sup>11</sup> Exercise would result in delivery of cash on the business day following expiration.

The Exchange proposes to create specific initial and maintenance listing criteria for options on the FTSE 100 Index. Specifically, the Exchange proposes to add new Interpretation and Policy .02(a) to Rule 24.2 to provide that the Exchange may trade FTSE 100 Index options if each of the following conditions is satisfied: (1) The index is broad-based, as defined in Rule 24.1(i)(1); (2) options on the index are designated as A.M.-settled index options; (3) the index is capitalization-weighted, price-weighted, modified capitalization-weighted or equal dollar-weighted; (4) the index consists of 90 or more component securities; (5) each of the component securities of the index will have a market capitalization of greater than \$100 million; (6) no single component security accounts for more than fifteen percent (15%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than fifty percent (50%) of the weight of the index; (7) non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the FTSE 100 Index; (8) during the time options on the index are traded on the

Exchange, the current index value is widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors; however, the Exchange may continue to trade FTSE 100 options after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors, provided that FTSE 100 futures contracts are trading and prices for those contracts may be used as a proxy for the current index value; (9) the Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange’s current Independent System Capacity Advisor allocation and the number of new messages per second expected to be generated by options on such index; and (10) the Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

Additionally, the Exchange proposes to add new Interpretation and Policy .02(b) to Rule 24.2 to set forth the following maintenance listing standards for options on the FTSE 100 Index: (1) The conditions set forth in subparagraphs .02(a) (1), (2), (3), (4), (7), (8), (9) and (10) must continue to be satisfied, the conditions set forth in subparagraphs .02(a)(5) and (6) must be satisfied only as of the first day of January and July in each year; and (2) the total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing. In the event a class of index options listed on the Exchange pursuant to Interpretation and Policy .02(b) fails to satisfy these maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.

The contract multiplier for the FTSE 100 Index options would be \$100. The FTSE 100 Index options would be quoted in index points and one point would equal \$100. The Exchange proposes that the minimum tick size for series trading below \$3 would be 0.05 (\$5.00), and at or above \$3 would be 0.10 (\$10.00). The Exchange also proposes that the strike price interval for FTSE 100 Index options would be no less than \$5, except that the strike price interval would be no less than \$2.50 if the strike price is less than \$200.

<sup>5</sup> The Exchange proposes to list up to twelve near-term expiration months at any one time for the FTSE 100 Index options. The Exchange also proposes to list up to ten expirations in Long-Term Index Option Series (LEAPS) on the reduced value of the FTSE 100 Index Options. The Exchange proposes that options on the FTSE 100 Index would be eligible for all other expirations permitted for other broad-based indexes (e.g., End of Week/End of Month Expirations, Short Term Option Series, and Quarterly Options Series). In addition, the Exchange proposes to designate the FTSE 100 Index as eligible for trading as FLEX options.

<sup>6</sup> The Exchange states that the FTSE 100 Index meets the definition of a broad-based index as set forth in Exchange Rule 24.1(i)(1).

<sup>7</sup> The Exchange proposes to designate FTSE as the reporting authority for the FTSE 100 Index.

<sup>8</sup> The Exchange states that from 2:00–10:30 a.m. (Chicago time) the real-time index is calculated using real time prices of the securities. At 10:30 a.m. (Chicago time) the real time index closes using the closing prices from the London Stock Exchange. Thus, between 10:30 a.m. and 3:15 p.m. (Chicago time) the FTSE 100 Index level is a static value that market participants can access via data vendors.

<sup>9</sup> Specifically, the FTSE 100 Index is governed by the Ground Rules for the FTSE UK Index Series. The level of the FTSE 100 Index reflects the free float-adjusted market value of the component stocks relative to a particular base date and is computed by dividing the total market value of the companies in the FTSE 100 Index by the index divisor. Further detail regarding this methodology can be found in the Notice, *supra* note 3, at n.5 and accompanying text.

<sup>10</sup> According to the Exchange, when the last trading day/expiration date is moved because of an Exchange holiday or closure, the last trading day/expiration date for expiring options would be the immediately preceding business day.

<sup>11</sup> According to the Exchange, if the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value would be determined in accordance with the rules and bylaws of The Options Clearing Corporation.

The Exchange proposes to apply the default position limits for broad-based index options of 25,000 contracts on the same side of the market (and 15,000 contracts near-term limit) to FTSE 100 Index options. All position limit hedge exemptions would apply. The exercise limits for FTSE 100 Index options would be equivalent to the position limits for those options. In addition, the Exchange proposes that the position limits for FLEX options on the FTSE 100 Index would be equal to the position limits for non-FLEX options on the FTSE 100 Index. The exercise limits for FLEX options on the FTSE 100 Index would be equivalent to the position limits for those options.

The Exchange states that, except as modified by the proposal, Exchange Rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to FTSE 100 Index options. The Exchange also states that FTSE 100 Index options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules, margin requirements,<sup>12</sup> and trading rules.<sup>13</sup>

The Exchange represents that it has an adequate surveillance program in place for FTSE 100 Index options and intends to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in the proposed options. The Exchange also states that it is a member of the Intermarket Surveillance Group, is an affiliate member of the International Organization of Securities Commissions, and has entered into various comprehensive surveillance agreements and/or Memoranda of Understanding with various stock exchanges, including the London Stock Exchange. Finally, the Exchange represents that it believes it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of FTSE 100 Index options.<sup>14</sup>

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by

<sup>12</sup> The Exchange states that FTSE 100 Index options would be margined as broad-based index options.

<sup>13</sup> See, e.g., Exchange Rule Chapters IX (Doing Business with the Public), XII (Margins), IV (Business Conduct), VI (Doing Business on the Exchange Floor), VIII (Market-Makers, Trading Crows and Modified Trading Systems), and XXIV (Index Options).

<sup>14</sup> For a complete description of the Exchange's proposal, please see the Notice, *supra* note 3.

Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>15</sup> Specifically, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that the listing and trading of FTSE 100 Index options will broaden trading and hedging opportunities for investors by providing an options instrument based on an index designed to measure the performance of the 100 largest companies traded on the London Stock Exchange.

Because the FTSE 100 Index is a broad-based index composed of actively-traded, well-capitalized stocks, the trading of options on the index does not raise unique regulatory concerns. The Commission believes that the listing standards, which are created specifically and exclusively for the index, are consistent with the Act, for the reasons discussed below.<sup>17</sup>

The Commission notes that proposed Interpretation and Policy .02 to Exchange Rule 24.2 would require that the FTSE 100 Index consist of 90 or more component securities. Further, for options on the FTSE 100 Index to trade, each of the minimum of 90 component securities would need to have a market capitalization of greater than \$100 million.

The Commission notes that the proposed listing standards for options on the FTSE 100 Index would not permit any single component security to account for more than 15% of the

<sup>15</sup> In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> The Commission notes that it previously approved the listing and trading reduced value index options on the FTSE 100 Index on the Exchange, International Securities Exchange, Inc. and NYSE Arca, Inc. See Securities Exchange Act Release Nos. 29722 (September 23, 1991), 56 FR 49807 (October 1, 1991) (order approving SR-CBOE-91-07); 53484 (March 14, 2006) 71 FR 14268 (March 21, 2006) (order approving SR-ISE-2005-25); and 58008 (June 24, 2008) 73 FR 36945 (June 30, 2008) (order approving SR-NYSEArca-2008-61).

weight of the index, and would not permit the five highest weighted component securities to account for more than 50% of the weight of the index in the aggregate. The Commission believes that, in view of the requirement on the number of securities in the index and on each security's market capitalization, this concentration standard is consistent with the Act. As noted above, the Exchange represents that it has an adequate surveillance program in place for FTSE 100 Index options and intends to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in the proposed options.

The Commission notes that, consistent with the Exchange's generic listing standards for broad-based index options, non-U.S. component securities of the FTSE 100 Index that are not subject to comprehensive surveillance agreements will not, in the aggregate, represent more than 20% of the weight of the index.

The proposed listing standards require that, during the time options on the FTSE 100 Index are traded on the Exchange, the current index value is widely disseminated at least once every 15 seconds by one or more major market data vendors. However, the Exchange may continue to trade FTSE 100 Index options after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every 15 seconds by one or more major market data vendors, provided that FTSE 100 futures contracts are trading and prices for those contracts may be used as a proxy for the current index value.<sup>18</sup>

In addition, the proposed listing standards require the Exchange to reasonably believe that it has adequate system capacity to support the trading of options on the FTSE 100 Index. As noted above, the Exchange represents that it believes it and the OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result

<sup>18</sup> The Exchange notes that, because trading in the components of the FTSE 100 Index starts at approximately 2:00 a.m. (Chicago time) and ends at approximately 10:30 a.m. (Chicago time), there will not be a current FTSE 100 Index level calculated and disseminated during a portion of the time when the FTSE 100 Index options would be traded (from approximately 10:30 a.m. (Chicago time) to 3:15 p.m. (Chicago time)). However, the Exchange states that the FTSE 100 Index futures contracts will be trading during this time period and that the futures prices would be a proxy for the current FTSE 100 Index level during this time period. The Exchange states that FTSE 100 Index futures contracts are listed for trading on the Chicago Mercantile Exchange Inc.

from the introduction of FTSE 100 Index options.

As a national securities exchange, the Exchange is required, under Section 6(b)(1) of the Act,<sup>19</sup> to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. As noted above, the Exchange states that, except as modified by the proposal, Exchange Rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB would equally apply to FTSE 100 Index options. The Exchange also states that FTSE 100 Index options would be subject to the same rules that currently govern other CBOE index options, including sales practice rules, margin requirements, and trading rules.

The Commission further believes that the Exchange's proposed position and exercise limits, trading hours, margin, strike price intervals, minimum tick size, series openings, and other aspects of the proposed rule change, as modified by Amendment No. 1, are appropriate and consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-CBOE-2015-100), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-31685 Filed 12-16-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76631; File No. SR-Phlx-2015-98]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Pricing Schedule Under Section VIII With Respect to Execution and Routing of Orders in Securities Priced at \$1 or More Per Share

December 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November

30, 2015, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ OMX PSX FEES," with respect to execution and routing of orders in securities priced at \$1 or more per share.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on December 1, 2015.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal

office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend certain charges and fees for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ OMX PSX System ("PSX") by member organizations for all securities traded at \$1 or more per share.

Specifically, under subparagraph (a)(1) of the rule the Exchange is proposing to increase the charges assessed member organizations that enter orders that execute in PSX. First, the Exchange is proposing to increase the charge for executions in Nasdaq-

listed securities from \$0.0028 to \$0.0029 per share executed. Second, the Exchange is proposing to increase the charge for executions in NYSE-listed securities from \$0.0027 to \$0.0028 per share executed. Lastly, the Exchange is proposing to increase the charge for executions in securities listed on exchanges other than Nasdaq and NYSE from \$0.0026 to \$0.0028 per share executed.

The Exchange is also proposing to increase credits provided to member organizations that provide displayed liquidity through PSX under subparagraph (a)(1) of the rule. First, the Exchange is proposing to increase the credit provided for Quotes/Orders entered by a member organization that provides and accesses 0.35% or more of Consolidated Volume during the month from \$0.0028 to \$0.0031 per share executed. Second, the Exchange is proposing to increase the credit provided for Quotes/Orders entered by a member organization that provides and accesses 0.25% or more of Consolidated Volume during the month from \$0.0027 to \$0.0029 per share executed. Lastly, the Exchange is eliminating the \$0.0023 per share executed credit provided for Quotes/Orders entered by a member organization that provides and accesses daily volume of 100,000 or more shares during the month, and is increasing the "default" credit (*i.e.*, the credit received for providing displayed liquidity that does not otherwise qualify for a higher credit) provided for all other Quotes/Orders from \$0.0020 to \$0.0023 per share executed.

Finally, the Exchange is proposing to eliminate text from subparagraph (a) of the rule that defines the term "regular market hours," which was erroneously left in the rule text when the tier it provided reference to was deleted. Currently, no fee or credit references the definition. Thus, the Exchange is proposing to delete the reference.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>3</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

<sup>19</sup> 15 U.S.C. 78f(b)(1).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).

principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine the price of non-core market data because national market system regulation “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>5</sup> Likewise, in *NetCoalition v. NYSE Arca, Inc.*, 615 F.3d 525 (D.C. Cir. 2010), the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>6</sup> As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”<sup>7</sup>

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>8</sup>

The proposed increases to the credits and charges in the fee schedule under the Exchange’s Pricing Schedule under Section VIII are reflective of the Exchange’s ongoing efforts to use pricing incentives to attract order flow to the Exchange and improve market

quality. The goal of these pricing incentives is to provide meaningful incentives for members to increase their participation on the Exchange.

The Exchange is proposing to increase the charges to a member organization entering an order that executes in PSX and is also proposing to increase credits provided to member organizations. As a general principle, the Exchange must, from time to time, adjust the level of fees and credits provided to most efficiently allocate reduced fees and credits in terms of market improving behavior. In this regard, the Exchange is limited in how far it may reduce fees and in the amount of credits that it can provide to market participants.

The Exchange believes that the increases to the charges assessed a member organization entering an order that executes in PSX are reasonable because they reflect the Exchange’s need to adjust its credits and fees in response to the costs and benefits provided by the Exchange. In addition to covering Exchange costs, the increased fees will allow the Exchange to offer credits to market participants that provide beneficial liquidity to PSX, to the benefit of all of its participants. The Exchange notes that it is increasing the charge assessed for executions in securities listed on exchanges other than Nasdaq and NYSE by a greater amount than for securities listed on Nasdaq and NYSE because it still wishes to offer lower fees for removal of liquidity for securities not listed on Nasdaq while balancing the exchanges’ fees with its credits. The Exchange believes that the proposed increases to the charges assessed a member organization entering an order that executes in PSX are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that enter orders in the securities based on the listing venue of the security.

The Exchange believes that the proposed increases to the credits provided to a member organization that provides displayed liquidity through PSX are reasonable because the Exchange seeks to improve market quality by providing increased incentives to market participants to provide beneficial displayed liquidity. To achieve this, the Exchange must, from time to time, adjust the levels of credits and the related qualification requirements in reaction to market behavior. In the present case, the Exchange is proposing to increase two of the credit tiers, eliminate the lowest credit tier, and increase the “default” credit to the level of the eliminated credit tier. The Exchange believes

providing the greatest incentive to market participants that also provide and access the highest level of Consolidated Volume during the month may significantly increase the number of member organizations that provide such high levels of market improving participation, to the benefit of all participants. Elimination of the credit tier and increasing the level of the default credit to the level of the eliminated tier is reasonable as it is reflective of the Exchange’s desire to make PSX an attractive venue to any member organization that is willing to provide displayed liquidity. The Exchange believes that the proposed increases to the credits provided for displayed liquidity through PSX and elimination of a credit tier are consistent with an equitable allocation of fees and are not unfairly discriminatory because they apply to all member organizations that provide displayed liquidity through PSX and meet the criteria of the credit tier. In addition, member organizations that previously would have qualified under the eliminated tier would continue to receive the same credit under the “default” credit tier.

The Exchange believes that the elimination of rule text that defines a term no longer used in the fee schedule is consistent with the protection of investors and the public interest because it will avoid investor confusion that may occur by including it.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.<sup>9</sup> Phlx notes that it operates in a highly competitive market in which market participants can readily favor dozens of different competing exchanges and alternative trading systems if they deem charges at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its charges and credits to remain competitive with other exchanges. Because competitors are free to modify their own charges and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which changes to charges and credits in this market may impose any burden on competition is extremely limited.

<sup>5</sup> See Exchange Act Release No. 34–51808 (June 9, 2005) (“Regulation NMS Adopting Release”).

<sup>6</sup> See *NetCoalition*, 615 F.3d at 534.

<sup>7</sup> *Id.* at 537.

<sup>8</sup> *NetCoalition*, 615 F.3d at 539 (quoting *ArcaBook Order*, 73 FR at 74782–74783).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

In this instance, the changes to charges and credits do not impose a burden on competition because the Exchange membership is optional and is the subject of competition from other exchanges. The increased credits and charges are reflective of the intent to increase the order flow on the Exchange. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, the Exchange does not believe that the proposed rule changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>10</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2015-98 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2015-98. 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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2015-98 and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31687 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-76632; File No. SR-CBOE-2015-104]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of a Proposed Rule Change To Trade Expiring MSCI EAFE Index Options Until 3:00 p.m.**

December 11, 2015.

#### **I. Introduction**

On November 13, 2015, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to change the trading hours for expiring MSCI EAFE Index ("EAFE") options. This proposal was published for comment in the **Federal Register** on November 25, 2015.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change on an accelerated basis.

#### **II. Description of the Proposed Rule Change**

The Exchange proposes to change the trading hours for expiring EAFE options from 10:00 a.m. (Chicago time) on their expiration date to 3:00 p.m. (Chicago time) on their expiration date. When the Exchange first listed EAFE options, the MSCI EAFE Index was not calculated and disseminated during the entire time period during which EAFE options were traded on the Exchange. Accordingly, the Exchange set the initial trading hours for expiring EAFE options to align with expiring EAFE futures contracts traded on the Intercontinental Exchange, Inc. ("ICE"), which stopped trading at 10:00 a.m. (Chicago time) on the third Friday of the futures contracts month.<sup>4</sup>

The MSCI EAFE Index, however, will now be calculated and disseminated through the close of trading on U.S.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76482 (November 19, 2015), 80 FR 73839 ("Notice").

<sup>4</sup> See Notice, *supra* note 3, at 73840. The Exchange established listing criteria that permits the trading of EAFE options "after trading in all component securities has closed for the day and the index level is no longer widely disseminated at least once every fifteen (15) seconds by one or more major market data vendors, provided that EAFE futures contracts are trading and prices for those contract may be used as a proxy for the current index value." See CBOE Rule 24.2.01(a)(8).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

markets at 3:00 p.m. (Chicago time). As such, the Exchange understands that ICE is changing the trading hours for expiring EAFE futures contracts listed on ICE from 10:00 a.m. (Chicago time) to 3:15 p.m. (Chicago time).<sup>5</sup> Because the MSCI EAFE Index will now be calculated and disseminated through the close of trading on U.S. markets (until 3:00 p.m. (Chicago time)) and because ICE is also changing the trading hours for expiring EAFE futures (to close at 3:15 p.m. (Chicago time)), the Exchange proposes to change the closing time for trading in expiring EAFE options from 10:00 a.m. (Chicago time) to 3:00 p.m. (Chicago time) on their expiration date.

The Exchange proposes to close trading at 3:00 p.m. (Chicago time)—rather than at 3:15 p.m. (Chicago time), the time ICE ceases trading for expiring EAFE futures contracts—because, according to the Exchange, on the last day of trading, the closing prices of the component stocks, which are used to derive the exercise settlement value of the EAFE options, are known at 3:00 p.m. (Chicago time) (or shortly thereafter).<sup>6</sup> The Exchange further notes that this proposed rule change is consistent with the closing times for other expiring P.M.-settled contracts that underlie indexes that close when the U.S. equity markets close at 3:00 p.m. (Chicago time).<sup>7</sup>

The Exchange proposes to change the trading hours for expiring EAFE options beginning with the December 2015 expiration, which occurs on December 18, 2015. The Exchange is proposing to have this change apply to all EAFE options listed on or before the effective date of this filing and all EAFE options listed afterward.

### III. Discussion and 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.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is consistent with the Act for the Exchange to change the trading hours for expiring EAFE options from a close of 10:00 a.m. (Chicago time) to 3:00 p.m. (Chicago time), because the MSCI EAFE Index will now be calculated and disseminated through the close of trading at 3:00 p.m. (Chicago time) and thus the current index value should be widely available to market participants throughout the entire trading day. Further, the proposed rule change will allow the trading hours of EAFE options to continue to closely align with the trading hours of expiring EAFE futures contracts, which the Commission believes will afford investors and market participants the ability to continue to hedge across markets. The Commission also notes that the trading hours are consistent with the closing times of other P.M.-settled contracts listed on the Exchange that underlie indexes that close when the U.S. equity markets close at 3:00 p.m. (Chicago time).<sup>10</sup>

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> for approving the proposed rule change prior to the 45th day after publication of notice in the **Federal Register**. The proposed rule change to modify the trading hours of EAFE options was published for a 15-day comment period to ensure that the public had an opportunity to review the proposal and no comments were received. The proposed rule change will increase the trading hours during which EAFE options may be traded, which the Commission believes should broaden the trading and hedging opportunities for investors. Further, the Commission notes that the Exchange represents that the change to the trading hours for EAFE futures will be implemented with the December 2015 expiration. Accordingly, the Commission believes that accelerated approval will maintain consistency in the trading hours of EAFE options and EAFE futures contracts, which should enable cross-market competition and facilitate hedging opportunities. For these reasons, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-CBOE-2015-104) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-31678 Filed 12-16-15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76623; File No. SR-BATS-2015-112]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.13(b)(4)(A) and 21.9(a)(3)(A), Amending Aggressive Re-Route Instruction

December 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2015, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend the Aggressive Re-Route instruction under Exchange Rule 11.13(b)(4)(A) to route such orders where that order has been locked or crossed by other Trading Centers on the Exchange’s cash equities trading platform (“BATS Equities”). Consistent with its practice of offering similar functionality for the Exchange’s equity options trading platform (“BATS

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Notice, *supra* note 3, at 73840.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See CBOE Rules 24.6.01, 24.6.03, 24.6.04 and 24.9(e).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

Options”) as it does for BATS Equities, the Exchange also proposes to amend Rule 21.9(a)(3)(A) to make similar changes with respect to BATS Options.

The text of the proposed rule change is available at the Exchange’s Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

## II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

With respect to BATS Equities, the Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Exchange Rules 11.13(a) and 11.13(b), as set forth below. Rule 11.13(a) describes the process by which an incoming order would execute against the BATS Book for BATS Equities. To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(b) then describes the process of routing marketable limit orders to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book.

Similarly, with respect to BATS Options, Rule 21.8 describes the process by which an incoming order would execute against the BATS Options Book.<sup>5</sup> To the extent an order has not been executed in its entirety against the BATS Options Book, Rule 21.9(a)(1) then describes the process of routing marketable limit orders to one or more other options exchanges, including a

description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Options Book.

Under previous Exchange rules,<sup>6</sup> to the extent the unfilled balance of an order had been posted to the BATS Book, should the order subsequently be *locked* or crossed by another accessible Trading Center, the System<sup>7</sup> would route the order to the locking or crossing Trading Center if instructed to do so by the User (the “RECYCLE Option”). The Exchange then filed a proposed rule change with the Commission for immediate effectiveness to modify the RECYCLE Option and rename it as the Aggressive and Super-Aggressive Re-Route instruction.<sup>8</sup>

The Aggressive Re-Route instruction subjects an order to the routing process after being posted to the BATS Book only if the order is subsequently crossed by another Trading Center (rather than

<sup>6</sup> See Securities Exchange Act Release Nos. 59967 (May 21, 2009), 74 FR 25793 (May 29, 2009) (SR-BATS-2009-015) (proposing to allow the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order); 62404 (June 30, 2010), 75 FR 39303 (July 8, 2010) (SR-BATS-2010-017) (naming the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order as the RECYCLE routing option).

<sup>7</sup> As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

<sup>8</sup> See Securities Exchange Act Release No. 73296 (October 3, 2014), 79 FR 61121 (October 9, 2014) (SR-BATS-2014-044) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 11.13 and Rule 21.9) (adopting the Aggressive Re-Route instruction). In SR-BATS-2014-044, the RECYCLE Option was renamed Super Aggressive Re-Route instruction, under which a routable order posted to the BATS Book routes to away Trading Centers any time such order is locked or crossed. The Exchange subsequently expanded the Super Aggressive Re-Route instruction to provide that when any order with a Super Aggressive Re-Route instruction is locked by an incoming BATS Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, the Re-Route order is converted to an executable order when displayed shares become available on the opposite side of the market and will remove liquidity against such shares (“liquidity swap functionality”). See Securities Exchange Act Release No. 74738 (April 16, 2015), 80 FR 22600 (April 22, 2015) (SR-BATS-2015-09). Once amended, the only difference between the Aggressive and Super Aggressive Re-Route instructions would be that the liquidity swap functionality described above would be available to an order subject to the Super Aggressive Re-Route instruction and not available to an order subject to the Aggressive Re-Route instruction.

if the order is locked or crossed). Further, a routable non-displayed limit order posted to the BATS Book that is crossed by another accessible Trading Center will be automatically routed to the crossing Trading Center. The Exchange proposes to modify the Aggressive Re-Route instruction to also provide that, where the order is locked by another accessible Trading Center, it would be automatically routed to the locking Trading Center. The proposed amendment would also apply to non-displayed orders with the Aggressive Re-Route instruction.<sup>9</sup>

In order to maintain consistency between the analogous Aggressive Re-Route instruction offered by BATS Equities and BATS Options, the Exchange proposes to modify the rules of BATS Options to conform to the changes described above related to the Aggressive Re-Route instruction. The proposed Aggressive Re-Route functionality for BATS Options is similar to the proposed functionality for BATS Equities, with the exception of language related to non-displayed orders. BATS Options does not have non-displayed orders, and thus, has omitted language regarding Re-Route functionality applicable to non-displayed orders. All other changes for BATS Equities, including the rationale and example described above, are identical for BATS Options.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Specifically, the proposed changes are designed to provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book and to facilitate executions on the Exchange consistent with User instructions. Thus, the proposals are directly targeted at removing impediments to and

<sup>9</sup> In April 2015, the Aggressive Re-Route instruction was expanded to apply to non-displayed orders. See Securities Exchange Act Release No. 74738 (April 16, 2015), 80 FR 22600 (April 22, 2015) (SR-BATS-2015-09).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> As defined in Rule 16.1(a)(9).



perfecting the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>12</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. Lastly, the Exchange notes that the proposed amendments to the Aggressive Re-Route instruction previously existed on the Exchange as the RECYCLE routing option.<sup>13</sup>

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that proposed amendment to the Aggressive Re-Route functionality encourages competition by increasing the likelihood of executions of orders that have been posted to the Exchange. The increased likelihood of an execution where the order is locked by a quotation on a Trading Center should attract additional order flow to the Exchange.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its

filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay will allow the Exchange to immediately provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book and to facilitate executions on the Exchange consistent with User instructions.<sup>18</sup> The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2015-112 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> The Exchange further stated that it will provide Members with reasonable advance notice of the proposed rule change's implementation date.

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2015-112. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-112, and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-31683 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

### **Submission for OMB Review; Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

#### *Extension:*

Form T-4. OMB Control No. 3235-0107, SEC File No. 270-124.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>12</sup> 15 U.S.C. 78k-1(a)(1).

<sup>13</sup> See *supra* notes 6 and 8.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget this request for extension of the previously approved collections of information discussed below.

Form T-4 (17 CFR 269.4) is a form used by an issuer to apply for an exemption under Section 304(c) (15 U.S.C 77ddd(c)) of the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T-4 is filed on occasion. The information required by Form T-4 is mandatory. This information is publicly available on EDGAR. Form T-4 takes approximately 5 hours per response to prepare and is filed by approximately 3 respondents. We estimate that 25% of the 5 hours per response (1 hour) is prepared by the filer for a total annual reporting burden of 3 hours (1 hour per response x 3 responses).

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 control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: December 11, 2015.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31677 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76622; File No. SR-CBOE-2015-089]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Relating to Complex Orders as Modified by Amendment No. 1

December 11, 2015.

#### I. Introduction

On October 13, 2015, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to: (1) amend the rule provisions regarding the initiation of a complex order auction (“COA”), (2) add rule provisions regarding the impact of certain incoming orders and changes in the leg markets on an ongoing COA, and (3) update the rule text regarding who can submit complex orders. On October 26, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 2, 2015.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.53C and Interpretation and Policy .04 regarding the initiation of a COA. Currently, Trading Permit Holders and PAR operators must affirmatively request that their incoming two-legged COA-eligible orders be COA’d.<sup>4</sup> The Exchange proposes to amend CBOE Rule 6.53C(d)(ii) to provide that such COA-eligible orders (including orders submitted for electronic processing from PAR) be COA’d by default.<sup>5</sup> Under the proposed rule, Trading Permit Holders would be permitted to request that a COA-eligible order with two legs not

COA (referred to as a “do-not-COA” request) on an order-by-order basis.<sup>6</sup> The Exchange believes that allowing Trading Permit Holders to make a “do-not-COA” request on an order-by-order basis will better allow them to make decisions regarding the handling of their orders based on market conditions at the time they submit their orders.

A PAR operator will not be permitted to override a Trading Permit Holder’s “do-not-COA” order request; such orders, therefore, will enter the Complex Order Book (“COB”).<sup>7</sup> An order with a “do-not-COA” request, however, would still be COA’d after it has rested on the COB pursuant to Interpretation and Policy .04.<sup>8</sup>

The Exchange notes that an order with a “do-not-COA” request will still have execution opportunities.<sup>9</sup> The Exchange explains that a “do-not-COA” order may execute automatically upon entry into the System against the leg markets or complex orders on the COB to the extent marketable (in accordance with allocation rules set forth in Rule 6.53C).<sup>10</sup> Further, the Exchange notes that an order on the opposite side of, and marketable against, a COA-eligible order may trade against the COA-eligible order if the System receives the order while a COA is ongoing.<sup>11</sup>

Second, the Exchange proposes to add subparagraphs 6.53C(d)(viii)(4) and (5) to CBOE Rule 6.53C to describe additional circumstances that will cause a COA to end early.<sup>12</sup> Proposed subparagraph (d)(viii)(4) will provide that if an order with a “do-not-COA” request or an order that is not COA-eligible is received prior to the expiration of the Response Time Interval for the original COA and is on the same side of the market and at a price better than or equal to the starting price, then the original COA will end.<sup>13</sup> Proposed subparagraph (d)(viii)(5) will provide that if the leg markets were not marketable against a COA-eligible order when the order entered the System (and thus prior to the initiation of a COA) but became marketable with the COA-eligible order prior to the expiration of the Response Time Interval, it will

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* In light of this proposed change, the Exchange proposes to delete the language in Interpretation and Policy .04(a) that indicates Trading Permit Holders may request that complex orders be COA’d on a class-by-class basis, as it is no longer necessary. *Id.*

<sup>8</sup> *Id.* at 67458.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* The proposed rule change makes corresponding changes to the heading and introductory paragraph of subparagraph (d)(viii). *Id.*

<sup>13</sup> *Id.* at 67458-9.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76273 (October 27, 2015), 80 FR 67457 (“Notice”).

<sup>4</sup> See Notice, *supra* 3, at 67457.

<sup>5</sup> *Id.* The Exchange represents that all Trading Permit Holders have requested that all of their COA-eligible orders with two legs process through COA upon entry into the System. *Id.*

cause the COA to end.<sup>14</sup> The Exchange believes that these provisions prevent an order that was entered after the initiation of a COA from trading ahead of an order with the same price that may have executed or entered the COB if it did not COA. Similarly, the Exchange believes it is fair for a COA-eligible order that was entered at a better price than an order that was resting in the COB prior to initiation of the COA to execute against leg markets that become marketable against the COA-eligible order and resting order during the COA, because the Trading Permit Holder who entered the COA-eligible order was willing to pay a better price than that of the resting order.<sup>15</sup>

Third, the Exchange proposes to amend CBOE Rule 6.53C(c)(ii)(3) and Interpretation and Policy .06(c) to provide that all Trading Permit Holders and PAR Officials may submit orders or quotes to trade against orders in the COB, as opposed to market participants,<sup>16</sup> as the Rule currently states.<sup>17</sup> In addition, the Exchange proposes to amend Rule 6.53C(c)(ii)(3) to provide that order and quote types (not just quote types) not eligible to rest or trade against the COB will be automatically cancelled.<sup>18</sup>

Finally, the Exchange proposes to make technical and other nonsubstantive changes, which are described in the Notice.<sup>19</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed

rule change is consistent with Section 6(b)(5) of the Act,<sup>21</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for CBOE to require that incoming two-legged COA-eligible orders be COA'd by default unless a Trading Permit Holder requests, on an order-by-order basis, that such orders not COA. The Commission notes that, should a Trading Permit Holder not wish its orders to be COA'd, the proposed rule will allow the Trading Permit Holder to request that its orders not be COA'd on an order-by-order basis. In addition, the Commission notes that the rules of another options exchange provide that certain complex orders be routed to a complex order auction unless a member designates that such orders not initiate a complex order auction on that exchange.<sup>22</sup>

The Commission also believes that it is reasonable for the Exchange to add new provisions regarding how incoming orders with "do-not-COA" requests or that are not COA-eligible, as well as how changes in the leg markets, may impact ongoing COAs. Such additions enhance the description of current COA functionality and the circumstances that may cause a COA to end early to help ensure investors understand how "do-not-COA" orders may impact a COA. As noted above, these rules provide that if entry of a "do-not-COA" order causes a COA to end, any executions that occur following the COA will occur in accordance with allocation principles in place, subject to an exception that the original COA-eligible order will receive time priority.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-CBOE-2015-089), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> See NASDAQ OMX PHLX LLC ("PHLX") Rule 1080, Commentary .07(a)(viii) and (e) (describing the complex order live auction ("COLA") process and "do not auction" orders).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

Robert W. Errett,  
Deputy Secretary.

[FR Doc. 2015-31682 Filed 12-16-15; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76625; File No. SR-BYX-2015-49]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.13(b)(4)(A), Amending Aggressive Re-Route Instruction

December 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 2, 2015, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend the Aggressive Re-Route instruction under Exchange Rule 11.13(b)(4)(A) to route such orders where that order has been locked or crossed by other Trading Centers.

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 67460.

<sup>16</sup> *Id.* at 67459. CBOE Rules 6.45A and 6.45B define market participants as Market-Makers, Designated Primary Market-Makers with an appointment in the subject class, and floor brokers and PAR Officials representing orders in the trading crowd. The Exchange explains that Trading Permit Holders and PAR Officials as a group is larger than market participants as a group, as the term market participants does not include other types of Trading Permit Holders (such as electronic proprietary traders or brokers submitting electronic orders on behalf of customers from off of the trading floor). *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 67460. The Exchange notes that first several sentences of CBOE Rule 6.53C(c)(ii)(3) reference both orders and quotes eligible to rest on the COB. The Exchange intended for Rule to provide that both orders and quotes that are not eligible to rest on the COB be cancelled. *Id.*

<sup>19</sup> *Id.* at 64759.

<sup>20</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange currently allows Users to submit various types of limit orders to the Exchange that are processed pursuant to Exchange Rules 11.13(a) and 11.13(b), as set forth below. Rule 11.13(a) describes the process by which an incoming order would execute against the BATS Book. To the extent an order has not been executed in its entirety against the BATS Book, Rule 11.13(b) then describes the process of routing marketable limit orders to one or more Trading Centers, including a description of how the Exchange treats any unfilled balance that returns to the Exchange following the first attempt to fill the order through the routing process. If not filled through routing, and based on the order instructions, the unfilled balance of the order may be posted to the BATS Book.

Under previous Exchange rules,<sup>5</sup> to the extent the unfilled balance of an order had been posted to the BATS Book, should the order subsequently be *locked* or crossed by another accessible Trading Center, the System<sup>6</sup> would route the order to the locking or crossing Trading Center if instructed to do so by the User (the "RECYCLE Option"). The Exchange then filed a proposed rule change with the Commission for immediate effectiveness to modify the RECYCLE Option and rename it as the Aggressive and Super-Aggressive Re-Route instruction.<sup>7</sup>

<sup>5</sup> See Securities Exchange Act Release No63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR-BATS-2010-002 [sic]) (naming the designation of an order as eligible for re-routing after being posted to the BATS Book if another Trading Center has locked or crossed the posted order as the RECYCLE routing option).

<sup>6</sup> As defined in Rule 1.5(aa), the System is the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

<sup>7</sup> See Securities Exchange Act Release No. 73295 (October 3, 2014), 79 FR 61117 (October 9, 2014) (SR-BYX-2014-026) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rules 11.13) (adopting the Aggressive Re-Route instruction). In SR-BYX-2014-026, the RECYCLE Option was renamed Super Aggressive Re-Route instruction, under which a routable order

The Aggressive Re-Route instruction subjects an order to the routing process after being posted to the BATS Book only if the order is subsequently crossed by another Trading Center (rather than if the order is locked or crossed). Further, a routable non-displayed limit order posted to the BATS Book that is crossed by another accessible Trading Center will be automatically routed to the crossing Trading Center. The Exchange proposes to modify the Aggressive Re-Route instruction to also provide that, where the order is locked by another accessible Trading Center, it would be automatically routed to the locking Trading Center. The proposed amendment would also apply to non-displayed orders with the Aggressive Re-Route instruction.<sup>8</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>9</sup> and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. Specifically, the proposed changes are designed to provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book and to facilitate executions on the Exchange

posted to the BATS Book routes to away Trading Centers to remove liquidity from such Trading Centers any time such order is locked or crossed. The Exchange subsequently expanded the Super Aggressive Re-Route instruction to provide that when any order with a Super Aggressive Re-Route instruction is locked by an incoming BATS Post Only Order or Partial Post Only at Limit Order that does not remove liquidity pursuant to Rule 11.9(c)(6) or Rule 11.9(c)(7), respectively, the Re-Route order is converted to an executable order when displayed shares become available on the opposite side of the market and will remove liquidity against such shares ("liquidity swap functionality"). See Securities Exchange Act Release No. 74739 (April 16, 2015), 80 FR 22567 (April 22, 2015) (SR-BYX-2015-07). Once amended, the only difference between the Aggressive and Super Aggressive Re-Route instructions would be that the liquidity swap functionality described above would be available to an order subject to the Super Aggressive Re-Route instruction and not available to an order subject to the Aggressive Re-Route instruction.

<sup>8</sup> In April 2015, the Aggressive Re-Route instruction was expanded to apply to non-displayed orders. See Securities Exchange Act Release No. 74739 (April 16, 2015), 80 FR 22567 (April 22, 2015) (SR-BYX-2015-07).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

consistent with User instructions. Thus, the proposals are directly targeted at removing impediments to and perfecting the mechanism of a free and open market and national market system. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>11</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. Lastly, the Exchange notes that the proposed amendments to the Aggressive Re-Route instruction previously existed on the Exchange as the RECYCLE routing option.<sup>12</sup>

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that proposed amendment to the Aggressive Re-Route functionality encourages competition by increasing the likelihood of executions of orders that have been posted to the Exchange. The increased likelihood of an execution where the order is locked by a quotation on a Trading Center should attract additional order flow to the Exchange.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the

<sup>11</sup> 15 U.S.C. 78k-1(a)(1).

<sup>12</sup> See *supra* notes 5 and 7.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Act<sup>15</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of the operative delay will allow the Exchange to immediately provide Users with additional control over their orders in the context of a national market system where quotations may lock or cross orders posted to the BATS Book and to facilitate executions on the Exchange consistent with User instructions.<sup>17</sup> The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BYX-2015-49 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2015-49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2015-49, and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31684 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76627; File No. SR-NYSEArca-2015-118]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

December 11, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 1, 2015, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule"). The Exchange proposes to implement the fee changes effective December 1, 2015. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> The Exchange further stated that it will provide Members with reasonable advance notice of the proposed rule change's implementation date.

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend the Fee Schedule in a number of different ways, effective December 1, 2015. Specifically, the Exchange proposes (i) to increase certain Take Liquidity Fees charged; (ii) to introduce an alternative qualification for Market Maker Monthly Posting Credit Tiers and Qualifications For Executions in Penny Pilot Issues and SPY; and (iii) to modify the Take Fee Discount Qualification, as described below.

Transaction Fees for Taking Liquidity

The Exchange proposes to modify the fees paid by Market Makers, Lead Market Makers, Firms and Broker Dealers, and Professional Customers (collectively, "Non-Customers") for Taking Liquidity in non-Penny Pilot Issues ("Take Fees"). Currently, Non-Customers pay Take Fees ranging from \$0.92 to \$0.94 per contract for electronic executions, depending on account type. The Exchange proposes to charge the same rate to all Non-Customers, and to raise that fee to \$0.99 per contract, which is within the range of fees charged by competing option exchanges.<sup>4</sup>

The Exchange also proposes to increase the Take Liquidity Fee for Customers in Penny Pilot issues from \$0.47 to \$0.49, which is within the range of fees charged by competing option exchanges.<sup>5</sup>

Take Liquidity Discount for Certain Market Participants

The Exchange proposes modifications to the Discount in Take Liquidity Fees for Professional Customer, Market Maker, Firm and Broker Dealer Liquidity Removing Orders (the "Take Fee Discount") for OTPs. Currently, the Take Fee Discount is applied if the OTP achieves one of two alternative qualifications, either: At least 1.00% of Total Industry Customer equity and exchange traded fund ("ETF") option average daily volume ("ADV") from Customer and Professional Customer Posted Orders in all Issues; or at least

<sup>4</sup> For example, BOX assesses fees greater than \$1.00 to non-Customers for executions against Public Customer interest in non-penny pilot options. See BOX Options fee schedule, available here, [http://boxexchange.com/assets/BOX\\_Fee\\_Schedule.pdf](http://boxexchange.com/assets/BOX_Fee_Schedule.pdf).

<sup>5</sup> See, e.g., NASDAQ Options Market ("NOM") price list, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing> (charging customers a \$0.50 take liquidity fee in Penny Pilot issues).

2.00% of Total Industry Customer equity and ETF option ADV from Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders in all Issues. The Take Fee Discount applied to orders meeting either qualification is \$0.04 in Penny Pilot issues only. The Exchange proposes to reduce the Take Fee Discount in Penny Pilot issues to \$0.02 and to institute a \$0.05 Take Fee Discount in non-Penny Pilot issues.

Market Maker Monthly Posting Credit and Qualifications for Executions in Penny Pilot Issues and SPY ("Posting Tiers")

Finally, the Exchange proposes to add an alternative qualification basis to achieve Super Tier II of the Posting Tiers.

Currently, a Market Maker may qualify for Super Tier II if it achieves at least 1.60% of Total Industry Customer equity and ETF option ADV from Market Maker orders in all issues, with at least 0.90% of Total Industry Customer equity and ETF option ADV from Market Maker Posted Orders in Penny Pilot and Non-Penny Pilot Issues.<sup>6</sup> The Exchange proposes that a Market Maker may also qualify for Super Tier II if it [sic] achieves at least 1.60% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer orders in all issues, with at least 1.20% of Total Industry Customer equity and ETF option ADV from Customer and Professional Customer Posted Orders in all issues. If a Market Maker achieves either qualification basis, it would receive the \$0.42 posting credit for executions in penny issues or SPY.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its

<sup>6</sup> The volume thresholds are based on Market Makers' volume transacted electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the "OCC"). Total industry customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. See OCC Monthly Statistics Reports, available here, <http://www.theocc.com/webapps/monthly-volume-reports>.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the proposed Take Fees for Non-Customers are reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>9</sup> In addition, the increased Take Fees are reasonable because the fees would generate revenue that would help to support the credits offered for posting liquidity, which are available to all market participants. Moreover, the Exchange believes the proposed change would not unfairly discriminate because it applies equally to all Non-Customers who are removing liquidity. The increased Take Fees for Customers in Penny Pilot issues are reasonable because the proposed fees would generate revenue that would help to support the credits and other incentives offered for posting liquidity, and they are not unfairly discriminatory because the fees for Customers are still at a rate lower than that charged to non-Customers. In addition, the Exchange believes the proposed Take Fees for Customers are reasonable, equitable and not unfairly discriminatory because they are competitive with fees charged by other exchanges and are designed to attract (and compete for) order flow to the Exchange, which provides a greater opportunity for trading by all market participants.<sup>10</sup>

The Exchange believes the changes to the Take Fee Discount for Non-Customers are reasonable, equitable and non-discriminatory because it would apply to both Penny Pilot and non-Penny Pilot issues, which would incent OTPs to execute large volumes of orders on the Exchange, which benefits all market participants through increased liquidity and enhanced price discovery. The Exchange believes the Take Fee Discount is reasonable, equitable, and not unfairly discriminatory because it continues to apply to all participants other than Customers, who pay a much lower Take Liquidity Fee, and because it is available to all firms that provide Customer and Professional Customer orders. The Exchange also notes that the proposed Take Fee Discount is consistent with those offered on competing options exchanges.<sup>11</sup>

<sup>9</sup> See *supra* n. 4.

<sup>10</sup> See *supra* n. 5.

<sup>11</sup> See, e.g., BATS Options Exchange fee schedule (Non-Customer Penny Pilot Take Volume Tiers),

The Exchange believes that the proposed change to the Posting Tiers, specifically adding an alternative basis to achieve Super Tier II, is reasonable, equitable and not unfairly discriminatory because it would impact all similarly situated OTPs that post electronic Customer (and Professional Customer) executions on the Exchange equally, and provides a reasonable alternative to qualify for Super Tier II posting credit.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,<sup>12</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed incentive would continue to encourage competition, including by attracting additional liquidity and a wider variety of business to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange also believes the proposed fee modifications would not impose an undue burden on competition because the changes offset an increase in fees for some transactions with a variety of means to achieve credits and discounts. The Exchange does not believe that the proposed changes would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets.

The increases in Take Liquidity fees would impact all affected order types (*i.e.*, Professional Customers, Firm, Broker Dealers) in issues at the same rate. The proposed change to Super Tier II is designed to attract additional volume, in particular posted electronic Customer (and Professional Customer) executions, to the Exchange, which would promote price discovery and transparency in the securities markets thereby benefitting competition in the industry. As stated above, the Exchange believes that the proposed change would impact all similarly situated OTPs that post electronic Customer (and Professional Customer) executions on the Exchange equally, and as such, the proposed change would not impose a disparate burden on competition either

among or between classes of market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>15</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-118 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-NYSEArca-2015-118. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-118 and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31686 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

available here, [http://www.batsoptions.com/support/fee\\_schedule/](http://www.batsoptions.com/support/fee_schedule/).

<sup>12</sup> 15 U.S.C. 78f(b)(8).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76629; File No. SR-NYSEARCA-2015-120]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

December 11, 2015.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 1, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (“Fee Schedule”). The Exchange proposes to implement the change on December 1, 2015. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Routable Retail Order Tier (“Routable Retail”) applicable to Tape A and C Securities on the Fee Schedule. Currently, the Routable Retail pricing tier provides ETP Holders, including Market Makers, that (1) provide liquidity of 0.20% or more of the US consolidated average daily volume (“CADV”) during a billing month across all Tapes, (2) maintain a ratio during a billing month across all Tapes of executed provide liquidity that is eligible to route away from the Exchange (“Routable Orders”)<sup>4</sup> to total executed provide liquidity of 55% or more, and (3) execute an ADV of Retail Orders<sup>5</sup> that provide liquidity during the month that is 0.10% or more of the US CADV, with a credit of \$0.0032 per share for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book and a fee of \$0.0030 per share [sic] and \$.0029 per share for Routable and non-Routable Orders in Tape C Securities, respectively [sic], that take liquidity from the Book.<sup>6</sup>

The Exchange proposes to lower the per share credit for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book to \$0.0030 per share. The Exchange proposes to implement the change on December 1, 2015.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

<sup>4</sup> ETP Holders are able to include an instruction with their orders to determine whether the order will be eligible to route to an away exchange (e.g., to execute against trading interest with a better price than on the Exchange) or, for example, be cancelled if routing would otherwise occur.

<sup>5</sup> Retail Orders are defined in the Fee Schedule as orders designated as retail orders and that meet the requirements of Rule 7.44(a)(3), but that are not executed in the Retail Liquidity Program. The Retail Liquidity Program is a pilot program designed to attract additional retail order flow to the Exchange for NYSE Arca-listed securities and securities traded pursuant to unlisted trading privileges while also providing the potential for price improvement to such order flow. See Rule 7.44. See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR-NYSEArca-2013-107).

<sup>6</sup> See Basic Rate. Basic Rates are applicable when tier rates do not apply.

Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>8</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange’s proposal to lower the rebate for Routable and non-Routable Orders in Tape A and Tape C Securities that provide liquidity to the Book is reasonable because the Exchange believes that despite the decrease, ETP Holders, including Market Makers, will continue to be incentivized to bring Retail Orders to earn the \$0.0030 per share rebate. The Exchange further believes that the proposed fee change is equitable and not unfairly discriminatory because the lowered rebate would apply to all similarly situated ETP Holders, including Market Makers, equally. Additionally, the Exchange believes that the per share credits for Routable and non-Routable Orders that provide liquidity are fair, equitable and not unfairly discriminatory because they are consistent with rebate differentiation that exists today at other exchanges.

The Exchange believes that the proposed rebate is competitive with rebates provided by other exchanges and is therefore reasonable and equitably allocated to those participants that direct orders to the Exchange rather than to a competing exchange. Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange’s statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>9</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed fee change will continue to encourage competition and attract liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed changes represent a significant departure from

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>9</sup> 15 U.S.C. 78f(b)(8).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.



pricing offered by the Exchange's competitors. Additionally, ETP Holders, including Market Makers, may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of ETP Holders, including Market Makers, or competing venues to maintain their competitive standing in the financial markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>10</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>11</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>12</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2015-120 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2015-120. 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-NYSEARCA-2015-120 and should be submitted on or before January 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2015-31688 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Submission for OMB Review Comment Request**

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-2736.

*Extension:*

Form F-80, OMB Control No. 3235-0404, SEC File No. 270-357.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form F-80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. The information provided is mandatory and all information is made available to the public upon request. Form F-80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual reporting burden of 8 hours (2 hours per response × 4 responses). The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

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 control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta.Ahmed@omb.eop.gov](mailto:Shagufta.Ahmed@omb.eop.gov); and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon,

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

100 F Street NE., Washington, DC 20549 or send an email to: *PRA Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

December 11, 2015.

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-31679 Filed 12-16-15; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No: SSA-2015-0073]

**Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers. (OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, Email address: *OIRA\_Submission@omb.eop.gov*. (SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-966-2830, Email address: *OR.Reports.Clearance@ssa.gov*. Or you may submit your comments online through *www.regulations.gov*, referencing Docket ID Number [SSA-2015-0073].

I. The information collection below is pending at SSA. SSA will submit it to

OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than February 16, 2016. Individuals can obtain copies of the collection instruments by writing to the above email address.

Application for Widower's or Widower's Insurance Benefits—20 CFR 404.335-404.338, & 404.603-0960-0004. Section 2029(e) and 202(f) of the Social Security Act set forth the requirements for entitlement to widow(er)'s benefits, including the requirements to file an application. For SSA to make a formal determination for entitlement to widow(er)'s benefits, we use Form SSA-10-BK to determine whether an applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s Title II benefits. SSA employees interview individuals applying for benefits either face-to-face or via telephone and enter the information on the paper form or into the Modernized Claims System (MCS). The respondents are applicants for widow(er)'s benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-10-BK paper version .....	2,045	1	15	511
SSA-10-BK MCS version .....	453,509	1	14	105,819
Totals .....	455,554	.....	.....	106,330

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than January 19, 2016. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov*.

Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(b)&(c), 404.2121(a), 416.2208(b), 416.2217(c)(1) & (2), 416.2201(b)&(c), 416.2221(a)—0960-0310. State vocational

rehabilitation (VR) agencies submit Form SSA-199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing causality statements. The respondents mail the paper copy of the SSA-199 to SSA for consideration and approval of the claim for reimbursement of costs incurred for SSA beneficiaries. For claims certifying adherence to cost containment policies and procedures, or for preparing causality statements, State

VR agencies submit written requests as stipulated in SSA's regulations within the Code of Federal Regulations. In most containment policies and procedures as well as causality statements prior to determining whether to reimburse State VR agencies. SSA uses the information on the SSA-199, along with the written documentation, to determine whether, and how much, to pay State VR agencies under SSA's VR program. Respondents are State VR agencies offering vocational and employment services to Social Security and Supplemental Security Income (SSI) recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-199 CFR 404.2108 & 416.2208 .....	80	160	(12,800)	23	4,907
CFR 404.2117 & 416.2217 Written requests .....	80	1	(80)	60	80
CFR 404.2121 & 416.2221 Written requests .....	80	2.5	(200)	100	333

Modality of completion	Number of responses	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
Total .....	80	.....	(13,080)	.....	5,320

Dated: December 14, 2015.

**Naomi R. Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2015-31743 Filed 12-16-15; 8:45 am]

**BILLING CODE 4191-02-P**

**DEPARTMENT OF STATE**

[Public Notice: 9380]

**Privacy Act; System of Records: Office of Foreign Missions Records, State-81**

**SUMMARY:** Notice is hereby given that the Department of State proposes to create a system of records, Office of Foreign Missions Records, State-81, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A-130, Appendix I.

**DATES:** This system of records will be effective on January 26, 2016, unless we receive comments that will result in a contrary determination.

**ADDRESSES:** Any persons interested in commenting on the new system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA-2; 515 22nd Street NW.; Washington, DC 20522-8100.

**FOR FURTHER INFORMATION CONTACT:** John Hackett, Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA-2; 515 22nd Street NW; Washington, DC 20522-8100, or at [Privacy@state.gov](mailto:Privacy@state.gov).

**SUPPLEMENTARY INFORMATION:** The Department of State proposes that the new system will be named "Office of Foreign Missions Records." The records in State-81 were previously published under STATE-36, Security Records. The records maintained in the Office of Foreign Missions Records are related to the implementation of the Foreign Missions Act, the operation of foreign missions, and the United States' extension of privileges, exemptions, immunities, benefits, and courtesies to foreign government officials, members/employees and officers of foreign missions and certain international organizations in the United States, their immediate family members, and domestic workers who are in the United

States in nonimmigrant A-3 or G-5 visa status.

The Department's report was filed with the Office of Management and Budget. The new system description, "Office of Foreign Missions Records, State-81," will read as set forth below.

**Joyce A. Barr,**

*Assistant Secretary for Administration, U.S. Department of State.*

**STATE-81**

**SYSTEM NAME:**

Office of Foreign Missions Records

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

Office of Foreign Missions (OFM), Department of State, 2201 C Street NW., Washington, DC 20520; State Annex 33, OFM Regional Offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Categories of individuals covered include: (a) members and employees of foreign missions and international organizations in the United States; (b) their immediate family and other household members; (c) domestic workers who are in the United States in nonimmigrant A-3 or G-5 visa status; (d) officials/representatives of foreign governments; and (e) individuals accompanying senior foreign embassy officials on tours of the White House.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. Administrative files related to the implementation of the Foreign Missions Act, provision of services and benefits. Records in the system may include biographic data, such as name, numeric identifier, gender, nationality, citizenship, visa data, date and place of birth, residential address, employer name and location, employee's function/title, employment start date, and employment termination date.

2. Records associated with the notification, accreditation, recognition, and termination of the appointment of members of foreign missions as well as employees and officers of international organizations in the United States;

3. Records may include documentation concerning:

a. Employment authorization for eligible dependents of foreign missions

and international organizations in the United States;

b. the authorization of the exemption of taxes imposed on the purchases of goods and services by eligible members of foreign missions and international organizations in the United States;

c. the authorization of tax and duty-free importation privileges for eligible members of foreign missions and international organizations in the United States;

d. Real property owned or leased by certain members of foreign missions and international organizations in the United States and the extension of any applicable privileges and immunities to such properties;

e. Individuals or entities who sell or purchase real property from foreign missions and international organizations;

f. Motor vehicle titling, registration, and licensing services and documentation for eligible members of foreign missions and international organizations in the United States, including motor vehicle records/moving violation records for individuals and information concerning an individual's motor vehicle liability insurance coverage;

g. A foreign mission or international organization member's notification or request for approval of travel planned within the United States that is outside of an established geographic area;

h. The extension of expedited port clearance courtesies to senior foreign officials entering the United States;

i. The extension of airport security screening courtesies associated with the departure of senior foreign officials from airports in the United States;

j. Requests from foreign missions for White House Tours; and

k. Assignment and management of electronic accounts for individuals authorized to submit requests to the Department of State on behalf of foreign missions and international organizations via OFM's e-Government System.

4. Records related to submissions of Form I-508 "Waiver of Rights, Privileges, Exemptions, and Immunities" from individuals who are lawful permanent residents and are in an occupational status making them eligible for an "A," "E," or "G" visa to waive rights, privileges, exemptions and

immunities associated with such occupational status;

5. Records concerning members of foreign missions and officers or employees of international organizations containing a finding or determination made by an appropriate authority of a state, a political subdivision of a state, or the United States that there is reasonable cause to believe that a member of a foreign mission or an officer or employee of an international organization has committed a criminal offense within the United States.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

22 U.S.C. 4301 *et seq.* (Foreign Missions Act); 22 U.S.C. 288 *et seq.* (International Organizations Immunities Act); Vienna Convention on Diplomatic Relations; Vienna Convention on Consular Relations; 22 U.S.C. 254a *et seq.* (Diplomatic Relations Act).

**PURPOSE:**

The records maintained herein are related to the implementation of the Foreign Missions Act, the operation of foreign missions, and the United States' extension of privileges, exemptions, immunities, benefits, and courtesies to foreign government officials, members/employees and officers of foreign missions and certain international organizations in the United States, their immediate family members, and domestic workers who are in the United States in nonimmigrant A-3 or G-5 visa status.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The principal users of this information outside the Department of State may include:

A. The Department of Homeland Security for uses within its statutory mission, including law enforcement, transportation and border security, administration of immigrant benefits, critical infrastructure protection, and fraud prevention;

B. The Department of Justice, including the Federal Bureau of Investigation, for purposes of law enforcement, criminal prosecution, representation of the U.S. government in civil litigation, fraud prevention, or border security;

C. The Department of the Treasury, for uses within its statutory mission, including the enforcement of U.S. tax laws, and economic sanctions;

D. The Department of Defense, for uses within its statutory mission;

E. The Department of Labor, for uses within its statutory mission including

the administration and enforcement of U.S. labor laws;

F. The Office of the Director of National Intelligence and other U.S. intelligence community agencies, for uses within their statutory missions, including intelligence, counterintelligence, and other national security interests;

G. State, local, and tribal government officials for purposes associated with their extension of privileges, exemptions, immunities and benefits to foreign missions, international organizations, and their members/officers and employees, and for law enforcement purposes;

H. Corporations/entities identified by OFM as providing benefits and services to the foreign mission community, but only to the extent such information is relevant and necessary for the provision of such benefits and services;

I. State, local, Federal, or non-governmental agencies and entities as needed for purposes of emergency or disaster response; and

J. Foreign missions, foreign governments, and international organizations in connection with their administration of human resource matters, criminal investigations, or in order to ensure the proper provision of a privilege or benefit.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Office of Foreign Missions Records, State-81.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic and physical media.

**RETRIEVABILITY:**

Records are retrieved through individual data fields including, but not limited to, biographic data (such as name, gender, nationality, citizenship, visa data, date and place of birth, residential address, employer name and location, employee's function/title, employment start date, and employment termination date) or other personal identifiers.

**SAFEGUARDS:**

All U.S. Government employees and contractors with authorized access have undergone a thorough background security investigation.

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Department of State employees who handle PII are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to the Office of Foreign Missions Records, a user must first be granted access to the Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only to unclassified systems and only through a Department approved access program. Remote access to the network is configured in accordance with the Office of Management and Budget Memorandum M-07-16 security requirements that include, but are not limited to, two-factor authentication and time out function.

Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

**RETENTION AND DISPOSAL:**

Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; SA-2, Department of State; 515 22nd Street NW; Washington, DC 20522-8100.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director; Office of Foreign Missions, Department of State; 2201 C

Street NW., Room 2236; Washington, DC 20520 (*OFMInfo@state.gov*).

#### NOTIFICATION PROCEDURE:

Individuals who have cause to believe that the Department of State may have records pertaining to him or her should write to the Director; Office of Information Programs and Services, A/GIS/IPS; SA-2, Department of State; 515 22nd Street NW; Washington, DC 20522-8100. The individual must specify that he/she wishes the records of the Office of Foreign Missions to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record, which give the individual cause to believe that the Department of State has records pertaining to him or her.

#### RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director; Office of Information Programs and Services (address above).

#### CONTESTING RECORD PROCEDURES:

Individuals who wish to contest records pertaining to them should write to the Director; Office of Information Programs and Services (address above).

#### RECORD SOURCE CATEGORIES:

These records contain information that is primarily obtained from the individual who is the subject of the records or from foreign missions and/or international organizations having information regarding the individual, as a result of, but not limited to:

1. Past or present employment; or
2. the individual being the member of a household of a foreign mission or international organization member.

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system may be exempt from subsections 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of 5 U.S.C. 552a.

[FR Doc. 2015-31840 Filed 12-16-15; 8:45 am]

BILLING CODE 4710-43-P

## SUSQUEHANNA RIVER BASIN COMMISSION

### Projects Approved for Consumptive Uses of Water

**AGENCY:** Susquehanna River Basin Commission.

#### **ACTION:** Notice.

**SUMMARY:** This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

**DATES:** November 1-30, 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, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

#### **Approvals By Rule Issued Under 18 CFR 806.22(f)**

1. Seneca Resources Corporation, Pad ID: Gamble Pad J, ABR-201511001, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 6, 2015.
2. Seneca Resources Corporation, Pad ID: Gamble Pad I, ABR-201511002, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 6, 2015.
3. EQT Production Company, Pad ID: Phoenix B, ABR-201511003, Morris Township, Tioga County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: November 6, 2015.
4. Cabot Oil & Gas Corporation, Pad ID: MyersR P1, ABR-201511004, Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: November 6, 2015.
5. Chesapeake Appalachia, LLC, Pad ID: Gary, ABR-201012019.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 9, 2015.
6. Chesapeake Appalachia, LLC, Pad ID: Roland, ABR-201012021.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 9, 2015.
7. Chesapeake Appalachia, LLC, Pad ID: Kinnarney, ABR-201012030.R1, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 9, 2015.
8. EOG Resources, Inc., Pad ID: Rightmire 1H Pad, ABR-201008082.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 9, 2015.
9. EOG Resources, Inc., Pad ID: RIGHTMIRE 2H Pad, ABR-201008083.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 9, 2015.
10. EOG Resources, Inc., Pad ID: WENGER Pad, ABR-201008118.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 9, 2015.
11. EOG Resources, Inc., Pad ID: STURDEVANT 1H, ABR-201008155.R1, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 9, 2015.
12. EOG Resources, Inc., Pad ID: OBERKAMPER Pad, ABR-201009004.R1, Springfield Township, Bradford County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 9, 2015.
13. SWEPI LP, Pad ID: Hotchkiss 472, ABR-201009045.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 9, 2015.
14. SWEPI LP, Pad ID: Williams 889, ABR-201009051.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 9, 2015.
15. SWEPI LP, Pad ID: Klettlinger 294, ABR-201009054.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 9, 2015.
16. SWEPI LP, Pad ID: Kindon 374, ABR-201010002.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 9, 2015.
17. Cabot Oil & Gas Corporation, Pad ID: Romeikaj P1, ABR-201511005, Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: November 13, 2015.
18. Chesapeake Appalachia, LLC, Pad ID: Franclaire, ABR-201012011.R1, Brainttrim Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 13, 2015.
19. Chesapeake Appalachia, LLC, Pad ID: SGL 289A, ABR-201012015.R1, West Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 13, 2015.
20. Chesapeake Appalachia, LLC, Pad ID: Baltzley, ABR-201012020.R1, Rush Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: November 13, 2015.
21. SWEPI LP, Pad ID: Wolfe 1114, ABR-201007098.R1, Nelson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
22. SWEPI LP, Pad ID: Fish 826, ABR-201009027.R1, Middlebury Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
23. SWEPI LP, Pad ID: Guindon 706, ABR-201009029.R1, Union Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
24. SWEPI LP, Pad ID: Byrne 510, ABR-201009059.R1, Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
25. SWEPI LP, Pad ID: Ingalls 710, ABR-201009080.R1, Liberty Township, Tioga

- County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
26. SWEPI LP, Pad ID: Smith 589, ABR–201009088.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
27. SWEPI LP, Pad ID: Martin 421, ABR–201009089.R1, Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
28. SWEPI LP, Pad ID: Schimmel 830, ABR–201009090.R1, Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
29. SWEPI LP, Pad ID: Lopatofsky 287, ABR–201009091.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
30. SWEPI LP, Pad ID: Worden 571, ABR–201009092.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 13, 2015.
31. Talisman Energy USA Inc., Pad ID: 05 035 Antisdel, ABR–201009015.R1, Warren and Windham Townships, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: November 13, 2015.
32. Talisman Energy USA Inc., Pad ID: 05 036 Antisdel, ABR–201009016.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: November 13, 2015.
33. SWN Production Company, LLC, Pad ID: TI–14 Connolly A Pad, ABR–201511006, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 16, 2015.
34. SWN Production Company, LLC, Pad ID: TI–19 Connolly B Pad, ABR–201511007, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 16, 2015.
35. SWN Production Company, LLC, Pad ID: TI–22 Creek A—Pad, ABR–201511008, Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 16, 2015.
36. Cabot Oil & Gas Corporation, Pad ID: JHHC P1, ABR–201511009, Jessup Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.2500 mgd; Approval Date: November 16, 2015.
37. Carrizo Marcellus, LLC, Pad ID: Yarasavage Well Pad, ABR–201102021.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: November 23, 2015.
38. Carrizo Marcellus, LLC, Pad ID: Kile, ABR–201103026.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: November 23, 2015.
39. Carrizo Marcellus, LLC, Pad ID: Mazzara, ABR–201103035.R1, Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: November 23, 2015.
40. Carrizo Marcellus, LLC, Pad ID: Baker West (Brothers), ABR–201103049.R1, Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 2.1000 mgd; Approval Date: November 23, 2015.
41. Energy Corporation of America, Pad ID: Whitetail #1–5MH, ABR–201008112.R1, Goshen and Girard Townships, Clearfield County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 23, 2015.
42. Energy Corporation of America, Pad ID: Coldstream Affiliates #1MH, ABR–201007051.R1, Goshen Township, Clearfield County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: November 23, 2015.
43. Enerplus Resources (USA) Corporation, Pad ID: Winner 4H, ABR–201009094.R1, West Keating Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: November 23, 2015.
44. EOG Resources, Inc., Pad ID: GHC Pad A, ABR–201009012.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 23, 2015.
45. EOG Resources, Inc., Pad ID: COP Pad P, ABR–201009038.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 23, 2015.
46. EOG Resources, Inc., Pad ID: SSHC Pad A, ABR–201009055.R1, Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.9990 mgd; Approval Date: November 23, 2015.

**Authority:** Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: December 14, 2015.

**Stephanie L. Richardson,**  
*Secretary to the Commission.*

[FR Doc. 2015–31747 Filed 12–16–15; 8:45 am]

**BILLING CODE 7040–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### [Summary Notice No. 2015–61]

#### Petition for Exemption; Summary of Petition Received; AeroCine, LLC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and

must be received on or before January 6, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2014–0400 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

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

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** Joshua Parker (202) 267–1538, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on December 11, 2015.

**Lirio Liu,**  
*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA–2014–0400  
*Petitioner:* AeroCine, LLC

*Sections of 14 CFR Affected:* 61.101(e)(4) and (5), 61.113(a), 61.315(a), and 61.23(a) and (c).

*Description of Relief Sought:* AeroCine, LLC is seeking relief for an unmanned aircraft system (UAS) operator to be in direct control of the UAS while under direct supervision and

communication with an FAA private, recreational, or sport licensed pilot, who acts as a visual observer. The petitioner is also seeking relief to permit the following operations: Over non-participating persons for breaking news flights with a UAS weighing no more than 4.4 pounds; above private, or controlled access property, without permission from the owner/controller or authorized representative; contemporaneous issuance of notice to airmen for breaking news instead of the current requirement for 24 hour advanced notification; night flight operations for closed set filmmaking; and the pilot in command to operate the UAS from a moving platform for closed set filmmaking. In addition, the petitioner requests approval for the UAS Aero X12, which, including payload, exceeds the FAA's max weight limit of 55lbs for a small UAS.

[FR Doc. 2015-31640 Filed 12-16-15; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the City of Orlando and the Federal Aviation Administration for the Orlando Executive Airport, Orlando, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for public comment.

**SUMMARY:** The FAA hereby provides notice of intent to release approximately 20.05 acres at the Orlando Executive Airport, Orlando, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Orlando, dated August 9, 1961. The release of property will allow the City of Orlando to dispose of the property for other than aeronautical purposes. The property is located within the Southeast quadrant of the airport. The parcel is currently designated as non-aeronautical use. The property will be released of its federal obligations for municipal purposes. The fair market value of this parcel has been determined to be \$3,880,000.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Greater Orlando Aviation Authority at Orlando International Airport and the FAA Airports District Office.

**DATES:** Comments are due on or before January 19, 2016.

**ADDRESSES:** Documents are available for review at the Greater Orlando Aviation Authority at Orlando International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Marisol C. Elliott, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

**FOR FURTHER INFORMATION CONTACT:** Marisol C. Elliott, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822-5024.

**SUPPLEMENTARY INFORMATION:** Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Issued in Orlando, Florida, on December 11, 2015.

**Rebecca R. Freeman,**

*Acting Manager, Orlando Airports District Office Southern Region.*

[FR Doc. 2015-31751 Filed 12-16-15; 8:45 a.m.]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement; Pennington County, SD; Pennington County, Maine

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind Environmental Impact Statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for roadway improvements proposed for South Rochford Road in Pennington County, South Dakota. The NOI was published in the **Federal Register** on January 30, 2012. A Draft Environmental Impact Statement (DEIS) was not released. This rescission is based on changes to the design standards that have brought the proposed action below the threshold of an EIS.

**FOR FURTHER INFORMATION CONTACT:** Marion Barber, Environmental Specialist, FHWA, 116 East Dakota

Avenue, Suite A, Pierre, SD 57501, (605) 224-8033. Further information can be found and comments can be submitted via the project Web site at: <http://www.southrochfordroad.com/>.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the South Dakota Department of Transportation (SDDOT) and Pennington County, is rescinding the NOI for a proposal to make improvements to the South Rochford Road in Pennington County, South Dakota. The previous proposed action provided for reconstruction of approximately 10 miles of roadway between the Town of Rochford and the intersection with Deerfield Road in accordance with the SDDOT Road Design Manual. The NOI is being rescinded due to modifications to the design standards that will provide for historic preservation, reduced wetland impacts, and preservation of sensitive plant species currently protected by the United States Forest Service.

The current proposed action would reconstruct the same 10 miles of roadway using the American Association of State Highway and Transportation Officials (AASHTO) Guidelines for Geometric Design of Very Low-Volume Local Roads. These guidelines provide for a reduced roadway width that is more consistent with similar low volume surfaced roadways in Pennington County. The proposed action would maintain the intended purpose of this action to improve year-round access to the Town of Rochford from the Deerfield Lake area by reconstructing the two-lane roadway, providing an all-weather surface, and improving drainage and drainage structures. SDDOT will offer an opportunity for a public meeting on the proposal to rescind the EIS which will be advertised through the local media along with a notification on the to the project Web site. Given the reduction in scope and the associated potential impacts of the proposed action, FHWA intends to prepare a lower-level NEPA document to determine if the project has the potential to significantly affect the quality of the human environment. If, at a future time, FHWA determines that the proposed action is likely to have a significant impact on the environment, a new NOI to prepare an EIS will be published.

Comments or questions concerning this rescission or the proposed action should be submitted through the project Web site at <http://www.southrochfordroad.com> or directed to the address provided above under the caption **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 10, 2015.

**Mark J. Clausen,**

*Engineering and Operations Supervisor,  
Federal Highway Administration, Pierre,  
South Dakota.*

[FR Doc. 2015-31698 Filed 12-16-15; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

[Docket No. NHTSA-2015-0125]

**Columbia Body Manufacturing Co.;  
Receipt of Petition for Temporary  
Exemption From FMVSS No. 224**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petition for temporary exemption from FMVSS No. 224, *Rear Impact Protection*; request for comment.

**SUMMARY:** In accordance with 49 CFR part 555, NHTSA seeks comments on a petition for exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 224, *Rear impact protection* by Columbia Body Manufacturing Co. (“Columbia Body” or “petitioner”) of Clackamas, Oregon. Columbia Body is seeking a three year exemption from the standard, asserting that compliance with the standard would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We are publishing this notice of receipt of the application in accordance with our exemption regulations. This action does not mean that we have made a judgment about the merits of the application.

**DATES:** Comments on this petition must be submitted by January 4, 2016.

**FOR FURTHER INFORMATION CONTACT:** For legal questions, contact Mr. Ryan Hagen, Office of the Chief Counsel, NCC-112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Washington, DC 20590. Telephone: (202) 366-2992; Fax: (202) 366-3820. For technical questions, contact Mr. Robert Mazurowski, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Washington, DC 20590. Telephone: (202) 366-1012; Fax: (202) 493-2990.

**ADDRESSES:** You may submit your comment, identified by the docket number in the heading of this

document, by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the electronic docket site by clicking on “Help and Information” or “Help/Info.”
- Fax: 1-202-493-2251.
- Mail: U.S. Department of Transportation, Docket Operations, M-30, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366-9826.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should

submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

**SUPPLEMENTARY INFORMATION:**

**A. Statutory Authority for Temporary Exemptions**

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary of Transportation has delegated the authority for implementing this section to NHTSA.

In recognition of the more limited resources and capabilities of small manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts is provided in the Safety Act to enable the agency to give those manufacturers additional time to comply with the Federal safety standards. The Safety Act authorizes the Secretary to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 motor vehicles, on such terms as the Secretary deems appropriate, if the exemption would be consistent with the public interest and the Safety Act and “compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.” (49 U.S.C. § 30113(b)(3)(B)(i)).

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards*, to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act (49



U.S.C. Chapter 301).<sup>1</sup> A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

## B. Rear Impact Protection

FMVSS No. 224, *Rear impact protection*,<sup>2</sup> requires that all trailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds (lb)) or more be fitted with a rear impact guard that conforms to FMVSS No. 223, *Rear impact guards*.<sup>3</sup> This requirement, however, has presented problems for certain specialized vehicles, such as road construction vehicles where interaction between the rear impact guard and the specialized paving or dumping equipment can cause engineering challenges. In 2004, NHTSA finalized a rule that excludes road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers), which discharge asphalt to a paving machine by use of a mechanical drive and conveyor belt.<sup>4</sup> In that final rule, NHTSA concluded that the installation of rear impact guards would interfere with the intended function of the trailers and were impractical, given the design and mission of these trailers.

The 2004 final rule decided against a regulatory exemption for gravity feed dump trailers, which do not have the mechanical drive and conveyor belt as discussed above, because gravity feed dump trailers can be versatile vehicles used for a wide variety of tasks. Creating an exemption in the regulation itself for gravity feed dump trailers could potentially permit a large vehicle population with greater exposure than RCC horizontal discharge trailers to be exempted from the standard. Instead,

<sup>1</sup> While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis," (49 U.S.C. 30113(b)(1)) the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

<sup>2</sup> 49 CFR 571.224.

<sup>3</sup> 49 CFR 571.223.

<sup>4</sup> 69 FR 67663 (November 19, 2004). Available at: <https://www.federalregister.gov/articles/2004/11/19/04-25703/federal-motor-vehicle-safety-standards-rear-impact-guards-final-rule> (last accessed on November 5, 2015).

NHTSA anticipated dealing with gravity feed dump trailers through the exemption process.<sup>5</sup> Prior to that final rule, NHTSA had granted an exemption to gravity feed dump trailers manufactured by Columbia Body.<sup>6</sup> Since that final rule, NHTSA has continued to grant exemptions to manufacturers of gravity feed dump trailer manufacturers through the procedures in 49 CFR part 555.<sup>7</sup>

## C. Overview of Columbia Body's Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Columbia Body of Clackamas, Oregon, a trailer manufacturer, has petitioned the agency for a three year temporary exemption from the rear impact protection requirements in FMVSS No. 224 based on substantial economic hardship.

Columbia Body is a small business that currently employs 40 full time employees and has annual sales of \$5–6,000,000. It produces two, three, and four axle "dump style" trailers that use a hydraulic hoist to raise the front end of the trailer and discharge its load through the tailgate. Columbia Body has produced an average of 17 non-gravity feed dump trailers a year over the last three years. Recently, many of Columbia Body's gravity feed dump body competitors have gone bankrupt, leading purchasers to request the trailers from Columbia Body. Given the recent requests, Columbia Body seeks to ensure it is able to fill any potential orders. If the exemption were granted, Columbia Body projects that it would sell no more than 50 of the exempted trailers per year. Columbia Body states that the trailers in question are designed specifically for use with paving machines. Without an exemption, Columbia Body states it will suffer substantial economic hardship, projecting it will have to lay off seven or eight of its 40 employees starting in 2016.

In its application, Columbia Body provides specific financial information from the last three years. In 2012,

<sup>5</sup> *Id.* at 67666.

<sup>6</sup> 68 FR 7406 (February 13, 2003). Available at: <http://www.regulations.gov/contentStreamer?documentId=NHTSA-2002-13955-0004&disposition=attachment&contentType=pdf> (last accessed on November 6, 2015).

<sup>7</sup> See: 69 FR 30989 (June 1, 2004), available at: <https://www.federalregister.gov/articles/2004/06/01/04-12334/reliance-trailer-co-llc-grant-of-application-for-renewal-of-temporary-exemption-from-federal-motor> (last accessed on November 6, 2015), and 74 FR 42142 (August 20, 2009), available at: <https://www.federalregister.gov/articles/2009/08/20/E9-19956/beall-corporation-grant-of-application-for-a-temporary-exemption-from-fmvss-no-224> (last accessed on November 9, 2015).

Columbia Body posted a net loss of \$108,000, followed by a \$215,000 loss in 2013. In 2014, it posted a net profit of \$302,000. If an exemption is not granted, Columbia Body projects it will post a \$169,000 net profit for 2016, in comparison to \$1 million net profit if an exemption is granted.

Columbia Body states that it has put forth a good faith effort to comply with FMVSS No. 224, however, is not possible for the company to do so at a price, and with the utility its customers require. Specifically, the rear end of the type of trailer in question interfaces with the front end of an asphalt paving machine, dumping hot asphalt into the paving machine's receiver. To establish this connection, the paving machine hooks to the rear wheels of the dump trailer. In order to prevent asphalt from spilling out while being transferred from the dump trailer to the paving machine, the paving machine fits 16 to 18 inches beneath the bottom of the dump trailer. The interaction between the dump trailer and paving machine occurs in the space where an underride guard would otherwise reside.

Columbia Body states that it has looked into possible solutions to this problem, including \$50,000 in research in 2005 and 2006 to evaluate solutions to comply with FMVSS No. 224. One solution included adding removable underride guards. Columbia Body states, however, that "[e]ven if we could install a removable underride guard it will put equipment operators in an unsafe situation installing and removing the guard." The petitioner states that the area where a removable underride guard would be installed is often covered in asphalt buildup. Additionally, Columbia Body believes that the cleaning, maintenance, and heavy impacts on the underride guard and the area immediately around it when contacting the paving machine would affect the structural integrity of the underride guard.

Another solution Columbia Body states it looked into involved constructing a sub-frame "with the ability to slide the dump body forward when in transit and slide it to the rear to provide the proper over hang [sic] when paving." Columbia Body states that although this design is possible, conversations with prospective customers indicate the design "would not be acceptable" because of the added cost and weight associated with building such a structure.

Columbia Body states that so long as the paving industry continues to use the same method of paving roads, it remains a physical impossibility to manufacture

this type of trailer and comply with FMVSS No. 224.

In support of its petition for exemption, Columbia Body notes that gravity feed dump trailers see limited highway exposure due to their function. Specifically, the trailers themselves are on the road for short periods of time. "Asphalt batch plants are typically set close to the paving activity to limit time traveling between the two paving activities." Additionally, the petitioner states that in many instances, these paving machines are often performing their transport tasks away from the driving public in restricted access construction areas.

Finally, Columbia Body believes its ability to obtain an exemption is in the public interest. Columbia Body has informed NHTSA that customers requesting its gravity feed dump trailers are doing so in order to pave local roadways. Many purchasers are local municipalities, or companies that support local municipalities in creating and maintaining roads for the traveling public. Therefore, the petitioner believes supplying gravity feed dump trailers is in the public interest.

#### D. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested exemption. The agency has concluded that Columbia Body's petition is complete and that it is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application. NHTSA has placed a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Columbia Body's petition for a temporary exemption from FMVSS No. 224. After considering public comments and other available information, we will publish a notice of final action on the petition in the **Federal Register**.

**Raymond R. Posten,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2015-31709 Filed 12-16-15; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[Docket No. FD 35963 (Sub-No. 1)]

#### BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Partial revocation of exemption.

**SUMMARY:** Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the local trackage rights described in Docket No. FD 35963 to permit the temporary trackage rights to expire at midnight on December 31, 2018, in accordance with the agreement of the parties,<sup>1</sup> subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line)*, 360 I.C.C. 91 (1979).

**DATES:** This decision is effective on January 16, 2016. Petitions to stay must be filed by December 28, 2015. Petitions for reconsideration must be filed by January 6, 2016.

**ADDRESSES:** Send an original and 10 copies of all pleadings, referring to Docket No. FD 35963 (Sub-No. 1) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on BNSF's representative: Karl Morell, Karl Morell & Associates, 655 15th Street NW., Suite 225, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Amy Ziehm (202) 245-0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: December 11, 2015.

<sup>1</sup> In that docket, on October 30, 2015, BNSF Railway Company (BNSF) filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant restricted local trackage rights to BNSF over UP's lines as follows: (1) Between UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Eley, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) between UP milepost 219.4 at Eley and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF submits that, while the trackage rights are only temporary rights, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8).

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

**Tia Delano,**

*Clearance Clerk.*

[FR Doc. 2015-31726 Filed 12-16-15; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Notice and request for nominations.

**SUMMARY:** FinCEN is inviting the public to nominate financial institutions and trade groups for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

**DATES:** Nominations must be received by January 19, 2016.

**ADDRESSES:** Applications must be emailed to [BSAAG@fincen.gov](mailto:BSAAG@fincen.gov).

**FOR FURTHER INFORMATION CONTACT:** FinCEN Resource Center at 800-767-2825.

**SUPPLEMENTARY INFORMATION:** The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 1000-1099 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions and trade groups. New members will be selected to serve a three-year term and must designate one individual to represent that member at plenary meetings. The designated representative should be knowledgeable about Bank Secrecy Act requirements and must be able and willing to make the necessary time commitment to participate on committees throughout the year by phone and attend biannual

plenary meetings held in Washington DC, in May and October.

It is important to provide complete answers to the following items, as applications will be evaluated on the information provided through this application process. Applications should consist of:

- Name of the organization requesting membership
- Point of contact, title, address, email address and phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.*
- Reasons why the organization's participation on the BSAAG will bring value to the group

Organizations may nominate themselves, but applications for individuals who are not representing an organization will not be considered. Members will not be remunerated for their time, services, or travel. In making the selections, FinCEN will seek to complement current BSAAG members in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and does not limit consideration to institutions nominated by the public when making selections.

**Jamal El-Hindi,**

*Deputy Director, Financial Crimes Enforcement Network.*

[FR Doc. 2015–31659 Filed 12–16–15; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8586

**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 8586, Low-Income Housing Credit.

**DATES:** Written comments should be received on or before February 16, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Michael Joplin, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions this regulation should be directed to Sara Covington at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at [Sara.L.Covington@irs.gov](mailto:Sara.L.Covington@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Low-Income Housing Credit.

*OMB Number:* 1545–0984.

*Form Number:* 8586.

*Abstract:* Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

*Current Actions:* There is no change being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and businesses, or other for-profit organizations.

*Estimated Number of Respondents:* 7,786.

*Estimated Time per Respondent:* 8 hours, 48 minutes.

*Estimated Total Annual Burden Hours:* 68,517.

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: December 9, 2015.

**Michael A. Joplin,**

*IRS Supervisory Tax Analyst.*

[FR Doc. 2015–31657 Filed 12–16–15; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

### Proposed Information Collection (Application for VA Education Benefits, Application for Family Member To Use Transferred Benefits, Application for VA Education Benefits Under the National Call to Service (NCS) Program and Application for Veterans Retraining Assistance Program)

*Activity:* Comment Request.

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before February 16, 2016.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to [nancy.kessinger@va.gov](mailto:nancy.kessinger@va.gov). Please refer to “OMB Control No. 2900–0154” in any correspondence. During the comment

period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:**

Nancy J. Kessinger at (202) 632-8924 or FAX (202) 632-8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104-13; 44 U.S.C. 3501-21), 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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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.

*Title:* Application for VA Education Benefits, VA Form 22-1990, Application for Family Member to Use Transferred Benefits, VA Form 22-1990E, Application for VA Education Benefits Under the National Call to Service (NCS) Program, VA Form 22-1990N and Application for Veterans Retraining Assistance Program, VA Form 22-1990R.

*OMB Control Number:* 2900-0154.

*Type of Review:* Revision of an approved collection.

*Abstract:*

A. VA Form 22-1990 is completed by claimants who are submitting an initial (or original) claim for VA education benefits.

B. VA Form 22-1990E is completed by a claimant who wishes to transfer his or her Montgomery GI Bill entitlement to their dependent(s).

C. VA Form 22-1990N is used by a claimant who signed an enlistment contract with the Department of Defense for the National Call to Service (NCS) program and elected one of two education incentives.

D. VA Form 22-1990R is used by a claimant to request assistance in retraining to enter the workforce.

Affected Public: Individuals or households.

Estimated Annual Burden: 273,098 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 855,652.

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. 2015-31694 Filed 12-16-15; 8:45 am]

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Part II

## Commodity Futures Trading Commission

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17 CFR Parts 1, 38, 40, et al.

Regulation Automated Trading; Proposed Rule

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1, 38, 40, and 170

RIN 3038-AD52

#### Regulation Automated Trading

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commodity Futures Trading Commission (“CFTC” or “Commission”) is proposing a series of risk controls, transparency measures, and other safeguards to enhance the regulatory regime for automated trading on U.S. designated contract markets (“DCMs”) (collectively, “Regulation AT”). The Commission’s proposals build on efforts by numerous entities in recent years to promote best practices and regulatory standards for automated trading, including standards and best practices for algorithmic trading systems (“ATs”), electronic trade matching engines, and new connectivity methods that characterize modern financial markets. In 2012 the Commission adopted rules requiring futures commission merchants (“FCMs”), swap dealers (“SDs”), and major swap participants (“MSPs”) to use automated means to screen orders for compliance with certain risk-based limits. It also adopted rules requiring certain financial risk control requirements for DCMs offering direct market access to their customers. In 2013 the Commission published an extensive Concept Release on Risk Controls and System Safeguards for Automated Trading Environments (“Concept Release”), compiling in one document a comprehensive discussion of industry practices, Commission regulations, and evolving concerns in automated trading.<sup>1</sup> Now, through this notice of proposed rulemaking (“NPRM”) for Regulation AT, the Commission seeks to update Commission rules in response to the evolution from pit trading to electronic trading. In particular, the Commission is proposing to adopt a comprehensive approach to reducing risk and increasing transparency in automated trading. Proposed Regulation AT is designed to consolidate previous work by industry participants, the Commission, and fellow regulators into a unified body of law addressing automation in order placement and execution in U.S. derivatives markets.

The Commission welcomes all public comments.

**DATES:** Comments must be received on or before March 16, 2016.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AD52, by any of the following methods:

- *CFTC Web site:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to 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.

Please submit comments by only one method. All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (“FOIA”), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, prescreen, 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 so treated that contain comments on the merits of the rulemaking 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 FOIA.

**FOR FURTHER INFORMATION CONTACT:**

Sebastian Pujol Schott, Associate Director, Division of Market Oversight, [sps@cftc.gov](mailto:sps@cftc.gov) or 202-418-5641; Marilee Dahlman, Special Counsel, Division of Market Oversight, [mdahlman@cftc.gov](mailto:mdahlman@cftc.gov) or 202-418-5264; Mark Schlegel, Special Counsel, Division of Market Oversight, [mschlegel@cftc.gov](mailto:mschlegel@cftc.gov) or 202-418-5055; Michael Penick, Economist, Office of the Chief Economist, [mpenick@cftc.gov](mailto:mpenick@cftc.gov) or 202-418-5279; Richard Haynes, Economist, Office of the Chief Economist, [rhaynes@cftc.gov](mailto:rhaynes@cftc.gov) or 202-418-5063; Andrew Ridenour,

Senior Trial Attorney, Division of Enforcement, [aridenour@cftc.gov](mailto:aridenour@cftc.gov) or 202-418-5438; or John Dunfee, Assistant General Counsel, Office of General Counsel, [jdunfee@cftc.gov](mailto:jdunfee@cftc.gov) or 202-418-5396.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
  - A. Overview—Development of Automated Trading Environment
  - B. Risks and Potential Benefits Associated With Automated Trading
  - C. The Proposed Regulations
    1. Overview of NPRM
    2. The Proposed Regulations Under Parts 1, 38, 40, and 170
- II. Background on Regulatory Responses to Automated Trading
  - A. The Commission’s Regulatory Response to Date
  - B. The Commission’s 2013 Concept Release
  - C. Other Recent Regulatory Responses
    1. SEC Regulatory Initiatives
    2. FINRA Initiatives
    3. European and Other Regulatory Initiatives
  - D. Industry and Regulatory Best Practices and Recommendations
    1. NFA Compliance Rule 2–9: Supervision
    2. FIA Reports on Automated Trading
    3. IOSCO Reports on Electronic Trading
    4. CFTC TAC Subcommittee
    5. FIX Risk Management Working Group
    6. Senior Supervisors Group (SSG) Briefing Note
    7. Treasury Market Practices Group Best Practices
- III. Recent Disruptive Events in Automated Trading Environments
- IV. Overview of Regulation AT
  - A. Concept Release/Regulation AT Terminology
  - B. Commenter Preference for Principles-Based Regulations
  - C. Multi-Layered Approach to Pre-Trade Risk Controls and Other Measures
  - D. Codification of Defined Terms Used Throughout Regulation AT
    1. “Algorithmic Trading”—§ 1.3(zzzz)
    2. “Algorithmic Trading Compliance Issue”—§ 1.3(tttt)
    3. “Algorithmic Trading Disruption”—§ 1.3(uuuu)
    4. “Algorithmic Trading Event”—§ 1.3(vvvv)
    5. “AT Order Message”—§ 1.3(wwww)
    6. “AT Person”—§ 1.3(xxxx)
    7. “Direct Electronic Access”—§ 1.3(yyyy)
  - E. Registration of Certain Persons Not Otherwise Registered With Commission—§ 1.3(x)
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - F. RFA Standards for Automated Trading and Algorithmic Trading Systems—§ 170.19
    1. Policy Discussion
    2. Description of Regulation
    3. Request for Comments
  - G. AT Persons Must Become Members of an RFA—§ 170.18

<sup>1</sup> Concept Release on Risk Controls and System Safeguards for Automated Trading Environments, 78 FR 56542 (Sept. 12, 2013).

1. Policy Discussion
  2. Description of Regulation
  3. Request for Comments
  - H. Pre-Trade and Other Risk Controls for AT Persons—§ 1.80
    1. Concept Release Comments on Pre-Trade and Other Risk Controls
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - I. Standards for Development, Testing, Monitoring, and Compliance of Algorithmic Trading Systems—§ 1.81
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - J. Risk Management by Clearing Member FCMs—§ 1.82
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Discussion of Persons Subject to Proposed §§ 1.80 and 1.82
    5. Request for Comments
  - K. Compliance Reports Submitted by AT Persons and Clearing FCMs to DCMs; Related Recordkeeping Requirements—§ 1.83
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - L. Risk Controls for Trading; Direct Electronic Access Provided by DCMs—§ 38.255(b) and (c)
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - M. Disclosure and Transparency in DCM Trade Matching Systems—§ 38.401(a)
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - N. Pre-Trade and Other Risk Controls at DCMs—§ 40.20
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - O. DCM Test Environments for AT Persons—§ 40.21
    1. Concept Release Comments
    2. Description of Regulation
    3. Request for Comments
  - P. DCM Review of Compliance Reports by AT Persons and Clearing FCMs; DCM Rules Requiring Certain Books and Records; and DCM Review of Such Books and Records as Necessary—§ 40.22
    1. Concept Release Comments
    2. Description of Regulation
    3. Policy Discussion
    4. Request for Comments
  - Q. Self-Trade Prevention Tools—§ 40.23
    1. Concept Release Comments
    2. Commission Analysis of Amount of Self-Trade in the Marketplace
    3. Description of Regulation
    4. Policy Discussion
    5. Request for Comments
  - R. DCM Market Maker and Trading Incentive Programs—§§ 40.25–40.28
    1. Policy Discussion
    2. Description of Regulations
    3. Request for Comments
  - V. Related Matters
    - A. Calculation of Number of Persons Subject to Regulations
      1. Request for Comments
    - B. Calculation of Hourly Wage Rates Used in Related Matters
    - C. Regulatory Flexibility Act
      1. FCMs and DCMs
      2. AT Persons
      3. Request for Comments
    - D. Paperwork Reduction Act
      1. Information Provided by Reporting Entities/Persons
        - a. § 1.3(x)(3)—Submissions by newly registered floor traders
        - b. § 1.83(a)—Compliance reports submitted by AT Persons to DCMs
        - c. § 1.83(b)—Compliance reports submitted by clearing member FCMs to DCMs
        - d. § 1.83(c)—AT Person retention and production of books and records
        - e. § 1.83(d)—Clearing member FCM retention and production of books and records
        - f. § 38.401(a) and (c)—Public dissemination of information by DCMs pertaining to electronic matching platforms
        - g. § 40.23—Information publicly disseminated by DCMs regarding self-trade prevention
        - h. § 40.25—Information in public rule filings provided by DCMs regarding Market Maker and Trading Incentive Programs
        - i. § 40.26—Information provided by DCMs to the Division of Market Oversight upon request regarding Market Maker and Trading Incentive Programs
    2. Information Collection Comments
  - E. Cost Benefit Considerations
    1. The Statutory Requirement for the Commission to Consider the Costs and Benefits of its Actions
    2. Concept Release Comments Regarding Costs and Benefits
    3. The Commission's Cost-Benefit Consideration of Regulation AT—Baseline Point
    4. The Commission's Cost-Benefit Consideration of Regulation AT—Cross-Border Effects
    5. General Request for Comment
    6. The Commission's Cost-Benefit Consideration of Regulation AT—Proposed Definitions
    7. Pre-Trade Risk Controls, Testing and Supervision of Automated Systems, Requirement to Submit Compliance Reports, and Other Related Algorithmic Trading Requirements
    8. Requirements for Certain Entities to Register as Floor Traders
    9. Transparency in Exchange Trade Matching Systems
    10. Self-Trade Prevention
    11. Market-Maker and Trading Incentive Programs
- VI. Aggregate Estimated Cost of Regulation AT
- VII. List of All Questions in the NPRM

## I. Introduction

### A. Overview—Development of Automated Trading Environment

U.S. derivatives markets have historically relied on manual processes for the origination of orders, transmission of information, and execution of trades. Trading decisions were typically initiated by natural persons, and transmitted through intermediaries via comparatively simple communications networks. Execution occurred in open-outcry trading pits operated by DCMs. Access to these pits was limited to brokers and traders granted trading privileges by the exchange. A range of other processing and risk management services were equally reliant on manual processes, and the complete trading system could move only as fast as its human decision-makers. Trading information was often recorded on paper order tickets and trading cards, and time-stamps were recorded only to the nearest minute. The physical element of trading was reflected in exchange or Commission rules governing diverse matters such as the types of trading permitted from the top step of a futures pit,<sup>2</sup> as well as requirements that certain orders for execution in a trading pit be recorded in “non-erasable ink.” This basic structure remained constant for decades, and produced a parallel regulatory framework also premised on natural persons and human decision-making speeds.

Today, derivatives markets have transitioned from the manual processes described above to highly automated trading and trade matching systems. Modern DCMs and DCM market participants, in particular, are characterized by a wide array of algorithmic and electronic systems for the generation, transmission, management, and execution of orders, as well as systems used to confirm transactions, communicate market data, and link markets and market participants through high-speed networks. Collectively, such DCM and market participant trading systems constitute the “automated trading

<sup>2</sup> For example, press reports surrounding the initiation of CME's “top step” rule in the S&P 500 stock-index pit in 1987 indicated that brokers preferred the top step to “get a panoramic view of the trading activity and quickly grab customer order sheets being relayed by nearby clerks.” They described a trading pit where “[s]ome 400 traders are jammed shoulder-to-shoulder in the amphitheater-like pit, which accounts for three-fourths of the nation's stock-index futures trading.” See Jouzaitis, Carol, “Merc Launches ‘Top-step’ Reform,” Chicago Tribune (June 22, 1987) available at [http://articles.chicagotribune.com/1987-06-22/business/8702160155\\_1\\_dual-trading-stock-index-futures-market-chicago-mercantile-exchange](http://articles.chicagotribune.com/1987-06-22/business/8702160155_1_dual-trading-stock-index-futures-market-chicago-mercantile-exchange).

environment” at the center of Regulation AT. Automated trading environments often make use of automated systems for either the generation or the execution of orders (in many cases, both). Such automated systems are based on sets of rules or instructions (commonly referred to as algorithms) and related computer systems used to automate the execution of a trading strategy.<sup>3</sup> In futures markets, orders generated by automated trading systems are ultimately transmitted to DCMs that accept, manage and match orders by automated means.

While technologies have evolved, the underlying functions of derivatives markets remain the same, as do the Commission’s responsibilities under the Commodity Exchange Act (the “CEA” or “Act”). Such markets, typically operated by DCMs, provide valuable risk mitigation and price discovery services for numerous financial and physical commodities businesses, including producers and consumers of energy, foodstuff, metals, and other raw materials, as well as natural person investors. The Commission is committed to the safety and integrity of U.S. markets as they continue their rapid technological change. Through proposed Regulation AT, the Commission is taking its next steps in ensuring that its regulatory standards and industry practices properly address current and foreseeable risks arising from automated trading, and promote responsible innovation and fair competition among markets and market participants.<sup>4</sup>

Within U.S. derivatives markets, DCMs represent a significant catalyst in the transition to automated trading. From its beginnings with CME Globex in 1992, DCM on-exchange trading now occurs almost exclusively on electronic matching platforms, using internal algorithms to rapidly match incoming orders from an array of market participants.<sup>5</sup> Data available to

Commission staff indicates that in an approximately two-year period through October 2014, over 95 percent of all on-exchange futures trading occurred on DCMs’ electronic trade matching platforms.<sup>6</sup> In this regard, the Commission notes that CME Group, the largest U.S. exchange operator, announced in February 2015 its intention to close all but one of its open-outcry trading floors for futures.<sup>7</sup> IntercontinentalExchange, the second largest DCM operator, ended all futures open-outcry trading in March 2008, and ended all options open-outcry trading in October 2012. On-exchange trading on DCMs other than the CME Group exchanges and IntercontinentalExchange now occurs exclusively on electronic matching platforms. Concurrent with their transition to electronic trade matching platforms, DCMs have taken steps to increase the speed of trading in their markets. These include offering co-location and proximity hosting services to reduce latencies between the DCM and market participants, as well as measures taken by DCMs to reduce processing times within their electronic trade matching platform. The two largest DCMs, for example, have for several years indicated in their public materials average or median order entry round trip times of less than one millisecond.<sup>8</sup>

500 futures contract, the first CME product available exclusively on Globex, including during regular (open-outcry) trading hours in other CME products. Globex monthly volume exceeded 100,000 contracts for the first time in 1997. In 1999, CME for the first time began offering “side-by-side” trading, allowing its Eurodollar contract to be traded both on Globex and in open-outcry during regular trading hours. Side-by-side trading was expanded in the ensuing years, including for example to FX products in 2001. Globex average daily volume exceeded 1,000,000 contracts for the first time in 2002. By 2004, Globex trading volume began exceeding open-outcry volume for the first time. Through agreements or mergers, CME began listing NYMEX products (2006) and CBOT products (2007) on Globex as well. See Aldinger, Lori, and Labuszewski, John W., “ELECTRONIC TRADING Twenty Years of CME Globex” (2012), available at <http://www.cmegroup.com/education/files/globex-retrospective-2012-06-12.pdf>.

<sup>6</sup> Haynes, Richard & Roberts, John S., “Automated Trading in Futures Markets,” CFTC Office of Chief Economist (Mar. 13, 2015), available at [http://www.cftc.gov/ucm/groups/public/economic-analysis/documents/file/occe\\_automatedtrading.pdf](http://www.cftc.gov/ucm/groups/public/economic-analysis/documents/file/occe_automatedtrading.pdf).

<sup>7</sup> See CME Press Release, “CME Group to Close Most Open Outcry Futures Trading in Chicago and New York by July; Most Options Markets to Remain Open,” (Feb. 4, 2014) available at <http://cmegroup.mediaroom.com/2015-02-04-CME-Group-to-Close-Most-Open-Outcry-Futures-Trading-in-Chicago-and-New-York-by-July-Most-Options-Markets-to-Remain-Open?pagetemplate=article>.

<sup>8</sup> See CME Group, “The World’s Leading Electronic Platform: CME Globex,” (2014) at 3, available at <http://www.cmegroup.com/globex/files/globexbrochure.pdf>; IntercontinentalExchange, 2010 Annual Report, (2011) at 26, available at

The largely complete transition of DCMs to electronic trade matching platforms has occurred alongside an equally important shift in the technologies used by market participants to place and manage orders. Market participants have applied a range of sophisticated technological tools to their trading. For example, market participants are increasingly using ATs, often coupled with high-speed communication networks. Market participants are also increasingly relying on electronic market and other data feeds to inform trading decisions, and on multiple computer algorithms to generate, manage, or route orders to DCMs. Market participants may also make use of direct electronic access and/or co-location services to minimize latencies between an ATS, market data systems, and a DCM’s electronic trading matching platform.

Data available to the Commission highlights the importance of ATS trading on DCMs today. The Commission’s analysis of data covering the same approximately two-year period addressed above (through October 2014) indicates that ATs were present on at least one side in almost 80 percent of foreign exchange futures volume, 67 percent of interest rate futures volume, and 62 percent of equity futures volume analyzed. They were also present on at least one side in approximately 47 percent of metals and energy product volumes. Even in agricultural products, a category not typically associated with automation in recent years, ATs were present in at least 38 percent of futures volume analyzed. Finally, in the aggregate, ATs were present in over 60 percent of all futures volume traded across all products in the nearly two-year period that the Commission examined. In highly liquid product categories, ATs represented both sides of the transaction over 50 percent of the time.<sup>9</sup>

Market participants using ATs may transact on DCMs through registered intermediaries, including their clearing members. Such intermediaries themselves often rely on extensive automation, using ATs for functions ranging from simple order routing to the generation of independent trading decisions. These registered intermediaries include FCMs, commodity pool operators (“CPOs”), commodity trading advisors (“CTAs”), introducing brokers (“IBs”), and floor brokers (“FBs”). In addition, Commission-registered SDs and MSPs

<http://ir.theice.com/~media/Files/I/Ice-IR/annual-reports/2010/ice-2010ar.pdf>.

<sup>9</sup> See Haynes & Roberts, *supra* note 6 at 4.

<sup>3</sup> See IOSCO Report on Regulatory Issues Raised by Technological Changes, *infra* note 103 at 10.

<sup>4</sup> See CEA Section 3, “Findings and Purposes,” noting in Section 3(a) that transactions subject to the CEA are “affected with a national public interest” and in Section 3(b) that “[t]o foster these public interests, it is further the purpose of this Act to deter . . . any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to the Act and the avoidance of systemic risk; . . . and to promote responsible innovation and fair competition among boards of trade . . . and market participants.”

<sup>5</sup> Trading on CME Globex was initially limited to “after-hours” periods when the Exchange’s open-outcry pits were closed. The first products offered on Globex in 1992 included German mark and Japanese yen futures and options on futures contracts, followed by other FX and currency products. In 1997, CME launched the E-mini S&P



may use ATs to conduct trading on DCMs. As discussed in more detail below, each of these categories of Commission registrants may be subject to Regulation AT in the event that they conduct algorithmic trading on a DCM.

### *B. Risks and Potential Benefits Associated With Automated Trading*

Regulation AT proposes a series of pre-trade risk controls and other measures intended to address the risks related to automated trading on DCMs. The proposed rules primarily address operational risk issues, as well as related issues such as self-trading and market maker and trading incentive programs.

The potential risks of automated trading were recently described in a report discussing the events of October 15, 2014, when the market for U.S. Treasury securities, futures, and other closely related financial markets experienced an unusually high level of volatility and a very rapid round-trip in prices. On July 13, 2015, five regulatory agencies issued a joint staff report on the unusual market events of October 15, 2014 (the "October 15 Joint Staff Report").<sup>10</sup> In addition to discussing the events of October 15, the report includes an Appendix C that summarizes many of the risks of automated trading. These risks include the following: Operational risks (ranging from malfunctioning and incorrectly deployed algorithms to algorithms reacting to inaccurate or unexpected data); market liquidity risks (arising from abrupt changes in trading strategies even when a firm executes its strategy perfectly); market integrity risks (automated trading can provide new

tools to engage in unlawful conduct); transmission risks (shocks based on erroneous orders impacting multiple markets); clearing and settlement risks (as more firms gain access to trading platforms, trades may not be subject to sufficient settlement risk mitigation techniques); and risks to effective risk management (the speed of trade execution may make critical risk mitigation devices less effective).

Notwithstanding the risks described above, several commentators have argued that algorithmic trading results in a more efficient marketplace. A recent study of the equities market concluded that algorithmic trading narrows spreads, reduces adverse selection, and reduces trade-related price discovery.<sup>11</sup> The study also suggested that algorithmic trading improves liquidity and enhances the information provided in quotes. Another recent study of low latency activity in the equities market (typically associated with high frequency trading) concluded that "an increase in low-latency activity reduces quoted spreads and the total price impact of trades, increases depth in the limit order book, and lowers short-term volatility."<sup>12</sup>

### *C. The Proposed Regulations*

#### 1. Overview of NPRM

The Commission is pursuing a number of goals in proposed Regulation AT. As an overarching goal, the Commission seeks to update Commission rules in response to the evolution from pit trading to electronic trading. The risk controls and other rules proposed in this NPRM are focused on algorithmic order origination or routing by market participants, and electronic order execution by DCMs. In addition to mitigating risks arising from algorithmic trading activity, the proposed rules are intended to increase transparency around DCM electronic trade matching platforms and the use of self-trade prevention tools on DCMs.<sup>13</sup> Furthermore, the proposed rules are intended to foster transparency with respect to DCM programs and activities, including market maker and trading incentive programs, that have become

more prominent as automated trading becomes the dominant market model.

The Commission notes that Regulation AT generally does not address trading activity on swap execution facilities ("SEFs"). The Commission believes that neither execution nor order entry on SEF markets are sufficiently automated at this time to require the degree of automated safeguards proposed herein.<sup>14</sup> In addition, Regulation AT is not proposing a number of measures discussed in the Concept Release, such as the following: Proposals to implement various post-trade reports (post-order drop copies, post-trade drop copies, and post-clearing drop copies), "reasonability checks" on incoming market data used by firms operating automated systems, policies and procedures for identifying "related" contracts, and proposals to standardize and simplify order types, each of which was discussed in the Concept Release.<sup>15</sup>

Market participants using automated trading include an important population of proprietary traders that, while responsible for significant trading volumes and liquidity in key futures products, are not registered with the Commission. These unregistered proprietary traders include a number of traders engaged in high-frequency trading ("HFT"). The Commission notes, however, that the risk control requirements under proposed Regulation AT do not vary in response to a market participant's algorithmic trading strategies; the same risk controls would be required in connection with high-frequency and low-frequency algorithmic trading. In particular, HFT is not specifically identified under the proposed regulations, and is not regulated in a different fashion from other types of algorithmic trading under proposed Regulation AT. Instead, the proposed regulations focus on automation of order origination, transmission and execution, and the risks that may arise from such activity. As discussed above, nearly universal electronic order matching at DCMs is

<sup>10</sup> See Joint Staff Report: The U.S. Treasury Market on October 15, 2014 (July 13, 2015) [hereinafter "October 15 Joint Staff Report"], prepared by the U.S. Department of Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, and U.S. Commodity Futures Trading Commission, available at <http://cftc.wss/OCE/conceptrelease/documentlibrary/Regulation%20AT/Reg%20AT%20-%20DRAFT%20PREAMBLE/October%2015%20report/treasury-market-volatility-10-14-2014-joint-report.pdf>. The report discusses the preliminary findings regarding the conditions that may have contributed to the October 15 volatility, particularly in the "event window" that began at 9:33 a.m. ET. Among other potential causes of this volatility, the October 15 Joint Staff Report states that several large transactions occurred between the release of certain U.S. retail sales data and the start of the event window; that there was a significant reduction in market depth following the retail sales data release, which appears to have resulted from a high volume of transactions and bank-dealers and principal trading firms changing their participation in the cash and futures order books; that latency associated with a significant increase in message traffic due to order cancellations increased just before the event window; and there was a higher incidence of "self-trading" during the event window. *Id.* at 4–6.

<sup>11</sup> See, e.g., Hendershott, Jones and Menkveld, "Does Algorithmic Trading Improve Liquidity?," *The Journal of Finance*, Vol. LXVI, No. 1 (Feb. 2011), available at <http://faculty.haas.berkeley.edu/hender/algo.pdf>.

<sup>12</sup> See Hasbrouck and Saar, "Low-latency trading," *Journal of Financial Markets* 16 (2013) at 646–679, available at <http://people.stern.nyu.edu/jhasbrou/Research/LowLatencyTradingJFM.pdf>.

<sup>13</sup> See section IV(Q) below for a discussion of the term "self-trade" and proposed regulations with respect to self-trade prevention.

<sup>14</sup> The requirements on DCMs arising out of Regulation AT may ultimately be imposed on SEFs. However, an important consideration for the Commission is that SEFs and SEF markets are much newer and less liquid than the more established and liquid DCMs and DCM markets. While SEFs and SEF markets are still in this nascent stage, the Commission does not want to impose additional requirements that may have the effect of decreasing the number of SEFs or decreasing liquidity. For these reasons, and in light of the lesser degree of automation in SEF markets, the policy considerations underlying Regulation AT are not as critical, at least at this time, in the SEF context.

<sup>15</sup> See Concept Release, 78 FR at 56569–73 for a summary of measures discussed in the Concept Release.

increasingly complemented by algorithmic order origination among market participants. Against this backdrop, the Commission believes that appropriate pre-trade and other risk controls are necessary at the level of market participants, clearing FCMs, and DCMs, in order to ensure the integrity of Commission-regulated markets and provide market participants with greater confidence that intentional, bona fide transactions are being executed.

Principal elements of Regulation AT for market participants and clearing FCMs include: (i) Codification of defined terms used throughout Regulation AT; (ii) registration of certain entities not otherwise registered with the Commission; (iii) new algorithmic trading procedures for trading firms and clearing firms, including pre-trade and other risk controls; (iv) testing, monitoring, and supervision requirements for ATs; and (v) requirements that certain persons submit compliance reports to DCMs regarding their ATs. Principal elements for DCMs include: (i) New risk controls for Direct Electronic Access (“DEA”) provided by DCMs; (ii) transparency in DCM electronic trade matching platforms; and (iii) new risk control procedures, including pre-trade risk controls, compliance report review standards, self-trade prevention tool requirements, and market-maker and trading incentive program disclosure and related requirements.

As mentioned above, Regulation AT is not intended to discriminate across registration categories, connectivity methods, or even “high-frequency” or slower trading strategies. Rather, Regulation AT is focused on reducing risk, increasing transparency and disclosure, and related DCM procedures.<sup>16</sup> In developing Regulation AT, the Commission built on the Concept Release and relevant comments received, which are discussed further in section II(B) below. However, interested parties will observe that the Commission has chosen not to pursue certain measures discussed in the Concept Release (as discussed above), while also proposing a small number of new measures not addressed in the Concept Release. In addition, Regulation AT in certain cases seeks only to clarify the scope of existing Commission

regulations that may be impacted by the growth of automated trading environments.

In preparing this NPRM, the Commission has reviewed relevant industry practices, measures taken by other U.S. and foreign regulators, and best practices or guidance set forth by other informed parties. In these sources and comments received in response to the Concept Release, the Commission has identified an emerging consensus around pre-trade risk controls for automated trading and supervision standards for ATs. The Commission also notes comments received in response to the Concept Release that are supportive of risk controls placed in multiple stages across the life-cycle of order generation, transmission, management and execution (*i.e.*, similar risk controls placed at the levels of market participants, clearing member FCMs, and DCMs). Proposed Regulation AT attempts to balance flexibility in a rapidly changing technological landscape with the need for a regulatory baseline that provides a robust and sufficiently clear standard for pre-trade risk controls, supervision standards, and other safeguards for automated trading environments. The specific regulations and amendments proposed by Regulation AT are discussed in greater detail below.

## 2. The Proposed Regulations Under Parts 1, 38, 40, and 170

Regulation AT proposes new regulations or amendments to existing regulations in parts 1, 38, 40, and 170 of the Commission’s regulations. It proposes to amend part 1 by inserting the following defined terms: § 1.3(tttt)—Algorithmic Trading Compliance Issue; § 1.3(uuuu)—Algorithmic Trading Disruption; § 1.3(vvvv)—Algorithmic Trading Event; § 1.3(www)—AT Order Message; § 1.3(xxxx)—AT Person; § 1.3(yyyy)—Direct Electronic Access; and § 1.3(zzzz)—Algorithmic Trading. Regulation AT also proposes to amend existing § 1.3(x), which defines Floor Trader.

In addition, Regulation AT would create a new subpart A in part 1 that includes the following new regulations applicable to AT Persons and their clearing FCMs: § 1.80—requiring AT Persons to implement pre-trade risk controls and other related measures; § 1.81—requiring AT Persons to implement standards for the development, testing, monitoring, and compliance of their ATs; § 1.82—requiring clearing member FCMs to implement pre-trade risk controls and other related measures for orders from their AT Person customers; and § 1.83—

requiring AT Persons and their clearing member FCMs to provide to DCMs annual compliance reports, and to keep and provide upon request to DCMs certain related books and records.

Regulation AT also proposes to amend part 38 of the Commission’s regulations. Specifically, it would amend existing § 38.255—Risk controls for trading, to require DCMs to have in place systems reasonably designed to facilitate the FCM’s management of the risks that may arise from their customers’ Algorithmic Trading using Direct Electronic Access. Regulation AT would also make corresponding changes to the discussion of risk controls in Appendix B—Guidance on, and Acceptable Practices in, Compliance with Core Principles (Subsection (b)(5)—Acceptable Practices for Risk controls for trading). Finally in part 38, Regulation AT would amend existing § 38.401(a) to require DCMs to provide additional public disclosure regarding their electronic matching platforms.

Regulation AT would also amend part 40 of the Commission’s regulations. It would create the following new regulations: § 40.20—requiring DCMs to implement pre-trade risk controls and other related measures; § 40.21—requiring DCMs to provide a test environment to AT Persons; § 40.22—requiring DCMs to implement a review program for compliance reports regarding Algorithmic Trading submitted by AT Persons and clearing member FCMs, require that certain books and records be maintained by such persons, and review such books and records as necessary; § 40.23—requiring DCMs to implement self-trade prevention tools, mandate their use, and publish statistics concerning self-trading; and §§ 40.25–40.28—requiring DCMs to provide disclosure and implement other controls regarding their market maker and trading incentive programs. Finally, Regulation AT would make changes to the definition of Rule in § 40.1(i) in response to certain of the changes proposed above.

Finally, Regulation AT proposes to amend part 170 of the Commission’s regulations. It would require in new § 170.18 that all AT Persons become members of at least one registered futures association (“RFA”). Regulation AT would create a new subpart D in part 170, and require in proposed § 170.19 that RFAs adopt membership rules, as deemed appropriate by the RFA, requiring pre-trade risk controls and other measures for ATs; standards for the development, testing, monitoring, and compliance of ATs; designation and training of algorithmic

<sup>16</sup> See, e.g., the compliance reports required to be submitted by AT Persons and clearing member firms of AT Persons under § 1.83, the statistics required to be reported by DCMs regarding self-trading that they have both authorized and prevented on their platforms under § 40.23, and the disclosure required of DCMs with respect to market maker and trading incentive programs under § 40.25.

trading staff; and clearing FCM risk management standards.

## II. Background on Regulatory Responses to Automated Trading

### A. The Commission's Regulatory Response to Date

The Commission has responded to the development of automated trading environments through a number of regulatory measures that address risk controls within both new and existing categories of registrants, including DCMs, SEFs, FCMs, SDs, MSPs and others.<sup>17</sup> While focused to a degree on financial and related risks, these provisions reflect the Commission's ongoing commitment to maintaining the safety and soundness of automated trading in modern derivatives markets. The Commission has adopted regulations with respect to DCMs and SEFs that require exchanges to establish risk control mechanisms to prevent market disruptions, including mechanisms that pause or halt trading.<sup>18</sup> The guidance and acceptable practices to the SEF and DCM rules in part 37 and 38, respectively, provide examples of acceptable risk controls.<sup>19</sup> In addition, in the DCM final rules, the Commission adopted new risk control requirements for exchanges that provide DEA to clients. Regulation 38.607 requires DCMs that permit DEA to have effective systems and controls reasonably designed to facilitate an FCM's management of financial risk.<sup>20</sup>

The Commission also adopted relevant regulations for FCMs, SDs, and MSPs. Such firms that are clearing members must establish risk-based limits based on position size, order size, margin requirements, or similar factors for all proprietary accounts and customer accounts.<sup>21</sup> The regulations, codified in §§ 1.73 and 23.609, also require these entities to "use automated means to screen orders for compliance with the [risk] limits" when such orders are subject to automated execution.<sup>22</sup> In addition, § 1.11 requires FCMs to have "automated financial risk management controls reasonably designed to prevent the placing of erroneous orders" and

"policies and procedures governing the use, supervision, maintenance, testing, and inspection" of automated trading programs.<sup>23</sup> The Commission also adopted regulations requiring SDs and MSPs that are clearing members to ensure that their "use of trading programs is subject to policies and procedures governing the use, supervision, maintenance, testing, and inspection of the program."<sup>24</sup>

Finally, the Commission adopted final rules implementing new authority under the CEA to, among other things, broadly prohibit manipulative and deceptive devices and price manipulation.<sup>25</sup> The Commission also provided guidance on the scope and application of CEA Section 4c(a)(5), which makes it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that violates bids or offers, demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period, or is, is of the character of, or is commonly known to the trade as, "spoofing."<sup>26</sup>

### B. The Commission's 2013 Concept Release

*Overview of Concept Release.* As noted above, in 2013 the Commission issued a "Concept Release on Risk Controls and System Safeguards for Automated Trading Environments," which provided an overview of the automated trading environment and discussed a series of pre-trade risk controls, post-trade reports and other measures, system safeguards, and additional protections that could be

implemented by Commission registrants or other market participants. The Concept Release reflects the Commission's ongoing commitment to the safety and soundness of U.S. derivatives markets in times of technological change, including the growth of automated trading.

The Concept Release was published in the **Federal Register** on September 12, 2013.<sup>27</sup> The initial 90-day comment period closed on December 11, 2013, but was reopened from January 21 through February 14, 2014, in conjunction with a meeting of the CFTC's Technology Advisory Committee ("TAC"). The Concept Release requested public comment on 124 separate questions regarding the necessity and operation of potential pre-trade risk controls, post-trade reports and other measures, system safeguards and additional protections (such as proposals to identify "related" contracts on trading platforms, and proposals to standardize and simplify order types). The Concept Release served as a vehicle to catalogue existing industry practices, determine their efficacy and implementation to date, and evaluate the need for additional measures. The Concept Release was not a proposed rule, but rather a prior step designed to facilitate a public dialogue and educate the Commission so that it may make an informed determination as to whether rulemaking is necessary and, if so, the substantive requirements of such a rulemaking.

*Topics Discussed in Concept Release.* The Concept Release highlighted data on the increased importance of electronic and algorithmic trading across a number of U.S. markets (including equities, futures and fixed income markets). The Concept Release also noted that the infrastructure of automated trading environments has progressively decreased the time necessary to process orders and execute trades, reducing the communication times between market participants and trading venues.<sup>28</sup> One exchange group now indicates that its "median inbound latency for order entry" on its trading platform is fifty-two (52) microseconds within its "four walls."<sup>29</sup> As discussed in the Concept Release, advances in trading speeds are partly due to the development of dedicated fiber-optic and microwave communications networks that have dramatically reduced transmission times across large

<sup>17</sup> These measures are discussed in more detail in the Concept Release. See Concept Release, 78 FR at 56548.

<sup>18</sup> See Core Principles and Other Requirements for Designated Contract Markets, 77 FR 36612, 36703 (June 19, 2012) [hereinafter "DCM Final Rules"]; Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476, 33590 (June 4, 2013) [hereinafter "SEF Final Rules"].

<sup>19</sup> See DCM Final Rules, 77 FR at 36718; SEF Final Rules, 78 FR at 33601.

<sup>20</sup> See 17 CFR 38.607.

<sup>21</sup> 17 CFR 1.73(a)(1) and 23.609(a)(1).

<sup>22</sup> 17 CFR 1.73(a)(2)(i) and 23.609(a)(2)(i).

<sup>23</sup> 17 CFR 1.11(e)(3)(ii). The Commission notes that the requirements of § 1.11(e)(3)(ii) fall within an FCM's broader obligation in § 1.11 to establish and maintain a formal "Risk Management Program." Such program must include a risk management unit independent of the business unit; quarterly risk exposure reports to senior management and the governing body of the FCM, with copies to the Commission; and other substantive requirements. Proposed Regulation AT would not require FCMs to subsume applicable requirements into their § 1.11 Risk Management Programs. However, the Commission is seeking public comment in the questions below regarding whether, in any final rules arising from this NPRM, FCMs should in fact be required to incorporate elements of Regulation AT proposed in §§ 1.80, 1.81, 1.83(a), and 1.83(c) into their § 1.11 Risk Management Programs. Such incorporation could help improve the interaction between an FCM's operational risk efforts pursuant to § 1.11(e)(3)(ii) and its pre-trade risk controls and development, monitoring, and compliance efforts pursuant to §§ 1.80, 1.81, 1.83(a), and 1.83(c). It could also help ensure that an FCM's §§ 1.80, 1.81, 1.83(a), and 1.83(c) processes benefit from the same internal rigor and independence required by § 1.11.

<sup>24</sup> 17 CFR 23.600(d)(9).

<sup>25</sup> See 17 CFR 180.1 and 180.2.

<sup>26</sup> See Antidistruptive Practices Authority, 78 FR 31890 (May 28, 2013).

<sup>27</sup> Concept Release, 78 FR 56542.

<sup>28</sup> See *id.* at 56546-47.

<sup>29</sup> See CME Group, "The World's Leading Electronic Platform. CME Globex," (2014) at 3, available at <http://www.cmegroup.com/globex/files/globexbrochure.pdf>.

distances.<sup>30</sup> On a smaller scale, co-location and proximity hosting are two common methods for reducing the distance, and thus latency, between market participants and the exchanges. Co-location services are now provided by most large electronic trading platforms within the United States.

Another important latency-reducing advance in connectivity discussed in the Concept Release is Direct Market Access (“DMA”). For purposes of the Concept Release, the Commission defined DMA as a connection method that enables a market participant to transmit orders to a trading platform without reentry or prior review by systems belonging to the market participant’s clearing firm.<sup>31</sup> DMA can be provided directly by an exchange or through the infrastructure of a third-party provider, but in all cases, DMA implies that an order is not routed through a clearing firm prior to reaching the trading platform.<sup>32</sup> For purposes of Regulation AT, as discussed in section IV(D)(7) below, the Commission proposes to define a slightly modified term: “Direct Electronic Access” (“DEA”), as opposed to Direct Market Access. Despite the slightly modified name, the Commission intends that the term “Direct Electronic Access” has a meaning similar to “Direct Market Access,” as such term was used in the Concept Release.<sup>33</sup>

The Concept Release discussed a set of risk controls that would be intended to operate at the same rapid speed at which trading occurs in the automated trading environment. As the industry reduces latency through improvements in technologies for the generation, transmission and execution of orders or management of other data, there is concern that the drive for ever lower latencies may lead to a competitive race toward progressively less stringent risk controls.<sup>34</sup> A separate, but related,

concern is that market participants may simply engage in trading at speeds beyond the abilities of their risk management systems, or those tasked with monitoring their activity. Risk management systems operating at these misaligned speeds could allow an active algorithm to breach its prescribed risk controls and disrupt one or more markets.

In light of the potential for disruptive trading events related to such high-speed algorithmic trading, the Concept Release addressed 23 potential risk controls and other measures broadly grouped into four categories. The first includes “pre-trade risk controls,” such as controls designed to prevent potential errors or disruptions from reaching trading platforms, or to minimize their impact once they have. A second category of safeguards includes “post-trade reports” and “other post-trade measures.” Examples in this category include reports that promote the flow of order, trade and position information; uniform trade adjustment or cancellation policies; and standardized error trade reporting obligations. The third category of risk controls discussed in the Concept Release is termed “system safeguards,” including safeguards for the design, testing and supervision of ATs, as well as measures such as “kill switches” that facilitate emergency intervention in the case of malfunctioning ATs.<sup>35</sup> Finally, the Concept Release presented a fourth category of measures focusing on various options for improving market functioning or structure.

*Comments Received on Concept Release and Commission Response.* The Commission received a total of 43 public comments on the Concept Release, including comments from DCMs, an array of trading firms, trade associations, public interest groups, members of academia, and consulting, technology and information service providers in the financial industry. All comments are available on [www.cftc.gov](http://www.cftc.gov). Many of the comments received are detailed and thorough, and

at 2 [hereinafter “CFTC TAC Recommendations”], available at [http://www.cftc.gov/ucm/groups/public/@swaps/documents/dsubmission/tacpresentation030111\\_ptfs2.pdf](http://www.cftc.gov/ucm/groups/public/@swaps/documents/dsubmission/tacpresentation030111_ptfs2.pdf).

<sup>35</sup> As explained in section IV(A) below, the Concept Release used the term “ATS” or “automated trading system” to refer to the algorithms used to automate the generation and execution of a trading strategy. For purposes of this NPRM, the Commission has determined to use the term “Algorithmic Trading” or “algorithmic trading system” (abbreviated as ATS), as opposed to the term “automated trading system.” For purposes of discussing comments to the Concept Release, the Commission may use the terms ATS and automated trading system as such terms were used in the Concept Release.

the Futures Industry Association (“FIA”) conducted surveys to gauge existing risk-management practices. Other commenters provided academic papers in support of their points of view.

Staff reviewed all comments received and made recommendations to the Commission. This NPRM reflects the Commission’s decision to propose regulations in certain areas addressed by the Concept Release, including: Registration of certain entities not otherwise registered with the Commission; enhanced identification of orders placed on exchanges; pre-trade risk controls at exchanges, trading firms and clearing firms; standards for development, testing and supervision of algorithmic systems; trading firm and clearing member FCM compliance reports regarding algorithmic trading; and self-trade prevention tools. Regulation AT also addresses several areas not covered in the Concept Release, including transparency in exchange trade matching systems and market-maker protections, and in certain cases seeks to clarify the scope of existing Commission regulations that may be impacted by the growth of automated trading environments.

### C. Other Recent Regulatory Responses

#### 1. SEC Regulatory Initiatives

The SEC has recently taken regulatory steps related to automated trading, aimed at preventing instability in the equities markets. Most significantly, the SEC adopted the Market Access Rule and Regulation SCI.

The Securities Exchange Act Rule 15c3–5—Risk Management Controls for Brokers or Dealers with Market Access (the “Market Access Rule”), adopted in November 2010, requires brokers and dealers to have risk controls in place before providing their customers with access to the market.<sup>36</sup> Specifically, the Market Access Rule requires risk controls that prevent entry of (i) orders exceeding appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer; and (ii) erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or those that indicate duplicative orders.<sup>37</sup>

<sup>36</sup> See Market Access Rule, 75 FR 69792 (Nov. 15, 2010); see also SEC Press Release No. 2010–210, “SEC Adopts New Rule Preventing Unfiltered Market Access” (Nov. 3, 2010), available at <http://www.sec.gov/news/press/2010/2010-210.htm>.

<sup>37</sup> See Market Access Rule, *supra* note 36 at 69825–26; see also SEC, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access (Apr. 15, 2014), available at <https://www.sec.gov/>

<sup>30</sup> See Concept Release, 78 FR at 56546.

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*

<sup>33</sup> The Commission notes that the term “direct electronic access” is also used in existing Commission regulation 38.607. Regulation AT does not modify § 38.607, and the term “direct electronic access” in § 38.607 will continue to have the meaning specified in that section.

<sup>34</sup> As noted by the Futures Industry Association’s Market Access Working Group, for example: “[p]re-trade risk controls have become a point of negotiation between trading firms and clearing members because they can add latency to a trade.” See FIA Market Access Risk Management Recommendations, *infra* note 97 at 8. Similarly, the TAC’s Pre-Trade Functionality Subcommittee noted that latency is a key area where trading firms and brokers are competing to gain an advantage. See TAC Pre-Trade Functionality Subcommittee, “Recommendations on Pre-Trade Practices for Trading Firms, Clearing Firms, and Exchanges Involved in Direct Market Access” (Mar. 1, 2011)

These risk controls must be under the direct and exclusive control of the broker-dealer (subject to certain exceptions) and regularly reviewed for effectiveness.<sup>38</sup> In October 2013, the SEC brought its first enforcement action under the Market Access Rule, securing a \$12 million settlement with Knight Capital in connection with the firm's August 2012 trading incident that disrupted the markets.<sup>39</sup>

On November 19, 2014, the SEC adopted Regulation Systems Compliance and Integrity ("Reg SCI").<sup>40</sup> Reg SCI applies to alternative trading systems, certain self-regulatory organizations (including registered clearing agencies), plan processors, and exempt clearing agencies (collectively, "SCI entities"). Under Reg SCI, SCI entities are required to have comprehensive policies and procedures in place for their technological systems. The SCI entities must, among other things, take appropriate corrective action when systems issues occur; provide notifications and reports to the SEC regarding systems problems and systems changes; inform members and participants about systems issues; conduct business continuity testing; implement standards that result in SCI systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and conduct annual reviews of their automated systems, which must be summarized in a report that is provided to the SEC.<sup>41</sup>

The SEC has also taken action in the area of enhancing oversight of proprietary trading firms. In March 2015, the SEC proposed a rule that would narrow an exemption that currently exempts certain broker-dealers from membership in a national securities association.<sup>42</sup> The exemption

*divisions/marketreg/faq-15c-5-risk-management-controls-bd.htm*.

<sup>38</sup> See Market Access Rule, *supra* note 36 at 69826.

<sup>39</sup> See SEC Press Release No. 2013-222, "SEC Charges Knight Capital With Violations of Market Access Rule" (Oct. 16, 2013), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539879795> [hereinafter "SEC Knight Capital Release"].

<sup>40</sup> See Reg SCI, 79 FR 72252 (Dec. 5, 2014); see also SEC Press Release No. 2014-260, "SEC Adopts Rules to Improve Systems Compliance and Integrity" (Nov. 19, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543496356#.VKQS2qxOlaQ>.

<sup>41</sup> See Reg SCI, *supra* note 40 at 72437-39.

<sup>42</sup> See SEC, Press Release No. 2015-48, "SEC Proposes Rule to Require Broker-Dealers Active in Off-Exchange Market to Become Members of National Securities Association" (Mar. 25, 2015) [hereinafter "SEC Press Release on Broker-Dealer

was originally designed to accommodate exchange specialists and other floor members that might need to conduct limited hedging or other off-exchange activities ancillary to their business.<sup>43</sup> Over time, proprietary trading firms were able to take advantage of this exemption.<sup>44</sup> The SEC's proposed rules would amend the exemption to target those broker-dealers for which it was originally designed, and require broker-dealers trading in off-exchange venues to become members of a national securities association. In the securities markets, this association is the Financial Industry Regulatory Authority ("FINRA").<sup>45</sup>

The SEC's Chair explained that the proposed rule "embodies a simple but powerful principle of the federal securities laws—the protection of investors and the stability of our markets require that trading is overseen by both the Commission and a strong self-regulatory organization."<sup>46</sup> In its preamble to the proposed rule, the SEC explained that, in the event that a broker-dealer trades electronically across a range of exchange and off-exchange venues, an individual exchange of which the broker-dealer is a member may be unable to effectively regulate the off-exchange activity of the broker-dealer, because the exchange may lack the resources or expertise to oversee such off-exchange activity.<sup>47</sup> The SEC viewed FINRA, the self-regulatory organization ("SRO") to which off-exchange trades are reported, as being in the best position to regulate cross-market activity by broker-dealers.<sup>48</sup>

The SEC has taken additional regulatory initiatives in this area. On July 11, 2012, the SEC adopted Rule 613 under Regulation NMS, requiring SROs to submit a plan to the SEC to create, implement, and maintain a consolidated audit trail ("CAT"). This audit trail is intended to increase the data available to regulators investigating illegal

Registration"], available at <http://www.sec.gov/news/pressrelease/2015-48.html#.VSbd9KwpBaQ>; Exemption for Certain Exchange Members, 80 FR 18036, 18042-43 (Apr. 2, 2015) [hereinafter "SEC Proposed Rule on Exemption for Certain Exchange Members"].

<sup>43</sup> See SEC Press Release on Broker-Dealer Registration, *supra* note 42.

<sup>44</sup> See *id.* The SEC estimates that there are approximately 125 firms exempt from association membership, which includes some of the most active cross-market proprietary trading firms. See SEC Proposed Rule on Exemption for Certain Exchange Members, 80 FR at 18042.

<sup>45</sup> See SEC Press Release on Broker-Dealer Registration, *supra* note 42.

<sup>46</sup> See *id.*

<sup>47</sup> SEC Proposed Rule on Exemption for Certain Exchange Members, 80 FR at 18042-43.

<sup>48</sup> See *id.* at 18041-45.

activities such as insider trading and market manipulation, and improve the ability to reconstruct broad-based market events in an accurate and timely manner.<sup>49</sup> The SROs submitted the plan on September 30, 2014.<sup>50</sup> In addition, in response to policy recommendations resulting from the Flash Crash events of May 6, 2010, the SEC and the securities industry implemented market-wide circuit breakers as well as a "limit up-limit down" mechanism in order to moderate price volatility in individual securities.<sup>51</sup> The SEC is also working to update its regulatory regime to improve firms' risk management of trading algorithms and to enhance regulatory oversight over their use.<sup>52</sup> The SEC is also developing an anti-disruptive trading rule to address the use of aggressive, potentially destabilizing trading strategies during vulnerable market periods.<sup>53</sup>

Finally, while not directly relevant to Commission-regulated markets, the SEC is working with equities exchanges and FINRA to minimize latency between different market feeds. Specifically, exchanges must not transmit data directly to customers any sooner than they transmit data to a securities information processor ("SIP"), the system that consolidates market feeds from all platforms and publishes the public price ticker. In addition, the technology used for transmitting data to the SIP must be on a par with what is used for transmitting data to direct feeds.<sup>54</sup> Finally, the SEC is working to address concerns associated with the fragmentation of trading venues, dark trading venues, and broker conflicts.<sup>55</sup>

## 2. FINRA Initiatives

In addition to the SEC, FINRA is developing rules focused on automated trading and transparency in the equities markets. In March 2015, FINRA published a Request for Comment proposing to require registration (as a "Limited Representative—Equity Trader") persons that are (1) primarily responsible for the design, development

<sup>49</sup> See SEC Press Release No. 2012-134, "SEC Approves New Rule Requiring Consolidated Audit Trail to Monitor and Analyze Trading Activity" (July 11, 2012), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171483188#.VKQkAqxOlaQ>.

<sup>50</sup> See SEC, "Rule 613 (Consolidated Audit Trail)," available at <http://www.sec.gov/divisions/marketreg/rule613-info.htm>.

<sup>51</sup> See Mary Jo White, Chairman, Securities and Exchange Commission, Enhancing Our Equity Market Structure (June 5, 2014), available at [http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VKP\\_o6xOlaS](http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VKP_o6xOlaS).

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

or significant modification of an algorithmic strategy; or (2) responsible for supervising such functions.<sup>56</sup> FINRA explained that given today's highly automated environment (according to FINRA, where firms trade using automated systems that initiate pre-programmed trading instructions based on specified variables, referred to as algorithmic trading strategies), it is concerned that persons involved in preparing or supervising algorithmic trading may lack adequate knowledge of securities rules and regulations, which could result in algorithms that do not comply with applicable rules.<sup>57</sup> Accordingly, FINRA believes such persons should meet the same minimum competency standards for knowledge of securities regulations that apply to individual traders.<sup>58</sup>

In March 2015, FINRA published a regulatory notice (15–09) providing guidance on supervision and control practices for algorithmic trading strategies in the equities markets.<sup>59</sup> The notice offered guidance on practices in five general areas: General risk assessment and response; software/code development and implementation; software testing and system validation; trading systems; and compliance. Among other practices, the notice recommended that firms should consider: Implementing a development and change management process that tracks the development of new trading code or material changes to existing code; implementing a basic summary description of algorithmic trading strategies that enables supervisory and compliance staff to understand the intended function of an algorithm; conducting testing to confirm that core code components operate as intended and do not produce unintended consequences; implementing controls, monitors, alerts and reconciliation processes that enable the firm to quickly identify whether an algorithmic is experiencing unexpected results; and providing for adequate communication between supervisory and compliance staff related to the function and control of algorithms such that the firm meets its regulatory obligations.<sup>60</sup>

<sup>56</sup> See FINRA, Regulatory Notice 15–06, “Registration of Associated Persons Who Develop Algorithmic Trading Strategies” (Mar. 2015), available at [http://www.finra.org/sites/default/files/notable\\_doc\\_file\\_ref/Notice\\_Regulatory\\_15-06.pdf](http://www.finra.org/sites/default/files/notable_doc_file_ref/Notice_Regulatory_15-06.pdf).

<sup>57</sup> See *id.* at 3.

<sup>58</sup> See *id.*

<sup>59</sup> See FINRA, Regulatory Notice 15–09, “Equity Trading Initiatives: Supervision and Control Practices for Algorithmic Trading Strategies” (Mar. 2015) [hereinafter “FINRA Notice 15–09”], available at <https://www.finra.org/industry/notices/15-09>.

<sup>60</sup> See *id.*

### 3. European and Other Regulatory Initiatives

#### a. ESMA

The European Securities and Markets Authority (“ESMA”) is an independent EU Authority established in January 2011. ESMA published guidelines on automated trading in February 2012, which became effective across the European Union on May 1, 2012.<sup>61</sup> The ESMA guidelines addressed the operation of an electronic trading system by a regulated market or a multilateral trading facility; the use of an electronic trading system, including a trading algorithm, by an investment firm for dealing on its own account or for the execution of orders on behalf of clients; and the provision of direct market access or sponsored access by an investment firm as part of the service of the execution of orders on behalf of clients.<sup>62</sup>

Among other elements, the ESMA guidelines recommended that trading platforms should have: Arrangements to prevent the excessive flooding of the order book; arrangements (such as throttling) to prevent capacity limits on messaging from being breached; and arrangements (for example, volatility interruptions or automatic rejection of orders which are outside of certain set volume and price thresholds) to constrain trading or to halt trading in individual or multiple financial instruments when necessary.<sup>63</sup> The ESMA guidelines also recommended that trading platforms should have procedures in place to identify potential market abuse in an automated trading environment, such as ping orders, quote stuffing, momentum ignition, and layering and spoofing.<sup>64</sup>

In addition, the ESMA guidelines recommended that investment firms should make use of clearly delineated development and testing methodologies prior to deploying an electronic trading system or a trading algorithm, and should monitor their electronic trading systems, including trading algorithms, in real-time.<sup>65</sup> ESMA also recommended that investment firms implement price and size parameters, systems that control messaging traffic to individual

trading platforms, financial risk controls, and controls that block a trader's orders if they are for a financial instrument that the trader does not have permission to trade.<sup>66</sup> As to orders submitted via direct market access and sponsored access, ESMA recommended, among other things, that such orders be submitted to the same pre-trade risk controls that it recommends for investment firms (including, for example, price and size parameters).<sup>67</sup>

On March 18, 2015, ESMA released a report finding that all 30 participating European Economic Area members have incorporated the Guidelines into their legal framework, and all except three have incorporated it into their supervisory framework.<sup>68</sup> The report went on to identify challenges to further enhancing compliance including: Market complexity, IT-knowledge, additional on-site inspections of markets, testing of trading halts, and setting up ring-defense against cyber-attacks.<sup>69</sup>

As discussed below, ESMA has performed additional work in the area of automated trading, such as developing technical standards for the requirements of MiFID II.

#### b. MiFID II

The European Commission published a new Directive on markets in financial instruments (“MiFID II”) on June 12, 2014.<sup>70</sup> The Directive contains a definition of both ‘algorithmic trading’ and ‘high-frequency algorithmic trading technique,’ which is defined as a specific type of algorithmic trading. Among other requirements, the Directive requires that an investment firm engaged in algorithmic trading must have effective systems and risk controls to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits, and prevent the sending of erroneous orders or other system activity that may create or contribute to a disorderly market.<sup>71</sup> Such a firm must also have effective business continuity arrangements to deal with any failure of its trading

<sup>66</sup> See *id.* at 14–15.

<sup>67</sup> See *id.* at 21–23.

<sup>68</sup> ESMA, Automated Trading Guidelines: ESMA Peer Review Among National Competent Authorities (Mar. 18, 2015), available at [http://www.esma.europa.eu/system/files/esma-2015-592-automated\\_trading\\_peer\\_review\\_report\\_publication\\_final\\_.pdf](http://www.esma.europa.eu/system/files/esma-2015-592-automated_trading_peer_review_report_publication_final_.pdf).

<sup>69</sup> See *id.* at 9–10.

<sup>70</sup> See European Commission, “Updated rules for markets in financial instruments: MiFID 2” (June 12, 2014) [hereinafter “MiFID II”], available at [http://ec.europa.eu/finance/securities/isd/mifid2/index\\_en.htm](http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm).

<sup>71</sup> See *id.* at Article 17(1).

systems and must ensure its systems are fully tested and properly monitored.<sup>72</sup> Furthermore, an investment firm that engages in a high-frequency algorithmic trading technique must store in an approved form accurate and time sequenced records of all its placed orders, including cancellations of orders, executed orders and quotations on trading venues and make them available to the competent authority upon request.<sup>73</sup>

The MiFID II Directive also requires a regulated market to be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that market or a related market during a short period. In exceptional cases, a regulated market must be able to cancel, vary or correct any transaction.<sup>74</sup> In addition, the Directive requires a regulated market to have in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms. A regulated market must also provide environments to facilitate such testing, to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market. The Directive requires a regulated market to implement systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached, and to limit and enforce the minimum tick size that may be executed on the market.<sup>75</sup>

The European Commission requested that ESMA develop technical and implementing standards for MiFID II. On May 22, 2014, ESMA published a consultation paper seeking comments on certain topics in connection with MiFID II, including “micro-structural issues” such as testing and risk control requirements for investment firms engaged in algorithmic trading and trading venues.<sup>76</sup> ESMA published another consultation paper on December 19, 2014, seeking further comments on technical and implementing standards in connection with the implementation of MiFID II and summarizing comments received in response to ESMA’s May

2014 paper.<sup>77</sup> The comment period for the December 19, 2014 consultation paper closed in March 2015. In late 2014, ESMA released a final report covering technical advice in certain areas, including the definition of algorithmic trading, HFT, and direct electronic access.<sup>78</sup> In July 2015, ESMA released final technical advice relating to investor protection topics, including procedures for financial services firms to apply for authorized status, information required of firms applying to passport into other jurisdictions, and co-operation between regulatory authorities.<sup>79</sup> On September 28, 2015, ESMA released a final report on draft regulatory and implementing technical standards for MiFID II (“2015 Final Draft Regulatory Standards”).<sup>80</sup> This report provides regulatory standards for investment firms engaged in algorithmic trading as well as for trading venues that allow algorithmic trading. Details regarding ESMA’s standards are discussed below as relevant to the Commission’s proposed regulations relating to risk controls and other measures that AT Persons, clearing member FCMs and DCMs must implement.

#### c. Other European Regulatory Initiatives

In May 2013, Germany enacted the Act on the Prevention of Risks and Abuse in High-frequency Trading (the

<sup>72</sup> ESMA, “Consultation Paper,” (Dec. 19, 2014) and accompanying Annexes A and B, available at [http://www.esma.europa.eu/system/files/2014-1570\\_cp\\_mifid\\_ii.pdf](http://www.esma.europa.eu/system/files/2014-1570_cp_mifid_ii.pdf).

<sup>73</sup> ESMA, “ESMA’s Technical Advice to the Commission on MiFID II and MiFIR,” (Dec. 19, 2014) [hereinafter “ESMA Technical Advice Final Report”], available at [http://www.esma.europa.eu/system/files/2014-1569\\_final\\_report\\_-\\_esmas\\_technical\\_advice\\_to\\_the\\_commission\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](http://www.esma.europa.eu/system/files/2014-1569_final_report_-_esmas_technical_advice_to_the_commission_on_mifid_ii_and_mifir.pdf).

<sup>74</sup> ESMA, Final Report: MiFID II/MiFIR draft Technical Standards on authorization, passporting, registration of third country firms and cooperation between competent authorities, Art. 6(g) (June 29, 2015), available at [http://www.esma.europa.eu/system/files/2015-esma-1006\\_-\\_mifid\\_ii\\_final\\_report\\_on\\_mifid\\_ip\\_technical\\_standards.pdf](http://www.esma.europa.eu/system/files/2015-esma-1006_-_mifid_ii_final_report_on_mifid_ip_technical_standards.pdf).

<sup>75</sup> ESMA, Final Report: Draft Regulatory and Implementing Technical Standards MiFID II/MiFIR (Sept. 28, 2015) [hereinafter, the “ESMA September 2015 Final Draft Standards Report”], available at [https://www.esma.europa.eu/system/files/2015-esma-1464\\_-\\_final\\_report\\_-\\_draft\\_rts\\_and\\_its\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](https://www.esma.europa.eu/system/files/2015-esma-1464_-_final_report_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf); ESMA, Regulatory technical and implementing standards—Annex 1 (Sept. 28, 2015) [hereinafter, the “ESMA September 2015 Final Draft Standards Report Annex 1”], available at [https://www.esma.europa.eu/system/files/2015-esma-1464\\_annex\\_i\\_-\\_draft\\_rts\\_and\\_its\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](https://www.esma.europa.eu/system/files/2015-esma-1464_annex_i_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf); ESMA, Cost-Benefit Analysis—Annex II, Draft Regulatory and Implementing Technical Standards MiFID II/MiFIR (Sept. 28, 2015), [hereinafter, the “ESMA September 2015 Cost-Benefit Annex II”], available at [https://www.esma.europa.eu/system/files/2015-esma-1464\\_annex\\_ii\\_-\\_cba\\_-\\_draft\\_rts\\_and\\_its\\_on\\_mifid\\_ii\\_and\\_mifir.pdf](https://www.esma.europa.eu/system/files/2015-esma-1464_annex_ii_-_cba_-_draft_rts_and_its_on_mifid_ii_and_mifir.pdf).

“High-frequency Trading Act”).<sup>81</sup> The High-frequency Trading Act requires that firms engaged in high-frequency trading must be licensed.<sup>82</sup> In summary, high-frequency trading is defined to include each of the following four elements: (i) Trading for one’s own account, or by proprietary trading firms; (ii) trading algorithmically without human intervention; (iii) trading using low-latency infrastructures; and (iv) trading that generates a high intraday message rate.<sup>83</sup> In addition, exchanges must impose, on a product-by-product basis, an excessive system usage fee and an order-to-trade ratio limit intended to prevent unnecessary messaging.<sup>84</sup> Finally, the High-frequency Trading Act requires identification of algorithmically generated orders and trading algorithms, which is intended to enhance monitoring of manipulative activity.<sup>85</sup>

In May 2015, the Bank of England’s Prudential Regulation Authority (“PRA”), the United Kingdom’s prudential supervisor of major trading firms, announced that it would assess the adequacy of existing risk measurement and management practices with respect to trading algorithms, including whether controls around algorithmic trading are “fit for purpose.”<sup>86</sup> The PRA discussed the growth of automated trading in financial markets, which has included incidents of extreme volatility. For example, volatility seen in the Swiss Franc exchange rate on January 15, 2015, following the Swiss central bank’s decision to remove a floor to the exchange rate, may have been exacerbated by high-frequency trading.<sup>87</sup>

Finally, in July 2015, the United Kingdom’s Financial Conduct Authority issued a consultation paper addressing strengthening accountability in

<sup>81</sup> See online summaries of High-frequency Trading Act (2013), available at [http://www.bafin.de/SharedDocs/Veranstaltungen/EN/WA11\\_20130430\\_hft\\_workshop\\_en.html](http://www.bafin.de/SharedDocs/Veranstaltungen/EN/WA11_20130430_hft_workshop_en.html).

<sup>82</sup> See *id.*; see also Morgan, Megan, Tabb Forum, “Decoding the German HFT Act: A Guide to Regulating Electronic Markets” (Oct. 17, 2014), available at <http://tabbforum.com/opinions/decoding-the-german-hft-act-how-to-regulate-electronic-markets>.

<sup>83</sup> See *id.*

<sup>84</sup> See *id.*

<sup>85</sup> See *id.*

<sup>86</sup> See Bailey, Andrew, Bank of England, “Financial Markets: Identifying risks and appropriate responses,” at 9 (May 15, 2015), available at <http://www.bankofengland.co.uk/publications/Documents/speeches/2015/speech814.pdf>.

<sup>87</sup> See *id.* at 5–6; Binham, Caroline, “High-frequency trading faces tougher Bank of England scrutiny,” Financial Times (May 15, 2015), available at <http://www.ft.com/intl/cms/s/0/f7d4e438-fb20-11e4-9aed-00144feab7de.html#axzz3aUzgw2N>.

<sup>72</sup> See *id.*

<sup>73</sup> See *id.* at Article 17(2).

<sup>74</sup> See *id.* at Article 48(5).

<sup>75</sup> See *id.* at Article 48(6).

<sup>76</sup> ESMA, “Consultation Paper,” (May 22, 2014), available at [http://www.esma.europa.eu/system/files/2014-549\\_-\\_consultation\\_paper\\_mifid\\_ii\\_-\\_mifir.pdf](http://www.esma.europa.eu/system/files/2014-549_-_consultation_paper_mifid_ii_-_mifir.pdf).

banking.<sup>88</sup> The proposed rule specifically set out to capture individuals responsible for the deployment of trading algorithms in its Certification Regime.<sup>89</sup> Pursuant to the proposal, individuals responsible for: (1) Approving the deployment of a trading algorithm or a material part of one; (2) approving the deployment of a material amendment to a trading algorithm or a material part of one, or the combination of trading algorithms; and (3) monitoring or deciding whether or not the use or deployment of a trading algorithm is or remains compliant with the firm's obligations would be captured and subject to the Certification Regime.<sup>90</sup>

#### d. The October 15 Joint Staff Report

As discussed above in section I(B), on July 13, 2015, five regulatory agencies issued the October 15 Joint Staff Report on the unusually high level of volatility and rapid round-trip in prices that occurred on October 15, 2014 in the market for U.S. Treasury securities, futures and other closely related financial markets.<sup>91</sup> In addition to discussing the events of October 15, the report includes an Appendix C that summarizes many of the risks of automated trading. These risks include the following: Operational risks (ranging from malfunctioning and incorrectly deployed algorithms to algorithms reacting to inaccurate or unexpected data); market liquidity risks (arising from abrupt changes in trading strategies even when a firm executes its strategy perfectly); market integrity risks (automated trading can provide new tools to engage in unlawful conduct); transmission risks (shocks based on erroneous orders impacting multiple markets); clearing and settlement risks (as more firms gain access to trading platforms, trades may not be subject to sufficient settlement risk mitigation techniques); and risks to effective risk management (the speed of trade execution may make critical risk mitigation devices less effective).

#### D. Industry and Regulatory Best Practices and Recommendations

Widely recognized organizations and governmental entities or agencies have issued "best practices" for automated

trading, including the National Futures Association ("NFA"), the FIA, ESMA, and the International Organization of Securities Commissions ("IOSCO"), among others.

#### 1. NFA Compliance Rule 2–9: Supervision

NFA, a registered futures association under Section 17 of the Act, has provided guidance regarding ATs to industry participants since 2002. Specifically, NFA Interpretive Notice 9046 addresses the "Supervision of the Use of Automated Order-Routing Systems" in the context of NFA's overarching supervision requirements in Compliance Rule 2–9 (Supervision).<sup>92</sup> The Commission believes that Compliance Rule 2–9 and Interpretive Notice 9046 are especially relevant because of their wide applicability as NFA membership rules, binding on FCMs, IBs, CPOs, CTAs, and other NFA members. In addition, these provisions and interpretations have been in place since at least 2006, such that NFA members—and by extension many AT Persons—will have been subject to regulatory requirements concerning algorithmic trading for many years.

Compliance Rule 2–9 requires each NFA member to "diligently supervise its employees and agents in the conduct of their commodity futures activities for or on behalf of the Member." Interpretive Notice 9046, first issued in 2002 and revised in 2006, states that NFA's board of directors "firmly believes that supervisory standards do not change with the medium used. How those standards are applied, however, may be affected by technology." To fulfill their supervisory responsibilities, NFA members "must adopt and enforce written procedures to examine the security, capacity, and credit and risk-management controls provided by the firm's automated order-routing systems (AORSs)." Interpretive Notice 9046 applies to systems "that are within a Member's control, including AORSs that are provided to the Member by an application service provider or an independent software vendor." NFA acknowledges that NFA members will not control an AORS chosen by an NFA customer, such as direct access systems provided by exchanges. In such circumstances, the NFA member must nevertheless adopt procedures "reasonably expected to address the trading, clearing, and other risks

attendant to [their] customer relationship[s]."

Among other requirements, Interpretive Notice 9046 addresses the following standards for automated systems:

- Pre-Execution Controls (including both credit and "fat-finger" protections): "An AORS should allow the Member to set limits for each customer based on commodity, quantity, and type of order or based on margin requirements. It should allow the Member to impose limits pre-execution and to automatically block any orders that exceed those limits."<sup>93</sup>

- Post-Execution Controls: "For customers subject to post-execution controls, the Member should have the ability to monitor trading promptly. The AORS should generate alerts when limits are exceeded through that system. The system should also allow the Member to block subsequent orders, either in their entirety or by kind (e.g., to block orders that create a new position or increase an existing position but not orders that liquidate some or all of an existing position)."<sup>94</sup>

- Direct Access Systems: "When authorizing [customer] use of a direct access system that does not allow the Member to monitor trading promptly, the Member should utilize pre-execution controls, if available, to set pre-execution limits for each customer, regardless of the nature of the customer."

- Review: "Members should use AORSs in conjunction with their credit-review/risk-management systems and should evaluate the controls imposed on each customer as part of their regular credit and risk-control procedures."

A number of the controls summarized above are in keeping with the Commission's proposed requirements for AT Persons, including proposed § 1.80, which requires pre-trade risk controls and other measures reasonably designed to prevent an Algorithmic Trading Event, including but not limited to maximum order message and execution frequencies per unit time; order price parameters and maximum order sizes; and certain order cancellation capabilities. The Commission notes once again its intent in much of Regulation AT to build on

<sup>88</sup> Financial Conduct Authority ("FCA"), CP15/22 Strengthening accountability in banking: Final rules (including feedback on CP14/31 and CP15/5) and consultation on extending the Certification Regime to wholesale market activities, at 46 (July 2015), available at <https://www.fca.org.uk/your-fca/documents/consultation-papers/cp15-22>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> See October 15 Joint Staff Report, *supra* note 10.

<sup>92</sup> NFA, "9046—Compliance Rule 2–9: Supervision of the Use of Automated Order-Routing Systems," (Dec. 12, 2006), available at <https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9046&Section=9>.

<sup>93</sup> Interpretive Notice 9046 does not require NFA members to "impose pre-execution controls on all customers, however. The Member should review the customer's sophistication, credit-worthiness, objectives, and trading practices and strategies when determining whether to impose controls pre-execution or post-execution and deciding what levels to use when setting limits."

<sup>94</sup> The Interpretive Notice adds that "[t]his ability can be provided by the AORS or through other risk-management systems."



existing regulatory requirements and industry practices so that its proposed regulations facilitate an ongoing transition to effective risk controls in algorithmic trading. The Commission believes that the existence of related regulatory standards enforced by NFA since 2002 and updated in 2006 would help minimize any potential disruptions or burdens that would otherwise be associated with a number of the Commission's proposed rules for AT Persons. The Commission also believes that NFA's prior experience in this area will assist in complying with the requirements of proposed § 170.19, discussed in detail in section IV(F) below.

## 2. FIA Reports on Automated Trading

On March 23, 2015, FIA released the "FIA Guide to the Development and Operation of Automated Trading Systems" (the "FIA Guide"), which provides recommendations concerning appropriate risk controls at the trader, broker and exchange levels.<sup>95</sup> Risk controls recommended by FIA include maximum order size limits, maximum intraday position limits, market data reasonability checks, price tolerance limits, repeated automated execution limits, exchange dynamic price collars, exchange market pauses, exchange message programs, message throttles, self-trade prevention tools, kill switches, cancel-on-disconnect service and exchange-provided order management tools. FIA also recommended audit trail procedures that identify automated trading system operators; certain post-trade measures to monitor for potential credit events or unintended trading; measures related to co-location services; and disaster recovery and business continuity procedures. Finally, FIA recommended measures related to automated trading system development and support, including general principles related to testing; policies and procedures related to security; systems monitoring procedures; and documentation procedures. Consistent with the approach the Commission intends to pursue in Regulation AT, the FIA Guide states that, "[c]are should be taken to avoid implementing overly prescriptive standards or rules that impose a one-size-fits-all approach to all entities."<sup>96</sup>

<sup>95</sup> FIA, "FIA Guide to the Development and Operation of Automated Trade Systems" (Mar. 23, 2015) [hereinafter "FIA Guide"], available at <https://fia.org/sites/default/files/FIA%20Guide%20to%20the%20Development%20and%20Operation%20of%20Automated%20Trading%20Systems.pdf>.

<sup>96</sup> *Id.* at 6.

The Commission encourages industry participants to consider FIA's recommendations. In the event that the FIA Guide recommends best practices that are not proposed in Regulation AT, the Commission encourages industry participants to consider implementing the FIA best practices if they are appropriate to their business and are reasonably designed to prevent an Algorithmic Trading Event. FIA's recommendations may also serve as a useful starting point for an RFA considering potential measures in response to proposed § 170.19, discussed in section IV(F) below.

FIA has issued several additional reports related to the appropriate best practices that should be implemented with respect to automated trading. In April 2010, FIA issued a report addressing the risks of direct market access and providing recommendations for risk controls to be implemented by exchanges and applied across all trading firms.<sup>97</sup> In November 2010, FIA's Principal Traders Group ("FIA PTG") released a report setting out recommended risk controls for trading firms that have direct access to exchange matching engines,<sup>98</sup> as well as a global survey of futures exchanges to determine what controls were in place to manage the risks in providing trading firms with direct market access.<sup>99</sup> In March 2012, FIA PTG and FIA European Principal Traders Association issued recommendations to assist trading firms in establishing internal procedures, processes and controls for the development, testing and deployment of trading software.<sup>100</sup> Finally, in September 2013, FIA released recommendations for increasing the usefulness of drop copy systems in exchange-traded markets.<sup>101</sup>

## 3. IOSCO Reports on Electronic Trading

IOSCO is an international body of securities regulators. IOSCO develops, implements and promotes adherence to internationally recognized standards for

<sup>97</sup> FIA, "Market Access Risk Management Recommendations," (Apr. 2010), available at [http://www.futuresindustry.org/downloads/Market\\_Access-6.pdf](http://www.futuresindustry.org/downloads/Market_Access-6.pdf).

<sup>98</sup> FIA PTG, "Recommendations for Risk Controls for Trading Firms," (Nov. 2010), available at [http://www.futuresindustry.org/downloads/Trading\\_Best\\_Practices.pdf](http://www.futuresindustry.org/downloads/Trading_Best_Practices.pdf).

<sup>99</sup> Sutphen, Leslie, "Exchange Survey Finds Wide Range of Risk Controls in Place," (Jan. 2011), available at <http://www.futuresindustry.org/downloads/RC-survey.pdf>.

<sup>100</sup> FIA PTG & EPTA, "Software Development and Change Management Recommendations," (Mar. 14, 2012), available at [http://www.futuresindustry.org/downloads/Software\\_Change\\_Management.pdf](http://www.futuresindustry.org/downloads/Software_Change_Management.pdf).

<sup>101</sup> FIA, "Drop Copy Recommendations," (Sept. 2013), available at [http://www.futuresindustry.org/downloads/FIA-Drop\\_Copy\(FINAL\).pdf](http://www.futuresindustry.org/downloads/FIA-Drop_Copy(FINAL).pdf).

securities regulation. Its membership regulates more than 95% of the world's securities markets in more than 115 jurisdictions.<sup>102</sup> In October 2011, IOSCO released recommendations to promote the integrity and efficiency of markets in order to mitigate risks posed by the latest technological developments.<sup>103</sup> Among other things, IOSCO recommended that regulators ensure that trading venues have in place suitable trading control mechanisms such as trading halts, volatility interruptions, and limit-up/limit-down controls to deal with volatile market conditions, as well as trading systems that have the ability to adjust to changes in message traffic (including sudden increases).<sup>104</sup> In addition, IOSCO recommended that all order flow of trading participants, regardless of whether they access the market directly, be subject to appropriate controls, including automated pre-trade controls. IOSCO also recommended that regulators should identify any risks arising from currently unregulated direct participants of trading venues and take steps to address them.<sup>105</sup>

More recently, in April 2015, IOSCO released a consultation report entitled "Mechanisms for Trading Venues to Effectively Manage Electronic Trading Risks and Plans for Business Continuity."<sup>106</sup> The report compiles the results of a survey that IOSCO sent to trading venues across more than 30 different jurisdictions. Based on the information compiled, the report proposes best practices that should be considered by trading venues when developing and implementing risk mitigation mechanisms. These practices are intended to promote the integrity, resiliency and reliability of trading systems and business continuity plans. With respect to managing risks originating from market participant technology, the report explains that most trading venues have policies, procedures and tools to detect and address the operational risks associated with electronic trading. These tools

<sup>102</sup> See IOSCO's public Web site, available at [https://www.iosco.org/about/?subsection=about\\_iosco](https://www.iosco.org/about/?subsection=about_iosco).

<sup>103</sup> Technical Committee of the IOSCO, "Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency: Final Report," (Oct. 2011), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf>.

<sup>104</sup> See *id.*

<sup>105</sup> See *id.*

<sup>106</sup> IOSCO, "Mechanisms for Trading Venues to Effectively Manage Electronic Trading Risks and Plans for Business Continuity: Consultation Report," (Apr. 2015) [hereinafter "IOSCO 2015 Consultation Report"], available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD483.pdf>.

include, among others, pre-trade risk controls (such as price and volume controls or filters and order entry controls), the ability to block, suspend or disconnect a user (e.g., a kill switch), measures to halt trading in the event of sudden price movements, and throttles that constrain the number or frequency of messages from any given participant.<sup>107</sup> IOSCO also explained that many trading venue participants use pre-trade risk controls such as order volume, price per security, credit, notional value of order, order value, capital, position checks, price deviation thresholds, and regulatory integrity checks.<sup>108</sup> Finally, IOSCO addressed direct market access by referring to a previous report it issued in 2010, called “Principles for Direct Electronic Access to Markets.” In that report, IOSCO recommended that intermediaries (including clearing firms) have adequate operational and technical capability to appropriately manage the risks posed by DEA.<sup>109</sup>

#### 4. CFTC TAC Subcommittee

In 2011, the Pre-Trade Functionality Subcommittee (“TAC Subcommittee”) of the CFTC’s TAC issued recommendations for pre-trade controls for trading firms, clearing firms and exchanges which use, or provide, direct market access.<sup>110</sup> The TAC Subcommittee recommended the following risk controls for trading firms: Quantity limits on individual orders; price collars; execution throttles; message throttles; and a kill switch that would cancel all existing orders and prevent the firm from placing new orders. The TAC Subcommittee further recommended that clearing firms trading on their own behalf should comply with those risk controls. In addition, clearing firms should confirm that their client firms are implementing such controls, approve the parameters used by the trading firm, and have access to the kill switch. Exchanges should implement, and require trading firms to use, pre-trade quantity limits on individual orders; intra-day position limits; price collars; and message throttles. The TAC Subcommittee also recommended that exchanges implement clear and consistent error trade policies, order cancellation

policies that allow for automatic cancellation of orders on disconnect, and the ability for clearing firms to view their firm’s orders and to cancel working orders.

#### 5. FIX Risk Management Working Group

Additional organizations have released best practices documents, including FIX Protocol Ltd.’s (“FIX”) Americas Risk Management Working Group. FIX is a non-profit, industry standards association that owns, maintains and continuously develops the Financial Information eXchange (FIX) Protocol in response to market requirements. In 2012, FIX released risk control guidelines for algorithmic trading orders and direct market access orders.<sup>111</sup> FIX identified typical order scenarios that brokers attempt to detect, which include the following: An order for an exceedingly large quantity; an order that will adversely impact the market for a given security; an order with incomplete or conflicting instructions; an order that is potentially duplicative or unintentionally repeating; an order where adverse or favorable price moves impact the order while it is working; and an order that may be stale or may have been replaced by the client or a system.<sup>112</sup> FIX explained that the absence of appropriate risk controls can result in market dislocation, failure to settle/deliver, conflict between the client’s intent and order execution, and trading the wrong product.<sup>113</sup> FIX provides a recommended matrix of risk controls, which includes maximum order quantity, average daily volume checks, price limit checks, favorable/adverse price move checks, position limits, credit checks, and stale, runaway, and duplicate order checks.<sup>114</sup>

#### 6. Senior Supervisors Group (SSG) Briefing Note

In April 2015, the Senior Supervisors Group (“SSG”), composed of the staff of banking and other financial regulatory agencies from ten countries and the European Union, issued an “Algorithmic Trading Briefing Note.”<sup>115</sup>

<sup>111</sup> See FPL Americas Risk Management Working Group, “Recommended Risk Control Guidelines,” (2012), available at [http://www.fixtradingcommunity.org/mod/file/view.php?file\\_guid=32127](http://www.fixtradingcommunity.org/mod/file/view.php?file_guid=32127).

<sup>112</sup> See *id.* at 5. Other scenarios include an order where the symbology cannot be resolved to a single security and large accrued long or short positions that may result in settlement and/or delivery risk if the client cannot settle the trade.

<sup>113</sup> See *id.*

<sup>114</sup> See *id.* at 22.

<sup>115</sup> See Senior Supervisors Group, “Algorithmic Trading Briefing Note,” (Apr. 2015) [hereinafter “SSG 2015 Note”], available at <http://www.newyorkfed.org/newsevents/news/banking/2015/SSG-algorithmic-trading-2015.pdf>.

The Note focused on how large financial institutions currently monitor and control for the risks associated with algorithmic trading during the trading day. The Note identified several risks that SSG believes are common to algorithmic trading across jurisdiction and asset class: (i) Systemic risk may be amplified; (ii) algorithmic trading desks may face a significant amount of risk intraday without transparency and robust controls; (iii) internal controls may not have kept pace with speed and market complexity; and (iv) without adequate controls, losses can accumulate and spread rapidly.<sup>116</sup> The Note provided a list of principles for supervisors to consider when evaluating controls over algorithmic trading at banks: (a) Controls must keep pace with technological complexity and trading speeds; (b) governance and management oversight can limit exposure to losses and improve transparency; (c) testing needs to be conducted during all phases of a trading product’s lifespan, namely during development, rollout to production, and ongoing maintenance; and (d) when assessing control depth and suitability, management should ensure sufficient involvement of control functions (including compliance, technology, legal, and controllers), as well as business-unit management.<sup>117</sup>

#### 7. Treasury Market Practices Group Best Practices

In June 2015, the Treasury Market Practices Group, a group sponsored by the Federal Reserve Bank of New York, and comprised of legal, compliance and business representatives from institutions related to U.S. Treasury market primary and secondary trading, released a white paper on Automated Trading<sup>118</sup> and an updated Best Practices document for trading in U.S. cash Treasury securities markets.<sup>119</sup> The

[www.newyorkfed.org/newsevents/news/banking/2015/SSG-algorithmic-trading-2015.pdf](http://www.newyorkfed.org/newsevents/news/banking/2015/SSG-algorithmic-trading-2015.pdf). The SSG includes staff from the following organizations: Canadian Office of the Superintendent of Financial Institutions, the European Central Bank Banking Supervision, the French Prudential Control and Resolution Authority, the German Federal Financial Supervisory Authority, the Bank of Italy, the Japanese Financial Services Agency, the Netherlands Bank, the Bank of Spain, the Swiss Financial Market Supervisory Authority, the United Kingdom’s Prudential Regulatory Authority, and, in the United States, the Office of the Comptroller of the Currency, the Securities and Exchange Commission, and the Federal Reserve.

<sup>116</sup> See *id.* at 2–3.

<sup>117</sup> See *id.* at 3–4.

<sup>118</sup> See Treasury Market Practices Group, “Automatic Trading in Treasury Markets,” (June 2015), available at [http://www.newyorkfed.org/tmpg/TPMG\\_June%202015\\_automated%20trading\\_white%20paper.pdf](http://www.newyorkfed.org/tmpg/TPMG_June%202015_automated%20trading_white%20paper.pdf).

<sup>119</sup> See Treasury Market Practices Group, “Best Practices for Treasury, Agency Debt, and Agency

<sup>107</sup> See *id.* at 20–21.

<sup>108</sup> See *id.*

<sup>109</sup> See *id.* at 22–23. IOSCO uses the term DEA or “direct electronic access” to mean an arrangement where a client of an intermediary obtains access to the market through the intermediary’s infrastructure or access without using the intermediary’s systems. See *id.* at 20 n.56.

<sup>110</sup> See CFTC TAC Recommendations, *supra* note 34.

Best Practice updates, among other things, expanded the scope of recommended risk controls that address the risks of automated trading (automated trading, for purposes of the Best Practices document, means the subset of electronic trading that relies on computer algorithms for decision-making and execution of order submissions), including the documentation of internal policies and procedures, additional transparency in exchange or trading platform market data, error trade rules and exchange provided services, expanded design and testing environments at firms and exchanges, and updated risk controls that align with the speed of trading technology. The white paper notes that these updates were issued in a period when cash Treasury securities markets, like many other asset classes, have experienced a strong increase in automated trading on electronic platforms.

### III. Recent Disruptive Events in Automated Trading Environments

The Concept Release discussed malfunctions in automated trading systems, in both derivatives and securities markets, that illustrate the technological and operational vulnerabilities inherent to automated trading environments.<sup>120</sup> As an example, the Flash Crash of May 2010 involved an automated trading system with a design flaw that impacted both the derivatives and securities markets. According to the CFTC/SEC joint report on the Flash Crash, an automated execution algorithm did not take price or time variables into account. Given the parameters of the program, the algorithm continued to send orders even as prices moved far beyond traditional daily ranges.<sup>121</sup> In another example, in 2012 a securities trading firm, Knight Capital Group, made a coding error in an automated equity router, and then incorrectly deployed new code in the same router.<sup>122</sup> Because of these coding errors, the firm's automated trading system inadvertently built up unintended positions in the equity market, eventually resulting in losses of more than \$460 million for the firm.<sup>123</sup>

Mortgage-Backed Securities Markets," (June 2015), available at [http://www.newyorkfed.org/tmpg/TPMG\\_June%202015\\_Best%20Practices.pdf](http://www.newyorkfed.org/tmpg/TPMG_June%202015_Best%20Practices.pdf).

<sup>120</sup> See Concept Release, 78 FR at 56548–49.

<sup>121</sup> See U.S. Commodity Futures Trading Commission and U.S. Securities and Exchange Commission, "Findings Regarding the Market Events of May 6, 2010," (September 30, 2010) [hereinafter, the "Flash Crash Report"], available at <http://www.cftc.gov/ucm/groups/public/otherif/documents/ifdocs/staff-findings050610.pdf>.

<sup>122</sup> See SEC Knight Capital Release, *supra* note 39.

<sup>123</sup> See *id.*

The malfunction impacted the broader market, creating swings in the share prices of almost 150 companies; these price swings were high enough to trigger pauses in the trading of five stocks.<sup>124</sup>

Foreign markets have also experienced disruptive events in recent years. For example, in May 2012 in Mexico, a "fat finger" error by a market participant resulted in the execution of 1.13 million shares (representing U.S. \$3.78 billion).<sup>125</sup> In February 2015, there was a five minute delay in opening futures and options on the Eurex exchange in Germany because a market participant's system was transmitting duplicate orders.<sup>126</sup> In February 2014, trading in three-year Korean treasury bonds was halted for almost two hours at the Korea Exchange due to a system malfunction resulting from an improper order from a brokerage house.<sup>127</sup> On October 26, 2011, the Bombay Stock Exchange had to cancel all derivatives trading due to unusually high volumes and price volatility as a result of a flawed algorithm used by a member firm.<sup>128</sup>

Goldman Sachs was recently fined \$7 million by the SEC for violating its Market Access Rule and causing a disruptive trading event.<sup>129</sup> On August 20, 2013, a configuration error in one of Goldman's options order routers erroneously sent thousands of limit orders to the options exchanges prior to the start of regular market trading.<sup>130</sup> By the time the creation of additional orders was disabled, and efforts to cancel unintended orders were taken, approximately 1.5 million unintended orders (representing 150 million underlying shares) had been executed

<sup>124</sup> See Strasburg, Jenny and Bunge, Jacob, "Loss Swamps Trading Firm," Wall St. J. (Aug. 2, 2012), available at <http://online.wsj.com/article/SB10000872396390443866404577564772083961412.html> and Valetkevitch, Caroline and Mikolajczak, Chuck, "Error by Knight Rips Through Stock Market," Reuters (Aug. 1, 2012), available at <http://www.reuters.com/article/2012/08/01/us-usa-nyse-tradinghalts-idUSBRE8701BN20120801>.

<sup>125</sup> See IOSCO 2015 Consultation Report, *supra* note 106 at 1 n.6.

<sup>126</sup> See *id.* and "Technical Failure Delays Eurex Trading in Futures, Options," Bloomberg (Feb. 17, 2015), available at <http://www.bloomberg.com/news/articles/2015-02-17/eurex-futures-options-opening-delayed-after-technical-problem>.

<sup>127</sup> See "Treasury trading system disrupted," Korea Times (Feb. 14, 2014), available at [https://www.koreatimes.co.kr/www/news/biz/2014/09/488\\_151619.html](https://www.koreatimes.co.kr/www/news/biz/2014/09/488_151619.html).

<sup>128</sup> See "Sebi probes Muhurat trading mishap on BSE," Business Standard (Nov. 12, 2011), available at [http://www.business-standard.com/article/markets/sebi-probes-muhurat-trading-mishap-on-bse-11111200083\\_1.html](http://www.business-standard.com/article/markets/sebi-probes-muhurat-trading-mishap-on-bse-11111200083_1.html).

<sup>129</sup> See *In re Goldman, Sachs & Co.*, No. 3–16665 (SEC June 30, 2014) (order instituting administrative and cease-and-desist proceedings).

<sup>130</sup> *Id.* at 2.

on the market.<sup>131</sup> The existing risk management controls and supervisory procedures in place at Goldman failed to stop the erroneous orders, and human error and failure to follow best practices exacerbated the errors.<sup>132</sup> While some erroneous orders were able to be cancelled, Goldman's loss ultimately totaled \$38 million.<sup>133</sup>

Disruptive events illustrate the importance of effective risk controls. The risk controls contemplated in Regulation AT are intended to limit the extent of market disruption caused by ATs or trading platform malfunctions. For example, a pre-trade risk control such as a message throttle will prevent submission of orders that exceed a predetermined frequency per unit time. Such a control could be operated by the market participant generating orders, the clearing firm guaranteeing its trades, or the trading platform on which orders would be executed, and would limit the impact of an algorithmic trading system not operating as intended. As another example, monitoring and supervision standards for algorithmic trading may help ensure that human supervisors intervene quickly when automated systems experience unexpected or degraded performance, and that supervision staff have the both the authority and knowledge to take appropriate steps in this scenario.

### IV. Overview of Regulation AT

#### A. Concept Release/Regulation AT Terminology

The Concept Release used the term "automated trading system" (abbreviated "ATS") to refer to the algorithms used to automate the generation and execution of a trading strategy.<sup>134</sup> In discussing comments to the Concept Release, the Commission will continue to use the term automated trading system. However, for greater precision, the proposed rules and preamble for Regulation AT instead refer to "algorithmic trading system" (also abbreviated "ATS"). This change is intended only as a change in nomenclature. ATs as described herein should not be confused with alternative trading systems in equities markets.

#### B. Commenter Preference for Principles-Based Regulations

As an initial matter, the Commission notes a preference expressed in comments to the Concept Release for principles-based, as opposed to prescriptive, regulations. Fifteen

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 3.

<sup>133</sup> *Id.* at 2.

<sup>134</sup> Concept Release, 78 FR 56542, 56544.

commenters advocated a limited or “principles-based” approach to any regulation arising from the Concept Release.<sup>135</sup> Commenters indicated that prescriptive requirements will become obsolete, stifle innovation, discourage self-reporting of technological failures, may not account for the unique characteristics of market participants, and would result in participants designing around such measures.<sup>136</sup>

More specifically, FIA<sup>137</sup> and CME Group, Inc. (“CME”) suggested that the best way to achieve standardization of risk controls is through implementing “best practices” developed through working groups of DCMs, FCMs, and other market participants.<sup>138</sup> Similarly, IntercontinentalExchange, Inc. (“ICE”) indicated that “exchanges are able to better implement and update risk controls on a market-by-market basis than through a Commission rulemaking,” and should be allowed flexibility in designing exchange risk controls.<sup>139</sup> Susquehanna International Group (“SIG”) stated that the Commission should “allow the exchanges to work with firms on tailoring the rules for implementation in ways that best consider the technical intricacies between firms and exchanges.”<sup>140</sup> Virtu Financial LLC (“VFL”) suggested that “mandating risk controls and supervisory systems that are ‘reasonably designed’ or ‘provide reasonable assurance’ of protection would allow participants to tailor these

controls to the specific risks associated with their business.”<sup>141</sup>

In addition, five commenters indicated that the Commission already has robust regulations in place to address the risks of automated trading.<sup>142</sup> Such comments cited the DCM and SEF Core Principles;<sup>143</sup> Commission regulations 1.73, 23.609, 38.255, and 38.607;<sup>144</sup> and CEA and Commission market manipulation and disruptive trading practices rules.<sup>145</sup>

In contrast to a limited or principles-based approach to regulation, several commenters supported a more prescriptive approach to a rulemaking addressing the risks of automated trading.<sup>146</sup> These commenters include the Institute for Agriculture and Trade Policy (“IATP”), Better Markets, and Americans for Financial Reform (“AFR”). For example, IATP stated that unless the Commission receives documentation that the risk controls of firms and exchanges are consistent and effective, the Commission should assume that regulatory standardization will be beneficial for each risk control and at each phase of the trade lifecycle.<sup>147</sup> In addition, several academic commenters discussed concerns with automated, high speed trading and advocated specific changes to the trade matching or order submission process to increase market liquidity and efficiency.<sup>148</sup>

As discussed below, consistent with comments received, the Commission has taken a balanced approach to the regulations it believes are necessary to manage the risks of algorithmic trading. For example, the Commission proposes a principles-based approach to its risk controls requirements, in that it would require particular controls but allow the relevant entity—a trading firm, clearing member FCM, or DCM—discretion in the design of such control and the parameters that would be used.

### C. Multi-Layered Approach to Pre-Trade Risk Controls and Other Measures

In response to the Commission’s questions in the Concept Release about the appropriate location for risk controls and other measures, commenters generally supported a multi-layered approach to risk controls, with each level—trading firm, clearing firm, and exchange—implementing risk controls that are adjusted depending on circumstance.<sup>149</sup>

For example, FIA commented that “[i]ntroducing redundant risk controls at more than one focal point in the trading lifecycle may increase the integrity of the marketplace when careful consideration is given to their differences in roles, implementations and configurations.”<sup>150</sup> However, FIA also stated that “we caution against a mandated proliferation of redundant risk controls because the existence of similar but not identically implemented risk controls may do more harm than good. Each new implementation of a control will increase complexity and may cause misunderstanding between traders and risk managers as a consequence of conflicting risk limits.”<sup>151</sup> As an example of a control that may be appropriately implemented at multiple levels, FIA stated that maximum order size limits may be implemented at both market participant and FCM levels without redundancy because they reflect the different responsibilities of each participant.<sup>152</sup> FIA further explained that if an FCM has implemented customer-specific controls within its infrastructure, it would be redundant to use the same controls at the DCM level, though as an additional protection, it is permissible to set higher limits at the DCM that apply across all customers.<sup>153</sup>

CME cited the TAC Subcommittee’s “Recommendations on Pre-Trade Practices for Trading Firms, Clearing Firms and Exchanges Involved in Direct Market Access,” and commented that “each level of the ‘electronic trading ‘supply chain’ (trading firms, clearing firms, and exchanges) must share in the effort to preserve market integrity through the implementation of effective risk controls, no matter if that participant has direct market access or is routing to the exchange via its clearing member firm”.<sup>154</sup> Specifically

<sup>135</sup> The Futures Industry Association (“FIA”) Comment Letter (Dec. 11, 2013) at 2, 12; CME Group (“CME”) Comment Letter (Dec. 11, 2013) at 3, 41–42; Gelber Group, LLC (“Gelber”) Comment Letter (Dec. 9, 2013) at 1–2; KCG Holdings, Inc. (“KCG”) Comment Letter (Dec. 11, 2013) at 3; The Alternative Investment Management Association (“AIMA”) Comment Letter (Dec. 11, 2013) at 1; The Minneapolis Grain Exchange (“MGEX”) Comment Letter (Dec. 11, 2013) at 1; CBOE Futures Exchange, LLC (“CFE”) Comment Letter (Dec. 11, 2013) at 2; Managed Funds Association (“MFA”) Comment Letter (Dec. 11, 2013) at 2; Holly Bell (Bell”) Comment Letter (Dec. 11, 2013) at 3; Virtu Financial LLC (“VFL”) Comment Letter (Jan. 10, 2014) at 2–3; Chris Barnard Comment Letter (Jan. 29, 2014) at 2; Susquehanna International Group (“SIG”) Comment Letter at 2; IntercontinentalExchange Group, Inc. (“ICE”) Comment Letter (Feb. 14, 2014) at 1–2; 3Red Trading LLC (“3Red”) Comment Letter (Feb. 14, 2014) at 2; OneChicago, LLC (“OneChicago”) Comment Letter (Feb. 14, 2015) at 5.

<sup>136</sup> FIA at 2, 12; CME at 3–4, 7; Gelber at 1–2; Tellefsen and Company, L.L.C. (“TCL”) Comment Letter (Oct. 31, 2013) at 5, 18; AIMA at 1, 2; CFE at 2; VFL at 3; Bell at 3.

<sup>137</sup> The Commission notes that six entities submitted letters in support of FIA’s comment letter: RGM Advisors, LLC, Allston Trading LLC, Geneva Trading USA, LLC, Tibra Trading America LLC, DRW Trading Group and IMC Financial Markets.

<sup>138</sup> FIA at 63; CME at 41.

<sup>139</sup> ICE at 1–2.

<sup>140</sup> SIG at 2.

<sup>141</sup> VFL at 3.

<sup>142</sup> CME at 3; FIA at 5; MFA at 6; Gelber at 2, 5, 20; Bell at 2, 4.

<sup>143</sup> Gelber at 21; CFE at 1; MFA at 6.

<sup>144</sup> MFA at 4; CFE at 1.

<sup>145</sup> Gelber at 2, 5, 20; CFE at 3; CME at 3; MFA at 6; Bell at 2.

<sup>146</sup> The Institute for Agriculture and Trade Policy (“IATP”) Comment Letter (Dec. 11, 2013) at 4; Better Markets Inc. (“Better Markets”) Comment Letter (Dec. 11, 2013) at 1; Americans for Financial Reform (“AFR”) Comment Letter (Dec. 11, 2013) at 6.

<sup>147</sup> IATP at 4.

<sup>148</sup> Eric Budish et al. Comment Letter (Feb. 14, 2014) at 1; Brian F. Mannix Comment Letter (Dec. 10, 2013) at 2; Elaine Wah et al. Comment Letter (Dec. 11, 2013) at 2.

<sup>149</sup> CME at 8–9; FIA at 61; Federal Reserve Bank of Chicago (“Chicago Fed”) Comment Letter (Dec. 11, 2013) at 2; AIMA at 7; KCG at 2; VFL at 2.

<sup>150</sup> FIA at 61.

<sup>151</sup> See *id.*

<sup>152</sup> FIA at 62.

<sup>153</sup> See *id.*

<sup>154</sup> CME at 7–8.

with respect to kill switch functionality, CME indicated that kill switch functionality deployed at multiple levels should not be considered redundant.<sup>155</sup> CME further suggested that while multi-layered kill switch functionality is not necessary for effective risk control, it is nevertheless beneficial as it adds additional measures of protection.<sup>156</sup> CME made a general point that registrants should establish controls appropriate to the nature of their business that are reasonably designed to control access, effectively monitor trading, and prevent errors as well as other inappropriate activity.<sup>157</sup> CME indicated that, regardless of whether orders are entered manually through an electronic system or entered through an automated trading system, such principles are equally important, because the method of order entry does not lessen the impact of a particular order on the market.<sup>158</sup>

Other commenters supported a multi-layered approach to risk controls. AIMA indicated that risk controls should be “broadly similar” and applied at the trading firm, clearing firm, and exchange levels.<sup>159</sup> KCG stated that “risk management is most effective when it is multi-layered and overlapping.”<sup>160</sup> VFL stated that a “multilayered system of risk controls is a key ingredient to protect the market from disruptive events.”<sup>161</sup>

The Commission agrees with the comments above that it should adopt a multi-layered approach to regulations intended to mitigate the risks of automated trading. As explained below, the Commission proposes to impose requirements at multiple stages of the lifecycle of an order. The Commission acknowledges FIA’s comment that the different role of entities at various stages in the trade lifecycle must be carefully evaluated. While Regulation AT requires the same types of pre-trade and other risk controls to be implemented by different entities, the Commission notes that the proposed regulations allow for discretion in the appropriate design and parameters of each risk control. Accordingly, a trading firm, clearing member FCM, and DCM may each choose to design and calibrate the same control in different ways, depending on how the control is used by each entity to manage risks.

The Commission notes that ESMA’s 2015 Final Draft Regulatory Standards require pre-trade risk controls at both investment firms and trading venues.<sup>162</sup> ESMA acknowledged commenter disagreement with such redundancy and stated, “ESMA believes that at least two lines of defence are appropriate in this complex business and thus continues to require the pre-trade risk controls conducted by both investment firms and trading venues.”<sup>163</sup> ESMA’s regulatory standards further provide that where a client is granted market access either through an intermediary’s systems, or directly without using the intermediary’s systems, the direct electronic access provider must apply the required pre-trade risk controls.<sup>164</sup> Regulation AT requires pre-trade and other risk controls at both the AT Person and clearing member FCM level (as well as the DCM level) based on its understanding that the risks—and the resulting calibration levels of the controls—may be different given those entities’ distinct priorities and understanding of the risks to themselves and their customers.

Below is a summary of each element of Regulation AT. For each element, the Commission addresses relevant Concept Release comments, summarizes the proposed regulation, and asks questions concerning the proposed regulation.

#### D. Codification of Defined Terms Used Throughout Regulation AT

##### 1. “Algorithmic Trading”—§ 1.3(zzzz)

###### a. Concept Release Comments

The Concept Release requested comment concerning whether the Commission should define ATS or algorithm for purposes of any ATS identification system. Commenters disagreed on whether the Commission should adopt a definition of “ATS.” FIA and CME opposed a regulatory definition, arguing that industry already has a definition of automated trading system.<sup>165</sup> FIA and CME indicated that

the definition of ATS is self-evident and has been in use for a long time, and that ATS, or automated orders, are orders that are generated and/or routed without human intervention. This includes orders generated by a computer system as well as orders that are routed using functionality that manages order submission by automated means (*i.e.*, execution algorithms).<sup>166</sup> Another commenter, Gelber Group, LLC (“Gelber”), stated that the Commission should adopt a “strong but appropriately flexible definition” of ATS aligned with existing exchange definitions.<sup>167</sup>

The Commission’s evaluation of this issue is also informed by the work of the TAC Subcommittee. In particular, the TAC Subcommittee described “automated trading” as follows: “[Automated trading] covers systems employed in the decision-making, routing and/or execution of an investment or trading decision, which utilizes a range of technologies including software, hardware, and network components to facilitate efficient access to the financial markets via electronic trading platforms.”<sup>168</sup>

###### b. Description of Regulation

While the Commission does not define the term “ATS” in this NPRM, the Commission does propose a new § 1.3(zzzz) that defines the related activity of “Algorithmic Trading.” This proposed term means trading in any commodity interest as defined in Regulation 1.3(yy)<sup>169</sup> on or subject to the rules of a DCM, where: (1) One or more computer algorithms or systems determines whether to initiate, modify, or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: the product to be traded; the venue where the order will be placed; the type of order to be placed; the timing of the order; whether to place the order; the sequencing of the order in relation to other orders; the price of the order; the quantity of the

<sup>162</sup> ESMA September 2015 Final Draft Standards Report, *supra* note 80 at 201.

<sup>163</sup> See *id.*

<sup>164</sup> ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 218.

<sup>165</sup> FIA at 41–42; CME at 29. CME defines “ATS” as “a trading method in which a computer makes decisions and enters orders without a person entering those orders. This is a programmatic way of representing the trader.” See CME Glossary, available at <http://www.cmegroup.com/education/glossary.html>. ICE defines “ATS” as “any system that automates the generation and submission of orders to ICE.” See ICE Notice, Revision to Authorized Trader Requirements (Jan. 4, 2011) at 3, available at [https://www.theice.com/publicdocs/otc/advisory\\_notices/ICE%20Advisory%20Notice%20for%20Authorized%20Trader%20Registration%2010411.pdf](https://www.theice.com/publicdocs/otc/advisory_notices/ICE%20Advisory%20Notice%20for%20Authorized%20Trader%20Registration%2010411.pdf).

<sup>166</sup> FIA at 41; CME at 29.

<sup>167</sup> Gelber at 2–3.

<sup>168</sup> CFTC Technology Advisory Committee Subcommittee on Automated and High-Frequency Trading, Presentation to the TAC (Oct. 12, 2012), available at [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/tac103012\\_wg1.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/tac103012_wg1.pdf).

<sup>169</sup> Regulation 1.3(yy) provides that the term “commodity interest” means (1) any contract for the purchase or sale of a commodity for future delivery; (2) any contract, agreement or transaction subject to a Commission regulation under section 4c or 19 of the Act; and (3) Any contract, agreement or transaction subject to Commission jurisdiction under section 2(c)(2) of the Act; and (4) Any swap as defined in the Act, by the Commission, or jointly by the Commission and the Securities and Exchange Commission. See 17 CFR 1.3(yy).

<sup>155</sup> CME at 22.

<sup>156</sup> See *id.*

<sup>157</sup> CME at 43–44.

<sup>158</sup> See *id.*

<sup>159</sup> AIMA at 7.

<sup>160</sup> KCG at 2.

<sup>161</sup> VFL at 2.

order; the partition of the order into smaller components for submission; the number of orders to be placed; or how to manage the order after submission; and (2) such order, modification or order cancellation is electronically submitted for processing on or subject to the rules of a DCM; provided, however, that Algorithmic Trading does not include an order, modification, or order cancellation whose every parameter or attribute is manually entered into a front-end system<sup>170</sup> by a natural person, with no further discretion by any computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a DCM.<sup>171</sup>

The term “Algorithmic Trading” is a critical underpinning of other elements of this NPRM. Specifically, the Commission proposes a number of requirements related to Algorithmic Trading, including that trading firms (*i.e.*, AT Persons, as defined in section IV(D) below), clearing member FCMs, and DCMs implement certain pre-trade risk controls for Algorithmic Trading; that trading firms implement certain standards for the development, testing, monitoring, and compliance of ATs; and that trading firms and clearing members FCMs submit compliance reports describing the new pre-trade risk controls. In addition, the term “Algorithmic Trading” is employed in the proposed definition of “AT Person,” a term that identifies those persons or entities subject to the Commission’s proposed new pre-trade risk control requirements, among other requirements.

The Commission notes that its definition of Algorithmic Trading is similar to the definition of algorithmic trading adopted by the European Commission under MiFID II.<sup>172</sup>

<sup>170</sup> The reference to a “front-end system” may include a system provided by an independent software vendor (“ISV”), a broker or an exchange, or developed internally.

<sup>171</sup> The Commission notes that if a customer submits an order to its clearing FCM, which then submits the order to a DCM, such order would still be considered “electronically submitted for processing on or subject to the rules of a designated contract market,” notwithstanding the fact that the order is routed through the intervening clearing FCM.

<sup>172</sup> See ESMA Technical Advice Final Report, *supra* note 78 at 318. Article 4(1)(39) of MiFID II defines algorithmic trading as “trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used for the purpose of routing orders to one or more trading venues or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.” See MiFID II, *supra* note 70. The

However, the definition of algorithmic trading under MiFID II does not include systems that only make decisions as to the routing of orders to one or more trading venues.<sup>173</sup> Similarly, for purposes of a proposal relating to registration of persons who develop algorithmic trading strategies, FINRA’s definition of “algorithmic trading strategy” does not include an order router alone.<sup>174</sup> In contrast to MiFID II and FINRA, the Commission intends that the definition of Algorithmic Trading includes systems that make determinations regarding any aspect of the routing of an order, *i.e.*, systems that only make decisions as to the routing of orders to one or more trading venues. The Commission believes that automated order routers have the potential to disrupt the market to a similar extent as other types of automated systems, and therefore should not be treated differently under the proposed regulations. For example, the SEC determined that Knight Capital made errors related to the coding and testing of an automated equity router, which caused the firm to acquire several billion dollars in unwanted positions and sustain a loss of more than \$460 million, in addition to causing substantial market disruption.<sup>175</sup>

The Commission has taken this approach to automated order routers after considering existing industry definitions of “automated trading systems.” For example, CME defines “ATS” as “a trading method in which a computer makes decisions and enters orders without a person entering those orders. This is a programmatic way of representing the trader.”<sup>176</sup> Similarly, ICE defines “ATS” as “any system that automates the generation and submission of orders to ICE.”<sup>177</sup> The

ESMA Technical Advice Final Report states at 323, “There is limited or no human intervention (and therefore algorithmic trading) when the system at least makes independent decisions at any stage of order-execution processes, either on initiating, routing or executing orders. It is noted that the reference to ‘orders’ encompasses ‘quotes’ as well.”

<sup>173</sup> See ESMA Technical Advice Final Report, *supra* note 78 at 324.

<sup>174</sup> See FINRA, Regulation Notice 15-06, “Registration of Associated Persons Who Develop Algorithmic Trading Strategies,” (Mar. 2015), available at [http://www.finra.org/sites/default/files/notice\\_doc\\_file\\_ref/Notice\\_Regulatory\\_15-06.pdf](http://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-06.pdf). In the Notice, FINRA defines an “algorithmic trading strategy” as “any program that generates and routes (or sends for routing) orders (and order-related messages, such as cancellations) in securities on an automated basis.” *Id.* at 3.

<sup>175</sup> See SEC Knight Capital Release, *supra* note 39.

<sup>176</sup> See CME Glossary, available at <http://www.cmegroup.com/education/glossary.html>.

<sup>177</sup> See ICE Notice, Revision to Authorized Trader Requirements (Jan. 4, 2011) at 3, available at [https://www.theice.com/publicdocs/otc/advisory\\_notices/ICE%20Advisory%20Notice%20for%20](https://www.theice.com/publicdocs/otc/advisory_notices/ICE%20Advisory%20Notice%20for%20)

Commission anticipates that entities using automated order routers will be using similar or related automated technology to determine other parameters of an order. In addition to the consideration that order routing systems have the potential to disrupt the market, the Commission believes that, given the interconnectedness of trading firm systems, carving out a particular subset of automated systems from the definition of Algorithmic Trading, *e.g.*, order routing systems, would introduce unnecessary complexity and reduce the effectiveness of the safeguards provided in its proposed regulations.<sup>178</sup>

The Commission notes that even if a computer algorithm or system makes one or more determinations with respect to an order (such as product, timing, price or quantity), the submission of the order would not constitute Algorithmic Trading if every parameter or attribute of the order is manually entered into a front-end system by a natural person, with no further discretion by any computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a DCM. However, if a natural person does not manually enter an order as described in the preceding sentence, but nonetheless intervenes in the order in some other and more limited manner, the submission of the order would still represent Algorithmic Trading if the other elements of the definition are met. The Commission believes that the risks of Algorithmic Trading continue to exist in trading where there is some limited natural person intervention at particular stages of order submission or execution, and Regulation AT requirements should apply to such trading to the same extent that it does to trading that is entirely automated. In sum, the only circumstance in which natural person intervention by definition would cause trading to not represent Algorithmic Trading is if the proviso in clause (2) of the definition of Algorithmic Trading were met.

Finally, the Commission clarifies that there are certain automated functions that do not fall within the proposed definition of Algorithmic Trading. For example, the use of automated programs that incorporate electronic indicators or

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<sup>178</sup> The Commission notes that Forex Capital Markets, LLC (“FXCM”) commented in response to the Concept Release that automatic order routing systems be excluded from any definition of “high-frequency trading,” arguing that such systems are already subject to extensive regulatory oversight and control. See FXCM 1-2. For the reasons stated above, the Commission determined to include such systems within the definition of Algorithmic Trading.

other technical analysis features to notify a trader regarding specified market activity (e.g., a product reaches a particular price) would not in itself represent Algorithmic Trading, unless the same program makes the determinations described in clause (1) of the definition, and clause (2) is also met. Similarly, if an entity (such as an introducing broker) uses certain electronic systems as part of its business practices, but does not submit orders to a trading platform, that entity's use of electronic systems would not of itself be considered Algorithmic Trading. Finally, the application of risk filters to an order that is otherwise entered through entirely manual means (i.e., an order whose every parameter or attribute is manually entered into a front-end system by a natural person, with no further discretion by any computer system or algorithm)<sup>179</sup> would not be considered Algorithmic Trading solely due to the use of risk filters. For example, existing §§ 1.11 and 1.73 require FCMs and clearing member FCMs, respectively, to establish certain automated financial or risk-based controls, including limits based on position size, order size and margin requirements or capital, credit or volume thresholds. The application of such automated controls would not, on their own, cause an order to fall within the definition of Algorithmic Trading.

The Commission notes that ESMA's 2015 Final Draft Regulatory Standards address the distinction between "investment decision algorithms" (which make automated trading decisions by determining which assets to purchase or sell) and "order execution algorithms" (which optimize order execution processes by automatic generation and submission of orders or quotes to one or several trading venues once the investment decision is made). ESMA's standards provide that pure investment decision algorithms which generate orders that are only to be executed by non-automated means and with human intervention are excluded from ESMA testing requirements.<sup>180</sup>

### c. Request for Comments

1. Is the Commission's definition of "Algorithmic Trading" generally consistent with what algorithmic trading is understood to mean in the industry? If not, please explain how it is inconsistent and how the definition should be modified. In your answer, please explain whether the definition

inappropriately includes or excludes a particular type or aspect of trading.

2. Should the Commission adopt a definition of "Algorithmic Trading" that is more closely aligned with any definition used by another regulatory organization?

3. For purposes of the Commission's definition of Algorithmic Trading, is it necessary for the Commission to define "computer algorithms or systems"? If so, please explain what should be included in such a definition.

4. Should the Commission's definition of "Algorithmic Trading" include systems that only make determinations as to the routing of orders to different venues (which is contemplated in the proposed definition)? With respect to the definition of "Algorithmic Trading," should the Commission differentiate between different types of algorithms, such as alpha-generating algorithms and order routing algorithms?

5. Is the Commission's understanding correct that most entities using automated order routers will be using similar or related automated technology to determine other parameters of an order?

6. The Commission posits a scenario in which an AT Person submits orders through Algorithmic Trading, and a non-clearing FCM or other entity acts only as a conduit for these AT Person orders. If the non-clearing FCM or other entity does not make any determinations with respect to such orders, the conduit entity would not be engaged in Algorithmic Trading, as that definition is currently proposed. Should the definition of Algorithmic Trading be modified to capture a conduit entity such as a non-clearing FCM in this scenario, thereby making the entity an AT Person subject to Regulation AT? In other words, should non-clearing FCMs be required to manage the risks of AT Person customers? How would non-clearing FCMs do so if the non-clearing FCMs do not have risk controls comparable to the risk controls specified in proposed § 1.82?

7. The Commission, recognizing that natural person traders who manually enter orders also have the potential to cause market disruptions, is considering expanding the definition of Algorithmic Trading to encompass orders that are generated using algorithmic methods (e.g., an algorithm generates a buy or sell signal at a particular time), but are then manually entered into a front-end system by a natural person, who determines all aspects of the routing of the orders. Such order entry would not represent Algorithmic Trading under the currently proposed definition. The

Commission requests comment on this proposed expansion of the definition of Algorithmic Trading, which the Commission may implement in the final rulemaking for Regulation AT. The Commission requests comment on the costs and benefits of this proposal, in addition to any other comments regarding the effectiveness of this proposal in terms of risk reduction.

### 2. "Algorithmic Trading Compliance Issue"—§ 1.3(tttt)

#### a. Description of Regulation

The Commission proposes to define three new, related terms: "Algorithmic Trading Compliance Issue," "Algorithmic Trading Disruption," and "Algorithmic Trading Event" (which encompasses Algorithmic Trading Compliance Issues or Algorithmic Trading Disruptions). As a general matter, the proposed regulations contained in Regulation AT are intended to address the risks of automated trading. Malfunctioning or incorrectly deployed algorithms deploying erroneous messages to trading venues can significantly impact markets and market participants. The speed at which trading occurs can magnify the harm caused by a malfunctioning system, for example, in driving unwarranted price changes. The proposed definitions work in conjunction with proposed regulations requiring certain risk controls and other measures and are intended to describe the types of market disruptions, regulatory violations, or other events that Regulation AT is designed to prevent or mitigate.

The three proposed terms Algorithmic Trading Compliance Issue, Algorithmic Trading Disruption, and Algorithmic Trading Event have analogues under Reg SCI's definitions of "Systems compliance issue," "Systems disruption," and "SCI event."<sup>181</sup> The term "SCI event," under Reg SCI, encompasses systems compliance issues and systems disruptions. Similar to Regulation AT, Reg SCI requires that an SCI entity's policies and procedures must include monitoring of systems to identify potential SCI events, and that SCI entities must establish escalation procedures to quickly inform responsible SCI personnel of potential SCI events.<sup>182</sup>

The term "Algorithmic Trading Compliance Issue" is defined in proposed § 1.3(tttt), and means "an event at an AT Person that has caused any Algorithmic Trading of such entity to operate in a manner that does not

<sup>179</sup> See the discussion of front-end systems *supra* note 170.

<sup>180</sup> See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 201–02.

<sup>181</sup> See Reg SCI, *supra* note 40 at 72437.

<sup>182</sup> *Id.* at 72437.

comply with the CEA or the rules and regulations thereunder, the rules of any designated contract market to which such AT Person submits orders through Algorithmic Trading, the rules of any registered futures association of which such AT Person is a member, the AT Person's own internal requirements, or the requirements of the AT Person's clearing member, in each case as applicable."

The term is relevant to Regulation AT's pre-trade risk and other control requirements for AT Persons as provided in proposed § 1.80, which requires the specified controls and measures to be reasonably designed to prevent or mitigate an "Algorithmic Trading Event." The term Algorithmic Trading Event, as discussed below, means either an Algorithmic Trading Compliance Issue or an Algorithmic Trading Disruption. The defined term Algorithmic Trading Compliance Issue is also relevant to Regulation AT's proposed testing requirements on AT Persons. Specifically, proposed § 1.81(c) requires each AT Person to establish procedures requiring its staff to review Algorithmic Trading systems in order to detect potential Algorithmic Trading Compliance Issues. Regulation § 1.81(c) also would require a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading designed to detect and prevent Algorithmic Trading Compliance Issues. Finally, proposed § 40.20 requires a DCM to establish and maintain pre-trade and other risk controls reasonably designed to prevent the occurrence of an Algorithmic Trading Disruption (or similar disruption) or an Algorithmic Trading Compliance Issue. The proposed definition of Algorithmic Trading Compliance Issue was not discussed in the Concept Release.

#### b. Request for Comments

8. Should the definition of Algorithmic Trading Compliance Issue be modified to include other potential compliance failures involving an AT Person that may have a significant detrimental impact on such AT Person, the relevant DCM, or other market participants?

#### 3. "Algorithmic Trading Disruption"—§ 1.3(uuuu)

##### a. Description of Regulation

Regulation AT proposes a defined term "Algorithmic Trading Disruption." The term is defined in new § 1.3(uuuu), and means "an event originating with an AT Person that disrupts, or

materially degrades, (1) the Algorithmic Trading of such AT Person, (2) the operation of the designated contract market on which such AT Person is trading or (3) the ability of other market participants to trade on the designated contract market on which such AT Person is trading."<sup>183</sup> The Commission notes that it interprets clause (3) of the definition broadly ("an event originating with an AT Person that disrupts, or materially degrades . . . the ability of other market participants to trade on the designated contract market on which such AT Person is trading.") Among other events that would meet the Commission's understanding of "disrupts, or materially degrades," the Commission interprets clause (3) as including an event originating with an AT Person that prohibits other market participants from trading on the designated contract market on which such AT Person is trading.

The term Algorithmic Trading Disruption is relevant to Regulation AT's pre-trade risk and other control requirements for AT Persons and FCMs that are clearing members for a DCO, as provided in proposed §§ 1.80 and 1.82(a), respectively. The controls and measures required by proposed § 1.80 must be reasonably designed to prevent or mitigate an "Algorithmic Trading Event." The term "Algorithmic Trading Event," as discussed below, means either an "Algorithmic Trading Compliance Issue" or an "Algorithmic Trading Disruption." The controls and measures required of clearing member FCMs in proposed § 1.82(a), in contrast to those required of AT Persons in proposed § 1.80, must be reasonably designed to prevent or mitigate only the narrower Algorithmic Trading Disruption. Finally, proposed § 40.20 requires a designated contract market to establish and maintain pre-trade and other risk controls reasonably designed to prevent an Algorithmic Trading Disruption. The proposed definition of Algorithmic Trading Disruption was not discussed in the Concept Release.

#### b. Request for Comments

9. Should the definition of Algorithmic Trading Disruption be modified to include other types of disruptive events that may originate with an AT Person?

10. Should the definition be expanded to include other types of disruptive downstream consequences that may result from an Algorithmic Trading

<sup>183</sup> The Commission notes that, under this definition, an Algorithmic Trading Disruption may be the result of intentional or unintentional acts by an AT Person.

Disruption originating with an AT Person, and which may negatively impact the relevant designated contract market, other market participants, or other persons? Alternatively, should the scope of the definition be reduced, and if so, why?

11. In addition, should the reference to "materially degrades" in the definition of Algorithmic Trading Disruption be expanded or otherwise modified to encompass other types of disruptions that may impact the relevant designated contract market, other market participants, or other persons? Please provide examples of real-world events originating with AT Persons (as defined under Regulation AT) that resulted in disruptions that may not be captured by the reference to "materially degrades" in the definition.

#### 4. "Algorithmic Trading Event"—§ 1.3(vvvv)

Regulation AT proposes a new definition in § 1.3(vvvv) (Algorithmic Trading Event) that means either an Algorithmic Trading Compliance Issue or an Algorithmic Trading Disruption. As noted above, the term Algorithmic Trading Event is used in proposed § 1.80 requiring AT Persons to implement risk controls that are reasonably designed to prevent or mitigate an "Algorithmic Trading Event." The proposed definition is also used in rules under proposed § 1.81(a) that require AT Persons to conduct regular back-testing of Algorithmic Trading using historical transaction, order, and message data to identify circumstances that may contribute to future Algorithmic Trading Events. The definition is also used in rules under proposed § 1.81(b) that require AT Persons to conduct continuous real-time monitoring of Algorithmic Trading to identify potential Algorithmic Trading Events, and in rules under proposed § 1.81(d) that require AT Persons to establish training procedures for communicating and escalating instances of Algorithmic Trading Events to the appropriate personnel. The proposed definition was not discussed in the Concept Release.

#### 5. "AT Order Message"—§ 1.3(wwww)

##### a. Description of Regulation

The Commission is proposing to define an "AT Order Message" (new § 1.3(wwww)) as each new order or quote submitted through Algorithmic Trading to a DCM by an AT Person and each change or deletion submitted through Algorithmic Trading by an AT



Person<sup>184</sup> with respect to such an order or quote. This term is used in the proposed regulations requiring AT Persons, clearing member FCMs and DCMs to implement pre-trade risk controls and other measures with respect to AT Order Messages. The proposed controls include a maximum AT Order Message frequency per unit time, which is also known as a message throttle requirement.<sup>185</sup> The Commission notes that its definition of AT Order Message is consistent with ESMA's definition of message in its HFT analysis.<sup>186</sup> The proposed language does not impose specific requirements concerning the design of the AT Order Message throttle or the particular thresholds that must be used.

The Commission believes that defining AT Order Message is necessary in proposed §§ 1.80, 1.82, 38.255(b) and (c), and 40.20(a)(1) to specify the type of messages that should be subject to frequency controls. The Commission intends that required maximum message frequency controls would apply to new orders, order cancellations, and changes to important order terms that have the potential to impact the market.<sup>187</sup> Notwithstanding the foregoing, while the definition of AT Order Message would only apply to order-related messages, the Commission recognizes that certain message types outside of the definition of AT Order Message may cause market disruptions by affecting the operation of a DCM's electronic matching platform. A DCM has the discretion to implement controls throttling excessive heartbeat<sup>188</sup> or administrative-type messages if it believes that such controls are necessary to prevent fraud or manipulation or otherwise ensure the proper functioning of its electronic matching platform and market.

As discussed below, the Commission believes that requiring maximum order message frequencies at the trading firm,

<sup>184</sup> The definition of AT Person is discussed in section IV.D.6.

<sup>185</sup> The regulation are proposed §§ 1.80 (for AT Persons), 1.82 (for FCMs), 38.255(b) and (c) (for DCMs permitting direct electronic access), and 40.20 (for DCMs).

<sup>186</sup> Specifically, ESMA considered one message to mean "each content that needs independent processing," and further explained that "messages to be counted for these purposes are each new order or quote, each successful change to an order or quote and each successful deletion of an order or quote." See ESMA Technical Advice Final Report, *supra* note 78 at 320.

<sup>187</sup> Order terms that have the potential to impact the market might include, but are not limited to, changes to price, quantity, and order type.

<sup>188</sup> By "heartbeat" messages, the Commission means signals sent at regular intervals to ensure that the connection between the trading firm and the DCM's electronic matching platform is in a normal state.

clearing member FCM and DCM levels serves important policy goals. Order entry frequencies that are much larger than intended could result in an accumulation or reduction of positions at speeds that outpace or overload associated risk management systems. Large quantities of unintended orders could also impact the market by increasing engine matching times or order submission latencies.

#### b. Request for Comments

12. Please comment on the proposed scope of the Commission's definition of AT Order Message. Is the proposed definition too expansive, in that it would limit the submission of messages that do not have the potential to disrupt the market? Alternatively, is the scope of the AT Order Message too limited, in that it could allow messages not related to orders (*i.e.*, heartbeat messages or requests for mass quotes) to intentionally or unintentionally flood the DCM's systems and slow down the matching engine? Please explain how this definition would be more appropriately limited or expanded.

#### 6. "AT Person"—§ 1.3(xxxx)

##### a. Description of Regulation

The Concept Release did not specifically address whether regulations in the area of algorithmic trading should include a defined term "AT Person." However, the Commission determined that such a defined term is necessary in order to identify which entities are subject to the proposed regulations addressing trading firms' management of the risks of algorithmic trading. These regulations include, for example, pre-trade and other risk controls on the orders initiated by the trading firm; development, testing and supervision standards; and the requirement to submit compliance reports regarding the new risk controls.

The proposed definition under new § 1.3(xxxx) lists those particular persons or entities that may be considered an AT Person: Persons registered or required to be registered as FCMs, floor brokers, SDs, MSPs, CPOs, CTAs, or IBs that engage in Algorithmic Trading on or subject to the rules of a DCM, or persons registered or required to be registered as floor traders as defined in § 1.3(x)(3).<sup>189</sup> Regulation § 1.3(x)(3) is a proposed revision to the Commission's existing definition of floor trader, and is discussed in detail below (see section

<sup>189</sup> As a result, any person who is required to be registered as one of these registration categories and who is engaged in Algorithmic Trading will be subject to all requirements of an AT Person under this regulation, regardless of whether such person has actually registered with the Commission.

IV(E) below on Registration of Certain Persons Not Otherwise Registered with the Commission). Such persons or entities would be AT Persons if they engage in Algorithmic Trading on or subject to the rules of a DCM. See section IV(H) below for a more detailed discussion of which persons would be designated as AT Persons for purposes of proposed § 1.80 and other regulations, and which persons would not be AT Persons, but would nonetheless be subject to proposed § 1.82.

#### b. Request for Comments

13. The Commission notes that the FIA Guide recommends certain pre-trade risk controls and contemplates three levels at which these controls can be placed: Automated trader, broker, and exchange. FIA defines "automated trader" as any trading entity that uses an automated system, including hedge funds, buy-side firms, trading firms, and brokers who deploy automated algorithms, and defines "broker" as FCMs, other clearing firms, executing brokers and other financial intermediaries that provide access to an exchange.

a. Should the Commission's definition of "AT Person" explicitly include or exclude any of the classes of parties included in FIA's term "automated trader"? Please explain. Are there any types of entities not present in this list that should be included in the "AT Person" definition?

b. Should Regulation AT use the term "broker," as understood by FIA? If so, please explain. Is there another term that would be more appropriate in defining the scope of AT Persons?

14. Algorithmic Trading carries technological and personnel costs, and the Commission expects that such trading will be performed by entities, not natural persons. Is this a reasonable assumption? For purposes of quantifying the number of AT Persons that will be subject to the regulations, do you believe that any AT Person (a definition that encompasses the following persons if engaged in Algorithmic Trading: FCMs, floor brokers, swap dealers, major swap participants, commodity pool operators, commodity trading advisors, introducing brokers, and newly registered floor traders using Direct Electronic Access) will be a natural person or a sole proprietorship with no employees other than the sole proprietor?

15. The Commission recognizes that a CPO could use Algorithmic Trading to enter orders on behalf of a commodity pool which it operates. In these

circumstances, should the Commission consider the CPO that operates the commodity pool or the underlying commodity pool itself as “engaged in Algorithmic Trading” pursuant to the definition of AT Person?<sup>190</sup>

16. The Commission notes that pursuant to § 1.57(b) of the Commission’s regulations IBs may not carry proprietary accounts. However, certain customer relationships may cause an IB to fall under the definition of AT Person. The Commission requests comment on the types of IB customer relationships that could cause IBs to fall under the definition of AT Persons. What activities are currently being conducted by IBs that could cause an IB to be considered engaging in Algorithmic Trading on or subject to the rules of a DCM and would therefore cause the IB to be considered an AT Person?

17. Should the definition of AT Person be limited to persons using DEA? In other words, should the definition capture persons registered or required to be registered as FCMs, floor brokers, SDs, MSPs, CPOs, CTAs, or IBs that engage in Algorithmic Trading on or subject to the rules of a DCM, or persons registered or required to be registered as floor traders as defined in § 1.3(x)(3), in each case if such persons are using DEA? The Commission requests comment on the costs and benefits of this approach, including comments on whether this more limited definition of AT Persons would adequately mitigate the risks associated with algorithmic trading.

#### 7. “Direct Electronic Access”— § 1.3(yyyy)

##### a. Concept Release Comments

The Concept Release asked whether there are specific risk controls that should apply in the context of direct market access, and whether the implementation of risk controls should be modified in the context of direct market access.<sup>191</sup>

Several commenters agreed that any potential risk controls should also apply to those with direct access to the market.<sup>192</sup> For example, FIA described market participants’ access to markets as consisting of two broad categories: “Direct ATS Participants,” characterized by use of an ATS directly connected to a DCM without using an

FCM’s infrastructure to route orders, and “Indirect ATS Participants,” characterized by use of an ATS that routes orders through an FCM’s infrastructure.<sup>193</sup> FIA stated that all types of market access create risks; therefore, the same principles should apply to all types of market access.<sup>194</sup> FIA also explained that since market participants may now access a DCM directly without passing through an FCM’s infrastructure, “the only consistent opportunity for risk control is at the DCM and the market participant.”<sup>195</sup>

Additional commenters made similar points. CME stated that all entities—whether they have direct market access or not—must “share in the effort to preserve market integrity.”<sup>196</sup> ICE explained that it treats every order and trade equally regardless of connection method or participant type.<sup>197</sup> KCG Holdings, Inc. (“KCG”) commented that “any pre-trade risk control requirements [must] be applied so as to not permit market participants to avoid their application based on the manner in which the participant accesses the market.”<sup>198</sup> VFL commented that “the privilege of direct exchange access should bring with it the obligation to deploy a system designed to protect the integrity of the marketplace.”<sup>199</sup> VFL explained that all exchange members should be required to employ pre- and post-trade risk controls, and all non-members should be required to access exchanges only through a member’s risk control layer.<sup>200</sup>

##### b. Description of Regulation

Consistent with the comments discussed above, the Commission proposes a new § 1.3(yyyy) that defines “Direct Electronic Access” (“DEA”) and, through other proposed rules, requires that AT Order Messages originating with an AT Person and submitted by AT Persons through such DEA be subjected to the same types of pre-trade and other risk controls that such orders would pass through if they flowed through the infrastructure of an FCM before entering the market.

The Commission notes that the Concept Release used the term “direct market access,” or “DMA,” and such term is commonly used in industry. The Commission intends that “Direct Electronic Access” be consistent with

the term “direct market access” as it is used in Commission-regulated markets. The Commission determined to employ the term *Direct Electronic Access*, as opposed to direct market access, in the interest of regulatory consistency. The term “Direct Electronic Access” by FCM customers is used in existing Regulation 38.607, where it is described as “allowing customers of futures commission merchants to enter orders directly into a designated contract market’s trade matching system for execution.”<sup>201</sup>

The Commission proposes that the term “Direct Electronic Access” means an arrangement where a person electronically transmits an order to a DCM, without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing. By “routed,” the Commission means the process by which an order physically goes from a customer to a designated contract market.<sup>202</sup> As indicated below, the Commission requests comment on its definition of DEA and whether there are particular scenarios where it would be unclear whether a customer is trading through DEA.

DEA is relevant to several of the proposed regulations. As explained below, DEA is used as a filter to help define a new category of market participants required to register as floor traders and be subject to the requirements of Regulation AT (see proposed § 1.3(x)(3), discussed below). In addition, the term DEA is relevant to revised § 38.255, which would require DCMs to have in place systems and controls reasonably designed to facilitate FCM’s management of the risks that may arise from Algorithmic Trading, and proposed § 1.82, which requires FCMs to implement such DCM-provided controls for DEA orders. This approach recognizes that when DEA is used, clearing FCMs do not have the ability to apply market risk controls to orders they receive for clearing before these orders reach the DCM. This approach of enabling clearing FCMs to implement DCM-based controls is

<sup>201</sup> In addition, in the context of foreign boards of trade, Section 4(b)(1)(A) of the CEA defines “direct access” as “an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.”

<sup>202</sup> The Commission notes that the operative element of DEA is submission of an order to a DCM without the order first being routed through a separate person who is a member of a DCO to which the DCM submits transactions for clearing. Other factors, such as co-location, or use of FCM-provided software, are not on their own determinative of whether a customer is submitting orders through DEA.

<sup>190</sup> The Commission notes that CPOs are separate legal entities from the underlying commodity pools which they operate.

<sup>191</sup> See section II(B) above for a discussion of direct market access in the Concept Release.

<sup>192</sup> FIA at 12, 15; KCG at 2; CME at 7–8; VFL at 2; AIMA at 1.

<sup>193</sup> FIA at 8–9.

<sup>194</sup> FIA at 12, 15.

<sup>195</sup> FIA at 8–9; 61–62.

<sup>196</sup> CME at 7–8.

<sup>197</sup> ICE at 2.

<sup>198</sup> KCG at 2.

<sup>199</sup> VFL at 2.

<sup>200</sup> See *id.*

similar to how the Commission addresses financial risk management by FCMs, as reflected in existing DCM regulation § 38.607.

The Commission's proposed definition of DEA differs from SEC, ESMA and IOSCO terminology. The SEC characterizes "direct market access" as an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to reaching the trading center.<sup>203</sup> "Sponsored access" generally refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center that bypass the broker-dealer's trading system and are routed directly to a trading center, in some cases supported by a service bureau or other third-party technology provider.<sup>204</sup> "Unfiltered" or "naked" access is a subset of sponsored access, where pre-trade filters or controls are not applied to orders before such orders are submitted to an exchange or ATS.<sup>205</sup> Similarly, ESMA and IOSCO refer to "direct electronic access" as including direct market access and sponsored access; "direct market access," as an arrangement where a member of a trading venue provides a connecting system to a person to transmit orders; and "sponsored access" as an arrangement where such an infrastructure is not used by a person.<sup>206</sup> While the Commission's proposed terminology differs from that used by other regulatory organizations, the Commission believes that its defined term DEA is consistent with existing Commission regulations. References to "DEA" and "Direct Electronic Access" throughout this preamble shall refer to the term proposed in § 1.3(yyyy).

#### c. Request for Comments

18. Please explain whether the Commission's proposed definition of DEA will encompass all types of access commonly understood in Commission-regulated markets as "direct market access." In light of the proposed regulations concerning pre-trade and other risk controls and standards for the development, testing and supervision of algorithmic trading systems, do you believe that the proposed definition of Direct Electronic Access is too limited (or, alternatively, too expansive)? If so,

<sup>203</sup> See Risk Management Controls for Brokers or Dealers With Market Access, 75 FR 69792, 69793 (Nov. 15, 2010).

<sup>204</sup> See *id.*

<sup>205</sup> See *id.*

<sup>206</sup> ESMA Technical Advice Final Report *supra* note 78 at 340; IOSCO 2015 Consultation Report, *supra* note 106 at 20 n.56.

please explain why and how the definition should be revised.

19. Should the Commission define "routed" in its definition of DEA? If so, how? Are there specific examples of trading or routing arrangements where it would be unclear whether trading was performed through DEA?

20. Should the Commission use the term "direct market access" instead of DEA, and if so why?

21. Should the Commission define sub-categories of DEA, such as sponsored market access?

22. The Commission's proposed definition of DEA in § 1.3(yyyy) differs from definitions of direct electronic access in § 38.607 and direct access for FBOTs in § 48.2(c). The Commission believes that the more technical definition in proposed 1.3(yyyy) is appropriate for Regulation AT. The Commission solicits comment regarding proposed 1.3(yyyy), whether all definitions of "direct" access should be harmonized across the Commission's rules, and if so how. Do you believe that two definitions would create confusion with respect to Commission requirements as to direct electronic access? With respect to §§ 1.80, 1.82 and 38.255(b) and (c) provisions imposing risk control requirements on AT Persons, FCM and DCMs, should the Commission use the existing definition of direct electronic access provided in § 38.607?

#### *E. Registration of Certain Persons Not Otherwise Registered With Commission—§ 1.3(x)*

The Commission proposes to amend the definition of "Floor trader" in Commission regulation 1.3(x), in order to facilitate the registration of proprietary traders using DEA for Algorithmic Trading on a DCM. Such persons would be required to register as Floor traders pursuant to proposed § 1.3(x)(3), assuming that they were not already registered or required to register with the Commission in another capacity. The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments

The Concept Release requested comment on whether all firms operating ATs to trade solely for their own account should be required to register with the Commission. As discussed in greater detail below, a registration requirement for firms operating ATs and not otherwise registered with the Commission would enhance the

Commission's oversight capabilities and allow for wider implementation of some or all of the pre-trade controls and risk management tools discussed in this NPRM and currently used in the market today. In particular, registration will help ensure that all market participants that actively trade on Commission-regulated markets implement appropriate controls, including those trading firms that access the market directly and use algorithmic trading systems that could malfunction and create systemic risk to all market participants.

In the Concept Release, the Commission requested specific comment on whether firms operating ATs to trade solely for their own account would meet the definition of "floor trader" in Section 1a(23) of the Act, and whether registering such firms as floor traders would effectuate the purposes of the Act. The "floor trader" definition in CEA 1a(23) states that, in general, the term "floor trader" means any person who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account.<sup>207</sup> Given the evolution of futures trading over recent years, electronic trading platforms have now become a primary "other place" in which proprietary market making and trading generally, takes place.

Seven commenters (including FIA, CME, MFA and the Chicago Fed) opposed registration for reasons including: DCMs already use Operator IDs; the DCM audit trail already satisfies the goals of registration; implementing the Commission's final rule on ownership and control reporting ("OCR") will provide additional information on trading identities; and the Commission already has access to trade data (*i.e.*, Regulation 1.40 and part 38's mandate that DCMs require market participants to submit to a DCM's

<sup>207</sup> CEA Section 1a(23)(A) provides that the term "floor trader," in general, means any person (i) who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account (I) any commodity for future delivery, security futures product, or swap; or (II) any commodity option authorized under section 4c; or (ii) who is registered with the Commission as a floor trader. A further definition of the term "floor trader" is provided for by Section 1a(23)(B), which states that the Commission, by rule or regulation, may include within, or exclude from, the term "floor trader" any person in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged who trades solely for such person's own account if the Commission determines that the rule or regulation will effectuate the purposes of the Act. 7 U.S.C. 1a(23).

jurisdiction).<sup>208</sup> In response to the Concept Release question seeking information concerning whether firms operating ATSs would meet the definition of “floor trader” under the CEA, CME and Gelber stated that the term floor trader is an anachronism that is irrelevant to automated trading environments.<sup>209</sup>

In contrast, Better Markets, AFR, and TCL supported ATS registration.<sup>210</sup> AFR stated that “[t]he enhancement of investigative authority is extraordinarily important given that the Commission staff would often need to involve itself in the workings of the ATSs to anticipate problems and to detect and investigate problems that have occurred. HFT firms should have the highest priority.”<sup>211</sup>

Finally, AIMA and VFL supported registration for participants with direct market access.<sup>212</sup> VFL commented that if an exchange provides a participant the ability to connect directly, then that participant enjoys all of the rights of a member and should be regulated at the federal and exchange level.<sup>213</sup> Finally, while Chicago Fed opposed a requirement that ATSs register with the Commission, it suggested that participants with direct market access must register with the exchange.<sup>214</sup>

## 2. Description of Regulation

The Commission proposes to require the registration of proprietary traders using DEA for Algorithmic Trading on a DCM. As discussed in greater detail in section 3 below, registration of entities with DEA as floor traders would mean that such firms must implement the pre-trade controls and risk management tools that Regulation AT requires of AT Persons. If the Commission were to only require those firms that are already registered with the Commission to implement such controls, some market participants conducting Algorithmic Trading on Commission-regulated markets would not be subject to the Commission’s risk control requirements.

In order to achieve registration of proprietary traders using DEA for Algorithmic Trading on a DCM, the Commission proposes amending the definition of “Floor trader” in Commission regulation 1.3(x). The amended definition would expressly include any person who purchases or

sells futures or swaps solely for such person’s own account in a place provided by a contract market for the meeting of persons similarly engaged, where such place is accessed by such person in whole or in part through DEA (as defined in proposed § 1.3(yyyy)) for Algorithmic Trading, and such person is not otherwise registered with the Commission as a futures commission merchant, swap dealer, floor broker, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker. The Commission notes, however, that persons otherwise registered or required to register with the Commission in another capacity (e.g., as a swap dealer) would not be exempt from such registration simply by registering as a Floor trader pursuant to proposed § 1.3(x)(3).

CEA 1a(23) states that the term “floor trader” means any person who, in or surrounding any pit, ring, post or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account.<sup>215</sup> The term was added to the Act in the Futures Trading Practice Act of 1992 (the “1992 Act”).<sup>216</sup> The 1992 Act also amended Section 4e of the Act to require registration of floor traders, and tasked the Commission with issuing rules to implement the requirement within 180 days of the date of enactment.

In 1993, pursuant to the 1992 Act, the Commission finalized rules regarding registration of floor traders.<sup>217</sup> The Commission established a definition for the term “floor trader” in Regulation 1.3(x). The Commission noted in the preamble to that final rule that “certain persons trading through electronic systems come within the [floor trader] definition.”<sup>218</sup> Given the prevalence of pit trading in 1992 and the short time frame to implement floor trader registration, the Commission determined to require registration for floor traders operating “on the trading floor of an exchange” and “to defer consideration of the application of floor trader registration requirements to persons using electronic trading systems and to reconsider the subject at a later date.”<sup>219</sup> The Commission expressly stated that, “[i]n order to preserve

flexibility in this area, the definition of floor trader in Rule 1.3(x) states that it shall include any person required to register as [a floor trader] by rule or regulation of the Commission pertaining to the operation of an electronic trading system.”<sup>220</sup>

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>221</sup> Title VII of the Dodd-Frank Act amended the CEA definition of “floor trader.”<sup>222</sup> This amendment maintained the language from the 1992 Act defining a floor trader as a person “who, in or surrounding any pit, ring, post, or other place provided by a contract market . . . for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account” any commodity for future delivery. However, the amended definition also applied to trading in swaps, and provided that the definition includes “anyone who is registered with the Commission as a floor trader.” Finally, the amendment allows for the Commission by regulation to include within the definition or exclude from the definition anyone who meets the statutory definition. Subsequently, the Commission amended the definition of floor trader in Rule 1.3(x) to precisely mirror the language contained in section 1a(23)(A) of the Act.<sup>223</sup>

## 3. Policy Discussion

In order to enhance the Commission’s oversight capabilities as they relate to entities with DEA and allow for wider implementation of some or all of the pre-trade controls and risk management tools discussed in this NPRM and currently used in the market today, the Commission proposes amending Regulation 1.3(x) to expressly include such firms within the definition of “floor trader.” The Commission emphasizes that the “floor trader” definition is not being expanded to capture all proprietary traders engaged in Algorithmic Trading; rather, the revised floor trader definition is limited to firms using DEA to engage in Algorithmic Trading. Historically, pursuant to the Commission’s preamble discussion in the Registration of Floor Traders Rule and the original formulation of Regulation 1.3(x) discussed above, the Commission has

<sup>208</sup> FIA at 43–46; CME at 32–34; Gelber at 22–24; KCG at 18; MFA at 3; AIMA at 2, 24; Chicago Fed at 3.

<sup>209</sup> CME at 34; Gelber at 22–24.

<sup>210</sup> Better Markets at 13; AFR at 8–9; TCL at 17.

<sup>211</sup> AFR at 8–9.

<sup>212</sup> AIMA at 24; VFL at 3.

<sup>213</sup> VFL at 3.

<sup>214</sup> Chicago Fed at 4.

<sup>215</sup> See *supra* note 207.

<sup>216</sup> Futures Trading Practices Act of 1992, Pub. L. 102–546, 106 Stat. 3590, 3625–28 (1992).

<sup>217</sup> Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged with Felonies, 58 FR 19575 (1993) (hereinafter “Registration of Floor Traders Rule”).

<sup>218</sup> *Id.* at 19576.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

<sup>222</sup> See *supra* note 207.

<sup>223</sup> See Final Rule, Adaptation of Regulations to Incorporate Swaps, 77 FR 66288, 66317 (Nov. 2, 2012).

only required registration of floor traders conducting business on the physical trading floor of an exchange. However, the Act contemplates floor traders in “other places” besides the trading floor, and the Commission has previously noted that the Act’s definition applies to persons using electronic trading systems.<sup>224</sup>

Registration of entities with DEA as floor traders would enhance the pre-trade controls and risk management tools discussed elsewhere in this NPRM by making such entities subject to the various regulations governing AT Persons under the NPRM. For example, the pre-trade risk controls listed in proposed § 1.80—maximum AT Order Message frequencies per unit time, maximum execution frequencies per unit time, order price parameters and maximum order size limits—must be established and used by all AT Persons. If the Commission were to only require those firms that are already registered with the Commission to implement such controls, it would be ignoring a significant number of market participants that actively trade on Commission-regulated markets, each of which has ATs that could malfunction and create systemic risk to all market participants. Registration as floor traders would also require entities using DEA, as AT Persons, to maintain certain books and records, thus enhancing the Commission’s ability to gather information.

The Commission estimates that there are approximately one hundred proprietary trading firms engaged in Algorithmic Trading in Commission-regulated markets. Some of these firms may already be registered with the Commission in some capacity. In the event that one of these firms engaged in Algorithmic Trading is already registered with the Commission, the

<sup>224</sup> Registration of Floor Traders Rule, 58 FR at 19576. Further, the Commission notes that it is not the first to observe the degree to which the tangible technological infrastructure provided by DCMs for trading, including for example electronic trade matching platforms or co-location or proximity hosting facilities, can constitute a “place.” Futures Industry magazine, a publication of FIA, noted the following in a 2007 article describing co-location and proximity hosting: “[t]he pit is back. Just a few years since the concept of a commodity exchange as a tangible ‘place’ had begun to seem hopelessly old-fashioned, many traders now want to be at the heart of the action once more. At Eurex, customers that until recently were scattered all over the globe are moving closer to the exchange, ‘forming a physical community like a pit again,’ says Matthias Kluber, head of networks and infrastructure operations at Deutsche Börse Systems, which builds and operates the Eurex trading and clearing systems.” See Bennet Voyles, Co-Location Catches On, Futures Industry (July/Aug. 2007) at 28, available at: [https://secure.fia.org/downloads/Jul-Aug\\_Colocatiion.pdf](https://secure.fia.org/downloads/Jul-Aug_Colocatiion.pdf).

firm would be considered an AT Person under clause (1) of the proposed definition of AT Person, and would not be required to also register as a floor trader. The proposed requirement under revised § 1.3(x) is intended to require firms not otherwise registered to become registered with the Commission. Given that a technological malfunction in a single trading firm’s systems can significantly impact other markets and market participants, the proposed registration requirement is critical to ensuring that all such firms are subject to appropriate risk control, testing, and other requirements of Regulation AT.

#### 4. Request for Comments

23. Should firms operating Algorithmic Trading systems in CFTC-regulated markets, but not otherwise registered with the Commission, be required to register with the CFTC? If not, what alternatives are available to fully effectuate the purpose and design of Regulation AT?

24. Should all firms deploying Algorithmic Trading systems be required to register with the Commission? Are there additional characteristics of AT Persons that should be taken into consideration for registration purposes? For example, should the Commission limit registration to trading firms meeting certain trading volume, order or message levels? In other words, should there be a minimum volume, order or message test in order to meet the definition of “floor trader,” or otherwise to meet the definition of AT Person? If so, what should be measured and what specific thresholds should be used?

25. In the alternative, should the Commission broaden the registration requirements in proposed § 1.3(x)(3)(ii) so that all persons trading on a contract market through DEA are required to register, instead of only those who are engaged in Algorithmic Trading?

26. Please supply any information or data that would help the Commission in deciding whether firms may or may not meet the definition of “floor trader” in Section 1a(23) of the Act.

27. Do you believe that the registration of such firms as “floor traders” would help effectuate the purposes of the CEA to deter and detect price manipulation or any other disruptions to market integrity? If you believe that registration of such firms will not help effectuate the purposes of the CEA, or that the same purposes can be achieved by other means, please explain.

#### F. RFA Standards for Automated Trading and Algorithmic Trading Systems—§ 170.19

To fully effectuate the design and intent of Regulation AT, the Commission is proposing a new § 170.19 requiring RFAs to adopt certain membership rules—as deemed appropriate by the RFA—relevant to algorithmic trading for each category of member in the RFA. RFAs would have discretion as to the rules they issue and the categories of members to which their rules apply. Further, to ensure that all AT Persons are subject to rules of an RFA regarding algorithmic trading, the Commission is also proposing a new § 170.18 requiring AT Persons to become members of at least one RFA. Proposed § 170.18 is discussed in detail in section G below. Taken together, §§ 170.18 and 170.19 would allow RFAs to supplement elements of Regulation AT as markets and trading technologies evolve over time, and allow frontline regulators to drive future incremental enhancements to the Commission’s basic regulatory structure for algorithmic trading by AT Persons.

##### 1. Policy Discussion

In developing Regulation AT, the Commission sought to balance meaningful regulatory baselines against the need for standards sufficiently flexible to keep pace with changing industry practices and technologies. The Commission’s determination to balance both interests is particularly reflected in its treatment of AT Persons and in proposed §§ 1.80, 1.81, and 1.82, which address: (1) Pre-trade risk controls and other measures for ATs; (2) standards for the development, testing, monitoring, and compliance of ATs; (3) designation and training of algorithmic trading staff; and (4) clearing FCM risk management. A number of the proposed sections and subsections in these rules include well-established risk control and other practices among market participants. The proposed pre-trade risk controls in § 1.80(a), for example, are generally limited to risk controls identified as best practices by FIA in 2015, and the text of the rules is intentionally flexible so that AT Persons may determine for themselves how required pre-trade risk controls and other measures should be designed and calibrated. Other proposed rules addressing AT Persons offer flexibility in that they require AT Persons to implement specific programs, but provide latitude regarding how such programs are to be designed. Thus, proposed § 1.81(a)(1)(vi) requires AT Persons to maintain a source code

repository to manage source code access, persistence, copies of production code, and changes to production code, but does not impose a prescriptive standard for how the source code repository must be structured or maintained. Similarly, proposed §§ 1.81(a)(1)(iii) and (a)(1)(iv) require regular back testing of Algorithmic Trading and stress testing of ATs, but impose no specific testing protocols and do not specify a minimum testing frequency. The Commission also notes the existence of numerous other pre and post-trade risk controls and measures available to AT Persons but not incorporated as requirements in Regulation AT. Some, such as drop-copy reporting, were raised in the Concept Release, and others were addressed in responsive public comments.

The Commission has determined to focus in Regulation AT on areas where the safety and soundness of derivatives markets would benefit from a core set of pre-trade risk controls and other measures applicable to all AT Persons. As noted above, the Commission believes that effective rules for AT Persons are best structured as clear regulatory requirements combined with embedded flexibility to adapt to changing markets and technologies. Accordingly, the Commission's proposed rules in §§ 1.80, 1.81, and 1.82 address only a subset of potentially responsive risk controls and other measures. Each AT Person shall also determine what additional safeguards would be reasonably designed to prevent an Algorithmic Trading Event given its trading strategies, technologies, or the markets in which it participates. The proposed rules also provide a degree of flexibility regarding the design, implementation, or calibration of those pre-trade risk control or other measures that are specifically required in §§ 1.80, 1.81, and 1.82, again allowing each AT Person to adapt the rules to its own trading and technology.

Given the structure of proposed §§ 1.80, 1.81, and 1.82 as regulatory baselines with a degree of embedded flexibility, the Commission has determined to provide RFAs with a discretionary role in augmenting the requirements of Regulation AT for AT Persons.<sup>225</sup> RFAs serve a vital regulatory function as frontline regulators of their members, which would include all AT Persons pursuant to proposed § 170.18. RFAs promulgate binding membership

rules and can supplement Commission rules as appropriate. RFAs can also operate examination programs to monitor members' compliance with association rules, and can sanction members for non-compliance. The Commission believes that RFAs are well-positioned to address rules in areas experiencing rapid evolution in market practices and technologies, including particularly §§ 1.80, 1.81, and 1.82. Proposed § 170.19 is described below.

## 2. Description of Regulation

Proposed § 170.19 would require RFAs to (1) establish and maintain a program (2) for the prevention of fraudulent and manipulative acts and practices, the protection of the public interest, and perfecting the mechanisms of trading on DCMs (3) by adopting rules for each category of member, as deemed appropriate by the RFA, requiring: (i) Pre-trade risk controls and other measures for ATs (§ 170.19(a)(1)); (ii) standards for the development, testing, monitoring, and compliance of ATs (§ 170.19(a)(2)); (iii) designation and training of algorithmic trading staff (§ 170.19(a)(3)); and (iv) operational risk management standards for clearing member FCMs with respect to customer orders originating with ATs (§ 170.19(a)(4)). With respect to rules (prong 3 above), the areas RFAs must address pursuant to proposed § 170.19 are similar to those that AT Persons and clearing FCMs must address in proposed §§ 1.80, 1.81, and 1.82. RFAs, however, would be required in § 170.19 to consider whether additional rules or granularity are appropriate as baseline SRO requirements and binding membership rules for one or more categories of RFA members.<sup>226</sup> The Commission notes that § 170.19 would require that RFAs consider the need for additional rules, and issue such rules where appropriate. However, § 170.19 would not require RFAs to issue any rules pursuant to § 170.19 where the RFA believes they are unnecessary. Rather, the proposed regulation leaves discretion to the RFAs to determine what rules would prevent fraudulent and manipulative acts and practices, protect the public interest, and perfect the mechanisms of trading on DCMs.

When evaluating potential membership rules regarding algorithmic

trading, proposed § 170.19 would also require RFAs to consider how such rules could help prevent fraudulent and manipulative acts, protect the public interest, and perfect the mechanisms of trading on DCMs (prong 2 above). The Commission believes that these are important elements in the requirements proposed to be codified in § 170.19. RFAs should be cognizant, for example, of the overarching requirement in proposed § 1.80 that AT Persons take steps reasonably designed to prevent an Algorithmic Trading Event, defined in proposed § 1.3(vvvv) to include both Algorithmic Trading Compliance Issues and Algorithmic Trading Disruptions. Algorithmic Trading Compliance Issues include events at an AT Person that cause its algorithmic trading to operate in a manner that does not comply with the CEA, Commission regulations, or the rules of a DCM. Algorithmic Trading Disruptions include events originating with an AT Person that disrupt or materially degrade the operation of a DCM or the ability of other market participants to trade on the DCM. In short, an AT Person's algorithmic trading should neither disrupt the market nor violate law. RFAs should consider these factors when determining whether and what further rules they may promulgate over time pursuant to § 170.19.

Proposed § 170.19 would require an RFA to "establish and maintain a program" (prong 1 above) for the prevention of fraud and manipulation, protection of the public interest, and perfecting the mechanisms of trading on DCMs. The Commission anticipates that an RFA would include in its routine examinations of members pursuant to such program a verification that such members are complying with any rules that the RFA may determine to issue pursuant to proposed § 170.19. The Commission intends for proposed § 170.19 to provide RFAs with a wide measure of latitude in both the rules they may elect to adopt and in the members to whom they apply such rules. It is the Commission's further intent that RFAs *consider* the need for rules pursuant to proposed § 170.19, and that they adopt such rules where the RFA considers it necessary. However, the determination as to both the necessity of rules and their application to specific categories of members remains with the RFA.

Finally, the Commission notes that while proposed § 170.19 would require RFAs to issue rules as they deem appropriate, RFAs would remain free to take other steps when potential rules regarding algorithmic trading are not yet ripe. As both membership and self-

<sup>225</sup> The Commission notes an exception in proposed § 1.83, which requires the submission of annual reports from AT Persons and their clearing FCMs to DCMs.

<sup>226</sup> In this regard, the Commission distinguishes an RFA's obligation to establish membership rules—*i.e.*, mandatory requirements for all persons in the relevant membership category—from steps that a single AT Person or clearing member FCM may voluntarily take to augment its pre-trade risk controls or other measures based on its unique trading or technology and its obligations pursuant to proposed §§ 1.80, 1.81, and 1.82.

regulatory organizations, RFAs are uniquely positioned to gain insights from members through examination programs and coordination with other self-regulatory or standard-setting bodies. In addition to rulemaking when necessary, RFAs could leverage these resources to issue guidance or best practices, hold periodic discussions with relevant stakeholders, and otherwise provide leadership as risks, risk control technologies, market practices evolve over time. The Commission also affirms that proposed § 170.19 is not intended to create conflicting obligations between an RFA's role in establishing algorithmic trading standards for its members and a DCM's role as a self-regulatory organization. Accordingly, the requirements of proposed § 170.19 specifically address pre-trade risk controls for ATs, standards for the designing, testing, monitoring, and supervision of ATs, and the designation and training of algorithmic trading staff. The Commission believes that these areas are appropriate for potential future standards issued by an RFA in an evolving technological and market environment, and that such standards will be best implemented as uniform requirements of an RFA for its relevant members as opposed to potentially varying approaches by individual DCMs.

### 3. Request for Comments

28. The Commission requests comment on the scope of responsibilities assigned to RFAs under proposed § 170.19. Should RFAs be responsible for fewer or additional areas regarding AT Persons, ATs, and algorithmic trading than specified in proposed § 170.19, prongs (1), (2), (3), and (4) (§ 170.19(a)(1)–(a)(4))? Regulation 170.19 requires RFAs to consider the need for rules in the areas listed in prongs (1)–(4) (§ 170.19(a)(1)–(a)(4)). Should RFAs be responsible for considering whether to adopt rules in fewer or additional areas?

29. The Commission requests comment on the latitude afforded to RFAs in proposed § 170.19. Should RFAs have more or less latitude to issue rules than specified in proposed § 170.19?

30. The Commission requests comment on RFAs' obligation in proposed § 170.19 to establish and maintain a program for the prevention of fraud and manipulation, protection of the public interest, and perfecting the mechanisms of trading, including through rules it may determine to adopt pursuant to § 170.19. The proposed rules anticipate that an RFA's program

will include examination and enforcement components. Is this the appropriate approach?

31. The Commission requests comment on whether proposed § 170.19 may result in duplicative obligations on AT Persons or any other market participant. In particular, please comment on potential duplication, if any, between algorithmic trading requirements that an RFA may impose upon its members pursuant to § 170.19, and similar requirements that may be imposed by a DCM in its role as a self-regulatory organization. What amendments would be appropriate in any final rules arising from this NPRM to clarify that unintended overlap between the role of an RFA and a DCM in this context?

### G. AT Persons Must Become Members of an RFA—§ 170.18

#### 1. Policy Discussion

An RFA is an association of persons registered with the Commission as such pursuant to section 17 of the CEA.<sup>227</sup> Subject to Commission oversight, RFAs serve a vital self-regulatory role by functioning as frontline regulators of their members, including in large measure most Commission registrants who will qualify as AT Persons pursuant to proposed § 1.3(xxxx).<sup>228</sup> Entities that are not members of an RFA, however, are not bound by the rules of the RFA.<sup>229</sup> As such, the Commission previously adopted §§ 170.15 and 170.16 to require each registered FCM, and each registered SD and MSP, respectively, to be an RFA member, subject to an exception for certain notice registered securities brokers or dealers.<sup>230</sup> The Commission also recently adopted § 170.17 to require that all registered IBs and CPOs, and most registered CTAs, to become RFA members.<sup>231</sup>

Together §§ 170.15, 170.16, and 170.17 require many, but not all, Commission registrants who may be considered AT Persons pursuant to proposed § 1.3(xxxx) to become RFA

<sup>227</sup> 7 U.S.C. 21.

<sup>228</sup> RFA members also remain subject to oversight by the Commission.

<sup>229</sup> Those Commission registrants that are not RFA members are nevertheless subject to the rules and regulations of the Commission. See 7 U.S.C. 21(e), which specifies that any person registered under the CEA, who is not an RFA member, "in addition to the other requirements and obligations of [the CEA] and the regulations thereunder shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade."

<sup>230</sup> 17 CFR 170.15 and 170.16.

<sup>231</sup> See Membership in a Registered Futures Association, 80 FR 55022 (Sept. 14, 2015).

members. In particular, floor brokers and floor traders, who have historically been overseen by the DCMs on which they operate, are not required by §§ 170.15, 170.16, or 170.17 to become members of an RFA. In order to ensure that all AT Persons will be subject to any rules promulgated by an RFA pursuant to proposed § 170.19, including floor brokers and floor traders, the Commission is proposing a new § 170.18. This provision would require that all AT Persons that are not otherwise required to be a member of a RFA pursuant to §§ 170.15, 170.16, or 170.17 be a member of an RFA.

### 2. Description of Regulation

The Commission is proposing a new § 170.18 to require all Commission registrants that are AT Persons to be members of an RFA. The membership requirements proposed by § 170.18 will ensure that all AT Persons would be subject to membership rules promulgated by an RFA, including those membership rules promulgated pursuant to proposed § 170.19 to address algorithmic trading. Specifically, proposed § 170.18 requires that each registrant that is an AT Person that is not otherwise required to be a member of an RFA pursuant to §§ 170.15, 170.16, or 170.17 must become and remain a member of at least one RFA that provides for the membership of such registrant, unless no such futures association is so registered.

### 3. Request for Comments

32. The Commission requests comment on whether the regulatory framework established by Regulation AT would require all AT Persons to be members of an RFA in order to be effective. Alternatively, could the goals of Regulation AT be realized without requiring all AT Persons to be members of an RFA?

### H. Pre-Trade and Other Risk Controls for AT Persons—§ 1.80

The Commission proposes as a fundamental element of Regulation AT a new § 1.80 of its regulations, requiring AT Persons to implement pre-trade risk controls, order cancellation systems, and other measures reasonably designed to prevent an Algorithmic Trading Event. Such controls include, but are not limited to, maximum AT Order Message frequency and maximum execution frequency per unit time; order price parameters and maximum order size limits; order cancellation and Algorithmic Trading disconnect systems; and connectivity monitoring systems for AT Persons with DEA. In

addition, proposed § 1.80 requires AT Persons to: Notify applicable clearing member FCMs and DCMs that the AT Person will engage in Algorithmic Trading; and calibrate or otherwise implement DCM-provided self-trade prevention tools.<sup>232</sup> It would also require AT Persons to periodically review the sufficiency and effectiveness of their compliance with § 1.80. The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments on Pre-Trade and Other Risk Controls

The Concept Release requested comment on various pre-trade and other types of risk controls, including message and execution throttles, maximum order sizes, price collars, and order management controls, such as connectivity monitoring services, automatic cancellation of orders on disconnect and kill switches. The Concept Release contemplated that such controls would apply at the trading firm, clearing member and trading platform levels. As discussed below, the Commission has determined to require that AT Persons, FCMs, and DCMs<sup>233</sup> implement such pre-trade and other risk controls. Relevant comments to the Concept Release are discussed below.

##### a. Message and Execution Throttles

The Concept Release described message throttles as establishing maximum message rates per unit in time and execution throttles as establishing limits on the maximum number of orders that an ATS can execute in a given direction per unit in time. The Concept Release also sought comment on a particular form of execution throttle, the repeated automated execution throttle, which would disable a trading system after a configurable number of repeated executions until a human re-enables the system.<sup>234</sup> The Concept Release stated that the throttles would be calibrated to address the potential for unintended message flow or executions from a malfunctioning ATS.<sup>235</sup>

Commenters indicated that message and execution throttles are widely used in the industry. FIA PTG surveyed its

members and found that almost all firms that responded used message and execution throttles.<sup>236</sup> Commenters noted certain benefits to messaging and execution throttles, including that they may mitigate the risk and impact of disruptive events, alert market participants to potential problems with their automated order entry systems, and help ensure a level playing field for all market participants.<sup>237</sup> Commenters also noted that message or execution limits have potential negative effects because they can block risk-reducing orders.<sup>238</sup>

Commenters addressing this topic did not support regulations mandating throttle thresholds because appropriate limits will vary per market participant, depending on each participant's unique systems and trading strategy.<sup>239</sup> MFA strongly advised against required use of the repeated automated execution throttle, stating that it is best for market participants to determine which controls are most appropriate for their ATSs.<sup>240</sup> IATP commented on the difficulty in setting standardized throttle thresholds, and alternatively suggested standardizing a graduated levy on order cancellations.<sup>241</sup> Finally, Chicago Fed commented that regulators should assess the methodology that trading firms use to set throttle limits, the reasonableness of those limits, and the procedures followed when they are breached.<sup>242</sup>

As to the appropriate design of throttles, CME and AIMA commented that throttles implemented by market participants should be based on the specific attributes of an entity or account, including the nature of a firm's trading strategies, the market it trades in, and the speed of its systems.<sup>243</sup> AIMA indicated that applying throttles on a per-algorithm basis would distort the output of the ATS because an algorithm interacts with many other algorithms within the same ATS.<sup>244</sup> In contrast, AFR indicated that in order to detect a malfunctioning algorithm, the threshold should be based on the algorithm's trading strategy.<sup>245</sup>

<sup>236</sup> FIA at 59–60.

<sup>237</sup> FIA at 12, 15–17, 65; CME at 8–9; Gelber 7; AFR at 6–7; KCG at 3–5; Better Markets at 6–7.

<sup>238</sup> KCG at 3–5; MFA at 7, 13. *See also* Bell at 3–4.

<sup>239</sup> FIA at 12; CME at 8–9; MFA at 7, 13; Gelber at 5–7; AIMA at 8; KCG at 3–4.

<sup>240</sup> MFA at 7, 13.

<sup>241</sup> IATP at 3–5.

<sup>242</sup> Chicago Fed at 2.

<sup>243</sup> CME at 8–9; AIMA at 8.

<sup>244</sup> AIMA at 9.

<sup>245</sup> AFR at 6–7.

##### b. Maximum Order Sizes

Commenters indicated that maximum order size controls are already used in the industry. According to FIA PTG's survey, all responding trading firms use maximum order size limits.<sup>246</sup> AIMA indicated that many market participants use maximum order sizes limits,<sup>247</sup> and Gelber, a trading firm, stated that it uses this risk control.<sup>248</sup> KCG, Gelber and 3Red commented that market participants should use exchange-provided maximum order size controls.<sup>249</sup>

With respect to implementing maximum order size limits, FIA and CME indicated that this control should be applied per product or contract.<sup>250</sup> KCG suggested that exchange-provided maximum order size controls should provide flexibility to the market participant in setting different levels for users within a firm, for example, based on trader ID or customer.<sup>251</sup> Alternatively, the market participant should rely on tighter internal controls.<sup>252</sup> CME and KCG opposed standardization of maximum order size protections, stating that implementation of this control depends on individual customers and the market,<sup>253</sup> while FIX and IATP supported uniformity with respect to these controls.<sup>254</sup>

##### c. Price Collars

The Concept Release requested comment on price collars, a control in which trading platforms would assign a range of acceptable order and execution prices for each product and all market participants would establish similar limits to ensure that orders outside of a particular price range are not transmitted to the trading platform. While most comments addressing this topic focused on price collars implemented by exchanges, FIA indicated that its FIA PTG survey reflected that almost all responding trading firms used either price collars or trading pauses.<sup>255</sup>

##### d. Connectivity Indications and Cancel on Disconnect

The Concept Release requested comment regarding "system heartbeats" that would indicate proper connectivity between a trading firm's automated

<sup>246</sup> FIA at 59–60.

<sup>247</sup> AIMA at 13.

<sup>248</sup> Gelber at 10.

<sup>249</sup> KCG at 8; Gelber at 10; 3Red at 2.

<sup>250</sup> FIA at 18–19; CME at 15.

<sup>251</sup> KCG at 8.

<sup>252</sup> *See id.*

<sup>253</sup> CME at 15–16; KCG at 8.

<sup>254</sup> FIX at 3; IATP at 5.

<sup>255</sup> FIA at 60.

<sup>232</sup> *See* section IV(Q) below for a discussion of the term "self-trade" and proposed regulations with respect to self-trade prevention.

<sup>233</sup> The pre-trade and other risk controls for DCMs in proposed § 40.20 are discussed below in a separate section.

<sup>234</sup> Concept Release, 78 FR at 56571.

<sup>235</sup> Concept Release, 78 FR at 56569.



trading system and the trading platform, and “auto-cancel on disconnect,” an exchange tool allowing trading firms to determine whether their orders will be left in the market upon disconnection. Two exchanges stated that they provide an optional cancel-on-disconnect functionality.<sup>256</sup> FIA characterized cancel-on-disconnect as a “widely adopted DCM-hosted pre-trade risk control” and indicated that it is increasingly common for FCMs to employ cancel-on-disconnect for their connections to the DCM.<sup>257</sup> Several commenters indicated that they support exchanges offering system heartbeats and/or cancel-on-disconnect to their market participants.<sup>258</sup>

#### e. Order Cancellation Systems

The Concept Release also addressed selective working order cancellation, a tool that enables an exchange to immediately cancel one, multiple, or all resting orders from a market participant as necessary in an emergency situation. Such a tool will mitigate impact to the market of a malfunctioning Algorithmic Trading system because it will limit additional erroneous orders from being submitted to a trading platform and executed. The Concept Release also considered order cancellation mechanisms that would immediately cancel all working orders and prevent submission (by the market participant), transmittal (by the clearing member), or acceptance (by the trading platform) of any new orders from a market participant or a particular trader or ATS of such market participant.

In response to the Concept Release, numerous commenters addressed kill switches, discussing industry use; opposition to prescriptive requirements; the importance of flexibility in design; potential triggers; and content of kill switch procedures. For purposes of this discussion, the term “kill switch” means generally any order cancellation tools that cancels or prevents submission of orders. Commenters generally indicated that kill switches could be beneficial, but also stressed the complexity involved in their design and use.

Several commenters described order cancellation mechanisms currently employed in the industry. One exchange commented that it has two kill switch tools: A kill switch used by the exchange, clearing firm, or trading firm to remove an entity from the market completely; and an order management

tool that enables clearing firms and end-users to cancel orders at a more granular level.<sup>259</sup> Another exchange explained that it can cancel orders and quotes in an emergency and it also provides a kill switch to clearing members that cancels all orders and quotes from a market participant.<sup>260</sup> While commenters noted the importance of placing kill switches at the DCM level,<sup>261</sup> several commenters stated that kill switches should be implemented by market participants and clearing firms in addition to exchanges.<sup>262</sup>

Commenters stressed the importance of flexibility in the design of kill switches<sup>263</sup> and generally opposed prescriptive requirements regarding their design and implementation.<sup>264</sup> Reasons included challenges concerning setting the correct level of granularity (*i.e.*, whether the control should apply to one participant and not others at the same firm); the possibility that kill switches may prevent a firm from being able to enter risk-reducing orders; prescriptive requirements will become outdated; that time is of the essence, and therefore exchanges and firms need to be free from time-consuming processes concerning the use of the kill switch; the standardization of kill switches, if poorly calibrated or too widely applied, could result in increased costs and disruption of legitimate trading operations; and a concern over adding more layers of complexity into an already complex market.<sup>265</sup>

A critical concern raised by commenters was how order cancellation mechanisms should address risk-reducing activity.<sup>266</sup> Gelber and KCG suggested that kill switches enable a firm to mitigate risk through manual order entry, and that allowing the market participant to set trigger thresholds will help ensure that orders entered for the purpose of reducing risk are not cancelled.<sup>267</sup> In contrast, CME stated that a kill switch should exist solely to completely remove an entity from the market, and that other tools can be used to enter risk reducing

orders. CME argued that allowing entry of risk reducing orders as an exception to the kill switch process introduces too much uncertainty and complexity.<sup>268</sup>

Finally, commenters discussed procedures concerning activation of a kill switch. For example, FIA and Gelber suggested that a kill switch have both automated and manual triggers.<sup>269</sup> KCG suggested that if the total risk of a portfolio exceeds certain thresholds, firm systems should automatically send only risk reducing orders and supervisors should be able to stop trading entirely.<sup>270</sup> TCL commented that an exchange or ATS operator will not implement a system that abdicates control to an automated kill switch. TCL suggested that monitoring systems identify irregular market activity and alert staff that have access to a kill switch.<sup>271</sup> Similarly, Chicago Fed recommended that a human decide whether to use a kill switch based on internal and market conditions.<sup>272</sup>

Additional Concept Release comments, including comments on kill switch functionality, are discussed below with respect to Regulation AT pre-trade risk and other control requirements on FCMs and DCMs.

#### 2. Description of Regulation

The Commission proposes a new § 1.80 of its regulations to require that AT Persons implement pre-trade risk controls and other measures for all AT Order Messages that are reasonably designed to prevent an Algorithmic Trading Event. Relevant controls and measures required by § 1.80 include, but are not limited to: Maximum AT Order Message frequency and maximum execution frequency per unit time; order price parameters and maximum order size limits; order cancellation and ATS disconnect systems; and connectivity monitoring systems. They also include several other specific requirements, such as notification by AT Persons to applicable DCMs and clearing member FCMs that they will engage in Algorithmic Trading; calibrating or otherwise implementing DCM-provided self-trade prevention tools; and periodic consideration of the sufficiency and effectiveness of the controls that an AT Person has implemented. Consistent with comments received in response to the Concept Release, proposed § 1.80 provides market participants latitude in the design and implementation of required controls, and in fact requires

<sup>259</sup> CME at 23–24.

<sup>260</sup> CFE at 11.

<sup>261</sup> FIA at 29–33; Citadel LLC (“Citadel”) Comment Letter (December 11, 2013) at 3; AIMA at 3, 18; MFA at 12–13; KCG at 13.

<sup>262</sup> FIA at 30; Citadel at 3; CME at 22; Chicago Fed at 2; MFA at 12–13; Gelber at 14.

<sup>263</sup> FIA at 29–33; TCL at 8; AIMA at 18; MFA at 12; KCG at 13–14.

<sup>264</sup> FIA at 29–33; CME at 23; Gelber at 14–15; AIMA at 19.

<sup>265</sup> FIA at 29–33; CME at 23; Gelber at 14–15; AIMA at 19; TCL at 8.

<sup>266</sup> FIA at 29–33; TCL at 8; Gelber at 14–15; CME at 24; KCG at 13; SIG at 8.

<sup>267</sup> Gelber at 14–15; KCG at 13.

<sup>268</sup> CME at 24.

<sup>269</sup> FIA at 29–33; Gelber at 14–15.

<sup>270</sup> KCG at 14.

<sup>271</sup> TCL at 8.

<sup>272</sup> Chicago Fed at 2.

<sup>256</sup> CME at Appendix A–4; CFE at 9–10.

<sup>257</sup> FIA at 14.

<sup>258</sup> FIA at 14; KCG at 12; MFA at 12; Chicago Fed at 2.

only a small number of specific controls that the Commission understands are already widely implemented by likely AT Persons (e.g., proposed §§ 1.80(a), 1.80(b) and 1.80(c)). In this regard, proposed § 1.80 provides each AT Person with the flexibility to identify and implement any additional controls that such AT Person believes are appropriate for its Algorithmic Trading. The Commission is cognizant that prescriptive regulations in this area may fail to take into account the unique characteristics of market participants and trading strategies, or may become obsolete as technology evolves. The Commission has attempted to provide appropriate flexibility to accommodate such variety and evolution, while also establishing a regulatory floor that reflects its evaluation of basic requirements for all AT Persons.<sup>273</sup>

### 3. Policy Discussion

Proposed § 1.80 requires AT Persons to implement pre-trade risk controls and other measures reasonably designed to prevent an Algorithmic Trading Event. This requirement is central to the purposes of § 1.80. As discussed below, the Commission believes that proposed § 1.80 would reduce the potential for market disruptions arising from system malfunctions, other errors, or intentional disruptive conduct. The Commission notes that the risks of such disruptions are heightened by the increased use of high-speed algorithmic trading, which makes the implementation of pre-trade risk controls and other measures even more necessary. Without effective risk controls, erroneous orders can significantly impact many market participants in a short amount of time. The prevention of Algorithmic Trading Events pursuant to § 1.80 would help ensure the integrity of Commission-regulated markets and provide market participants with greater confidence that intentional, bona fide transactions are being executed.

The pre-trade risk controls and other measures required by proposed § 1.80 include, but are not limited to, those described in clauses (a)–(e) of § 1.80. The Commission believes that each of these enumerated controls and other measures will promote the goals of § 1.80, as described above. Proposed § 1.80(f) also promotes the goals of § 1.80, by requiring each AT Person to periodically review its compliance with

<sup>273</sup> See section IV(H) below for a more detailed discussion of which persons will be designated as AT Persons for purposes of proposed § 1.80 and other regulations, and which persons will not be AT Persons, but will nonetheless be subject to proposed § 1.82.

§ 1.80 to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event. Each AT Person must take prompt action to remedy any deficiencies it identifies.

#### a. Maximum AT Order Message and Execution Frequencies

Proposed § 1.80(a)(1)(i) requires AT Persons to set pre-trade risk controls that establish maximum AT Order Message and execution frequencies per unit time. These controls are commonly referred to in industry as message and execution throttles. These controls are designed to prevent excessive messaging or trading which could disrupt, slow down, or impede normal market activity. The Commission's proposed regulation on maximum order message and execution frequencies is aimed at preventing market disruptions caused by either inadvertent or intentional submission of AT Order Messages. This proposed regulation should not prevent DCMs from maintaining any and all additional safeguards intended to prevent intentional activity such as quote stuffing, or to apply such safeguards to message or data flows that are broader than the proposed definition of AT Order Messages. As indicated above, commenters to the Concept Release indicated that message and execution throttles are already widely used in the industry.<sup>274</sup> Commenters indicated that the benefits of these risk controls include mitigating the risk and impact of disruptive events, alerting market participants to potential problems with their automated trading systems, helping to ensure a level playing field for all market participants, and deterring predatory and disruptive activities.<sup>275</sup> In light of these benefits, and the already extensive use of this risk control, the Commission includes maximum AT Order Message and execution frequencies in its proposed rule.

The Commission notes that ESMA's 2015 Final Draft Regulatory Standards require investment firms to establish a maximum messages limit and repeated automated execution throttle.<sup>276</sup> The execution throttle should limit the number of times a strategy is applied only where appropriate to the specific

<sup>274</sup> See FIA at 59–60 (FIA's surveys of member firms and FCMs) and comment indicating that exchanges already use throttles (CME at 8–9; CFE at 5–6; TCL at 6; KCG at 4; MFA at 7; and AIMA at 8).

<sup>275</sup> See FIA at 12, 15–17, 65; MFA at 7; CME at 8; Gelber at 5–7; AFR at 6–7.

<sup>276</sup> ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 214–15.

trading venue, strategy or product.<sup>277</sup> ESMA requires that the controls be calibrated as appropriate for the investment firm's capital base, clearing arrangements, trading strategy, risk tolerance and experience.<sup>278</sup> ESMA further requires that firms take into account variables such as length of time since engaged in algorithmic trading and reliance on third-party vendors, and firms must re-calibrate in order to account for the changing impact of the orders on the relevant market due to different price and liquidity levels.<sup>279</sup> In addition, the calculations supporting each control should take into account all orders sent to a trading venue.<sup>280</sup> FIA has recently recommended that automated traders implement message throttles and repeated automated execution limits.<sup>281</sup>

As to the appropriate thresholds of these controls, the Commission agrees with Concept Release comments indicating that regulations should not mandate specific thresholds because, among other things, flexibility is necessary to respond to the dynamics of the market, and appropriate limits will vary by participant.<sup>282</sup> For example, commenters suggested that message and execution throttles should be based on the specific attributes of the trading firm or account, including the nature of the firm's trading strategies, the market it trades in, and the speed of its systems.<sup>283</sup> Therefore, the proposed rules do not prescribe particular limits or thresholds, aside from the overarching requirement that the controls be reasonably designed to prevent an Algorithmic Trading Event, and § 1.80(a)(2)'s requirement that the controls be set at the level of each AT Person, or such other more granular level as the AT Person may determine, including but not limited to, by product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message. While several commenters supported greater Commission involvement in setting risk control parameters, the Commission believes that it is not in the best position to determine the appropriate message or execution rate for each trading firm, trading strategy, product, and every other potentially relevant factor that should be taken into account when establishing thresholds.

<sup>277</sup> See *id.*; ESMA September 2015 Final Draft Standards Report, *supra* note 80 at 200.

<sup>278</sup> See *id.*

<sup>279</sup> See *id.*

<sup>280</sup> See *id.*

<sup>281</sup> FIA Guide, *supra* note 95 at 10, 12.

<sup>282</sup> See FIA at 12; CME at 9; Gelber at 5–7; AIMA at 8; KCG at 3–4; OneChicago at 5.

<sup>283</sup> CME at 8–9; AIMA at 8.

As discussed below, DCMs would receive information as to the specific quantitative settings used by each AT Person as part of Commission-required compliance reports pursuant to proposed § 1.83. Pursuant to this reporting process, DCMs would be able to identify AT Persons that have message or execution throttle thresholds that appear insufficient.

The Commission notes that several commenters cited potential negative effects of controls establishing message or execution limits (e.g., they can block risk-reducing orders and decrease liquidity). The Commission believes that the overall benefits to maximum order message and execution frequencies, as noted above, outweigh potential negative effects. In addition, allowing market participants discretion in the design and implementation of message and execution throttles, as well as in establishing appropriate thresholds, would enable market participants to address and limit the potential negative effects of this risk control.

Finally, as noted above, proposed § 1.80(a)(2) requires the controls to be implemented at the AT Person-level. Consistent with § 1.80's overarching requirement that an AT Person shall implement pre-trade risk controls and other measures reasonably designed to prevent an Algorithmic Trading Event, each AT Person must evaluate whether the controls should be set at a more granular level—for example, by product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message. Where deemed appropriate by the AT Person, the controls should be set at such more granular levels. In addition, proposed § 1.80(a)(3) requires that natural person monitors at the AT Person be promptly alerted when the controls are breached. The purpose of this requirement is to ensure that the AT Person would take any further action that is necessary to prevent or mitigate an Algorithmic Trading Event.

#### b. Order Price Parameters and Maximum Order Size Limits

Proposed § 1.80(a)(1)(ii) requires pre-trade risk controls that limit the prices and quantities associated with individual order messages. By requiring “order price parameters,” the Commission means that AT Persons must establish price limits intended to prevent orders with prices far from the prevailing market from entering the market. At the trading firm or clearing member level, such controls may be called “price tolerance limits” that define a maximum amount that an order

price may deviate from a pre-determined price, such as the last trade price, or the market open price.<sup>284</sup> By requiring “maximum order size limits,” the Commission means the risk control generally understood in industry as “fat-finger” limits. Commenters to the Concept Release indicated that maximum order size controls are already widely used by trading firms and that this control is effective at reducing the likelihood that an exchange would need to make use of its error trade policy.<sup>285</sup>

The Commission notes that ESMA's 2015 Final Draft Regulatory Standards require investment firms to establish price collars, maximum order value limits and maximum order volume limits, appropriately calibrated for their capital base, clearing arrangements, trading strategy, risk tolerance and experience.<sup>286</sup> IOSCO has also indicated that many market participants already employ order price and volume limits.<sup>287</sup> In addition, FIA has recently recommended that automated traders employ maximum order size and price tolerance limits.<sup>288</sup> Finally, the Commission also notes that the SEC's Market Access Rule requires controls that prevent entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.<sup>289</sup>

Given the usefulness of price and order size parameters in preventing the execution of erroneous trades, the Commission determined to require that AT Persons establish such controls on all orders submitted through Algorithmic Trading. The proposed regulations are intended to be sufficiently flexible so that as required controls improve or new types controls emerge, they may be incorporated into an AT Person's pre-trade risk control program and satisfy the requirements of proposed § 1.80(a). Similarly, this regulation is intended to be sufficiently flexible that exchanges, AT Persons, and clearing member FCMs may set the specific thresholds that will be most effective in preventing an Algorithmic Trading Event.

<sup>284</sup> See FIA Guide, *supra* note 95 at 10.

<sup>285</sup> FIA at 18–19, 23; CME at 15; Gelber at 10; KCG at 8; 3Red at 2.

<sup>286</sup> See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 214–15.

<sup>287</sup> See IOSCO 2015 Consultation Report, *supra* note 106 at 21.

<sup>288</sup> See FIA Guide, *supra* note 95 at 8, 10.

<sup>289</sup> See SEC, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, *supra* note 37.

Accordingly, the Commission proposes to require that each order pass through price parameter and maximum order size limit checks in order to protect the natural price discovery process from disruptive behavior such as unintentionally large orders. Consistent with the Commission's approach to the other pre-trade risk controls, the Commission will not impose thresholds, but will leave design of the control and specific thresholds to the discretion of market participants. Finally, the Commission notes that market participants could comply with the pre-trade and other risk controls required by Regulation AT in multiple ways: By internally developing such controls from scratch, upgrading existing systems, or purchasing a risk management solution from an outside vendor. The Commission understands that market participants may also be able to purchase some risk management solutions from DCMs. The Commission notes that implementation of exchange-provided controls, such as a maximum order size limit, would comply with Regulation AT's requirement that AT Persons use that control. However, an AT Person's use of a DCM-provided maximum order size limit would not constitute DCM compliance with proposed regulations requiring that DCMs implement maximum order sizes limits at the exchange level.

#### c. Order Management Controls

Proposed § 1.80(b) requires that AT Persons implement certain order management controls. The required controls must have the ability to: (i) Immediately disengage Algorithmic Trading; (ii) cancel selected or up to all resting orders when system or market conditions require it; and (iii) prevent submission of any new AT Order Messages (i.e., a “kill switch”). The parameters for the order cancellation systems must be reasonably designed to prevent an Algorithmic Trading Event. In addition, proposed § 1.80(c) requires that AT Persons with Direct Electronic Access (as defined in proposed § 1.3(yyyy)) must implement systems to indicate on an ongoing basis whether they have proper connectivity with the trading platform and any systems used by a DCM to provide the AT Person with market data. Proposed § 1.80(b)(2) requires that prior to an AT Person's initial use of Algorithmic Trading to submit a message or order to a DCM's trading platform, such AT Person must notify the applicable DCM whether all of its resting orders should be cancelled or suspended in the event of disconnect with the trading platform.

The order cancellation systems requirements provided in proposed § 1.80(b) and (c) are intended to protect against erroneous trading activity caused by an algorithmic trading system malfunction. As to connectivity monitoring and cancel-on-disconnect, several commenters supported exchanges offering such functionality to trading firms.<sup>290</sup> Given the possibility of a technology failure that causes a market participant's orders to be left in the market upon disconnect, leaving the trader or trading firm unable to manage the orders, the Commission believes that systems indicating proper connectivity and cancel-on-disconnect are important risk management tools that should be required. The Commission notes that commenters to the Concept Release indicated cancel-on-disconnect functionality should be a flexible tool, allowing market participants to determine whether orders should be left in the market upon disconnection.<sup>291</sup> FIA has explained that automated traders must decide whether cancellation upon disconnect mitigates or increases risk.<sup>292</sup> Accordingly, the Commission does not require cancellation or suspension of orders upon disconnect. Rather, it requires AT Persons, prior to engaging in Algorithmic Trading, to notify the DCM as to what action it should take in the event of disconnect, which may depend on the facts and circumstances.

As to "kill switch" functionality, comments to the Concept Release indicated that exchanges already provide kill switch functionality for use by market participants or clearing members, and additional commenters suggested that such functionality should be implemented by market participants and clearing firms in addition to exchanges.<sup>293</sup> The Commission notes the challenges identified by commenters around setting the correct level of granularity of an order cancellation tool, and of the potential need for trading firms to submit risk-reducing orders. The Commission believes that requiring that order cancellation tools allow for submission of risk-reducing orders may introduce too much uncertainty or complexity into the market, or may be technically infeasible at this time. In light of such considerations, the Commission's proposed regulations do not mandate specific elements of kill switch design, such as the parameters or

procedures concerning when the control must be triggered, or require that the functionality must allow for submission of risk-reducing orders. Rather, § 1.80(b)(1) would require that AT Persons have the ability and authority to disengage Algorithmic Trading, cancel selected resting orders, and prevent submission of new AT Order Messages, but does not specify when such functionality should be triggered. The Commission allows flexibility for AT Persons to design and implement appropriate parameters and procedures that are appropriate for their trading strategy or markets.

The Commission's approach to order cancellation systems is consistent with current recommendations in the European regulatory context. ESMA's 2015 Final Draft Regulatory Standards require that investment firms know which algorithm and which trader, trading desk or, where applicable, client is responsible for each order, and have the ability, as an emergency measure, to cancel unexecuted orders submitted to individual trading venues originated by individual traders, trading desks, or where applicable, clients. Investment firms must also have the ability, as an emergency measure, to immediately cancel all the firm's outstanding orders at all trading venues to which it is connected.<sup>294</sup> The Commission also notes that FIA recently recommended that automated traders build their own kill switch functionality into their trading systems where it is possible to implement it on a sufficiently granular level to identify individual trading systems.<sup>295</sup> FIA also recommended that where an exchange provides a kill switch, there should be a registration process and entitlement system that requires automated traders or brokers to specify which staff are authorized to use the functionality.<sup>296</sup> The Commission believes that FIA (in its recent Guide to the Development and Operation of Automated Trading Systems), other industry organizations, and commenters to the Concept Release provided reasonable recommendations as to the design and implementation of order cancellation systems. The Commission urges AT Persons and other market participants to consider such recommendations in the implementation of order cancellation and connectivity systems.

#### d. Notification of Algorithmic Trading

Proposed § 1.80(d) requires that, prior to an AT Person's initial use of Algorithmic Trading to submit a message or order to a DCM, such AT Person must notify its clearing member FCM, as well as the DCM on which the AT Person is trading, that it will engage in Algorithmic Trading. The Commission intends that this requirement ensure that clearing member FCMs and exchanges have sufficient advance notice to implement and calibrate pre-trade and other risk controls to manage risks arising from the AT Person's trading.

#### e. Self-Trade Prevention Tools

Proposed § 1.80(e) requires that, to the extent that implementation of a DCM's self-trade prevention tools requires calibration or other action by an AT Person, such AT Person must calibrate or take such other action as is necessary to apply such tools. This proposed regulation is designed to operate in conjunction with proposed § 40.23, which requires DCMs to either apply, or provide and require the use of, self-trade prevention tools.<sup>297</sup>

#### f. Periodic Review for Sufficiency and Effectiveness

Finally, proposed § 1.80(f) requires that each AT Person shall periodically review its compliance with § 1.80 to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event. Proposed § 1.80(f) would also require that an AT Person take prompt action to remedy any deficiencies it identifies. The Commission recognizes through proposed § 1.80(f) that trading practices, technologies for algorithmic trading, and best practices in risk controls will necessarily evolve over time. It believes that periodic review by AT Persons of their own pre-trade risk controls and other measures will help to ensure compliance with proposed § 1.80 in an engaged and proactive manner.

#### g. Certain Measures Not Adopted in This NPRM

The Commission determined not to address in this NPRM some measures that were discussed in the Concept Release and supported by Concept Release commenters. For example, various commenters favored standardization around drop copies and error trade policies. FIA commented that drop copies should be available for

<sup>290</sup> FIA at 14; KCG at 12; MFA at 12; Chicago Fed at 2.

<sup>291</sup> CME at Appendix A-4; CFE at 9-10; MFA at 12.

<sup>292</sup> FIA Guide, *supra* note 95 at 15.

<sup>293</sup> FIA at 30; Citadel at 3; CME at 22-24; Chicago Fed at 2; MFA at 12-13; Gelber at 14; CFE at 11.

<sup>294</sup> See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 211-12.

<sup>295</sup> See FIA Guide, *supra* note 95 at 14.

<sup>296</sup> See *id.* at 14.

<sup>297</sup> See section IV(Q) below for a discussion of proposed § 40.23 and requests for comment in connection with the proposed regulations.

all trading venues and products whenever technologically practicable and that trade reports and other information provided by drop copy should be disseminated to the consumer in real-time or as near real-time as practicable.<sup>298</sup> As to error trade policies, FIA suggested that they be clear and deterministic enough for all participants to understand, promote a marketplace where all trades stand as executed, protect participants who are counterparties to error trades, and not be subject to discretion.<sup>299</sup> KCG, MFA, Citadel and SIG also made similar comments.<sup>300</sup> The Commission believes that standardization of drop copy reports and error trade policies, as well as other measures addressed in the Concept Release, merit further consideration within the Commission as well as in industry. However, the Commission determined to include particular risk controls in Regulation AT, and not others, based on its understanding of the critical importance of controls required in proposed § 1.80 in preventing and mitigating market disruptions, as well as their current widespread industry use.

In addition, as noted above, the Commission has taken a principles-based approach to its requirements relating to risk controls and other measures. Proposed § 1.80 provides market participants discretion in the design and implementation of controls, and requires only a small number of specific controls that the Commission understands are already widely implemented. Proposed § 1.80 provides AT Persons with flexibility to identify and implement any additional controls appropriate for their Algorithmic Trading. The Commission is aware that prescriptive regulations in this area may not take into account the unique characteristics of each market participant, and may become obsolete. The proposed regulation reflects the Commission's intent to accommodate the diverse and evolving nature of market participants' businesses and technology, while establishing basic regulatory requirements of essential risk controls and related measures that each market participant engaged in Algorithmic Trading should have.

#### 4. Request for Comments

33. Are any pre-trade and other risk controls required by § 1.80 ineffective, not already widely used by AT Persons, or likely to become obsolete?

34. Are there additional pre-trade or other risk controls that should be specifically enumerated in proposed § 1.80?

35. Do you believe that the pre-trade and other risk controls required in § 1.80 sufficiently address the possibility of technological advances in trading, and the development of new, more effective controls that should be implemented by AT Persons?

36. The Commission welcomes comment on whether the regulation's requirements relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

37. The Commission notes that § 1.80(d) requires that prior to initial use of Algorithmic Trading, an AT Person must notify its clearing member FCM and the DCM that it will engage in Algorithmic Trading. The Commission welcomes comment on whether the content of that notification requirement is sufficient, or whether clearing member FCMs and DCMs should also be notified of additional information. For example, should AT Persons be required to notify their clearing member FCMs of particular changes to their Algorithmic Trading systems that would affect the risk controls applied by the clearing member FCM?

38. Is § 1.80(f)'s requirement that each AT Person periodically review its compliance with § 1.80 appropriate? Should there be more prescriptive and granular requirements to ensure that each AT Person periodically reviews its pre-trade and other risk controls and takes appropriate steps to update or recalibrate them in order to prevent an Algorithmic Trading Event? Alternatively, is § 1.80(f) necessary? Does the Commission need to explicitly require AT Persons to conduct a periodic review of their compliance with § 1.80?

39. AT Persons that are registered FCMs are required by existing Commission regulation 1.11 to have formal "Risk Management Programs," including, pursuant to § 1.11(e)(3)(ii), "automated financial risk management controls reasonably designed to prevent the placing of erroneous orders" and "policies and procedures governing the use, supervision, maintenance, testing, and inspection of automated trading programs." As described in § 1.11, an FCM's Risk Management Program must include a risk management unit independent of the business unit; quarterly risk exposure reports to senior management and the governing body of the FCM, with copies to the Commission; and other substantive requirements. The Commission requests

public comment regarding whether one or more of the proposed requirements applicable to FCMs in §§ 1.80, 1.81, 1.83(a), and 1.83(c) (as described below) should be incorporated within an FCM's Risk Management Program and be subject to the requirements of such program as described in § 1.11. In this regard, any final rules arising from this NPRM could place all requirements applicable to FCMs in §§ 1.80, 1.81, 1.83(a), and 1.83(c) within the operational risk measures required in § 1.11(e)(3)(ii). Such incorporation could help improve the interaction between an FCM's operational risk efforts and its pre-trade risk controls; development, monitoring, and compliance efforts; and reporting and recordkeeping requirements, pursuant to §§ 1.80, 1.81, 1.83(a), and 1.83(c). It could also help ensure that an FCM's §§ 1.80, 1.81, 1.83(a), and 1.83(c) processes benefit from the same internal rigor and independence required by the Risk Management Program in § 1.11.

40. The Commission proposes to adopt a multi-layered approach to regulations intended to mitigate the risks of automated trading, including pre-trade risk controls and other procedures applicable to AT Persons, clearing member FCMs and DCMs. Please comment on whether an alternative approach, for example one which does not impose requirements at each of these three levels, would more effectively mitigate the risks of automated trading and promote the other regulatory goals of Regulation AT.

#### *I. Standards for Development, Testing, Monitoring, and Compliance of Algorithmic Trading Systems—§ 1.81*

The Commission proposes regulations under § 1.81 requiring AT Persons to establish policies and procedures that accomplish a number of objectives with respect to the development, testing, monitoring, and compliance of Algorithmic Trading. The proposed regulations are intended to standardize a set of principles in order to reduce the operational risk of such systems. The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

##### 1. Concept Release Comments

The Concept Release requested comment on testing procedures for ATs. The Concept Release contemplated, among other things, that market participants operating ATs must test each ATS internally and on each trading platform on which it will

<sup>298</sup> FIA at 13.

<sup>299</sup> See *id.*

<sup>300</sup> KCG at 10–11; MFA at 2, 10–12; Citadel at 3, 4–5; SIG at 8–9.

operate, and trading platforms must provide test environments that simulate the production environment. In particular, the Concept Release asked for comment on when it is most beneficial for firms to test an ATS after it has been modified, and how the Commission and market participants should distinguish between major modifications and minor modifications.

Commenters support ATS testing and discussed current and best practices, but disagreed as to whether regulatory measures are appropriate to standardize these practices. Most commenters (including FIA, CME, CFE, and MFA) oppose standardized ATS testing procedures.<sup>301</sup> FIA indicated that it is impractical to implement prescriptive standardized procedures for development, testing and change management given the diversity of technologies and business operations at DCMs. FIA pointed to the testing recommendations outlined in its March 2012 “Software Development and Change Management Recommendations” as best practices for trading firms, which could also apply to all participants. FIA described different types of testing and supports DCMs providing robust test environments and market participants using such environments.<sup>302</sup> CME cited the FIA PTG’s “Recommendations for Risk Controls for Trading Firms” as an appropriate principles-based approach to management, oversight, and testing of electronic trading systems.<sup>303</sup> CME noted that exchange systems vary widely, and each exchange should develop and test in a manner that comports with industry best practices.<sup>304</sup>

SIG indicated that DCMs should provide test environments and stated that ATS testing procedures should be standardized “where possible.”<sup>305</sup> Gelber stated that standardizing development, testing and change management might be helpful, but it is more important that these procedures are clear and comprehensive at each exchange than that they are standardized.<sup>306</sup>

Both FIA and CME noted the difficulty of establishing objective criteria to determine what constitutes a “major” or “minor” modification of an ATS.<sup>307</sup> CFE noted that DCMs are

already subject to DCM Core Principle 20 and Commission regulation 38.1051(h), which require DCMs to conduct periodic, objective testing and review of their automated systems to ensure that they are reliable, secure, and have adequate scalable capacity.<sup>308</sup> In addition, KCG argued that a “testing process that creates too many frictions can discourage making changes that improve a system.”<sup>309</sup> Similarly, TCL stated that the testing procedures suggested in the Concept Release are overly broad and could force ATS operators to take a narrow view of what constitutes a change.<sup>310</sup>

In contrast, several commenters support regulatory involvement in this area. Chicago Fed noted that many industries have standards-setting bodies, but because there is no corollary for the development of ATSs within an “HFT environment,” market participants and the TAC should work together to formulate such standards and guidelines that will help mitigate the impact of operational risks.<sup>311</sup> IATP stated that out of all of the safeguards addressed in the Concept Release, ATS testing has the greatest potential to reduce market disruptions. IATP recommended that the Commission review and select from current best practices.<sup>312</sup> MFA recommended that industry engage in more robust testing, and that trading platforms should offer testing where a firm’s software interacts with other types of software.<sup>313</sup>

AIMA opposes standardization, and suggested alternatively that “CFTC principles” create a legal requirement for a certain standard of testing and change management. AIMA cited as an example the Department of Energy Software Engineering Methodology.<sup>314</sup> While MFA also opposes standardization, it stated that “rules or industry practice should encourage more robust and more routine testing at the trading platform level.”<sup>315</sup>

Finally, as to current ATS testing practices, MFA indicated that “many, if not all, exchanges provide market participants a test facility to test trading software and algorithms, as well as offer test symbols to trade.”<sup>316</sup> CME and CFE

described their own testing practices. CME indicated that market participants routinely test in their own testing environments using historical data to test trading strategies against a range of market conditions, and that exchanges commonly make their own historical data available for testing purposes. CME explained that it requires all systems interfacing with CME Globex to be certified on the order entry and/or market data interfaces prior to deployment.<sup>317</sup> CFE provides a user testing environment that simulates the production environment.<sup>318</sup> TCL described FIA industry-wide testing of backup systems.<sup>319</sup>

FIX stated that it has a working group that is developing best practices related to testing and is working to increase the availability of test financial instruments.<sup>320</sup> Similarly, IIT commented that a working group named AT 9000, which is affiliated with the International Organization for Standardization, is developing a quality management system for automated trading. The goals of AT 9000 are to help automated trading industry organizations satisfy their responsibility for trading safety, to satisfy regulatory requirements, and to improve the efficiency and effectiveness of automated trading.<sup>321</sup>

The Concept Release also requested comment on ATS development and change development. Among other things, the Concept Release contemplated that trading platforms and market participants operating ATSs must maintain a development environment that is adequately isolated from the production trading environment, and that market participants must have policies and procedures concerning approval and verification of changes to their trading systems. In particular, the Concept Release asked for comment on what challenges or benefits may result from the implementation of standardized development and change management procedures.

FIA described the core components of a change management as including authorization (effective pre-deployment review of the proposed change) and auditability (procedures for communicating requirements, changes and functionality related to proprietary software and technical infrastructure). FIA indicated that prescriptive

<sup>308</sup> CFE at 2–3.

<sup>309</sup> KCG at 15–16.

<sup>310</sup> TCL at 15.

<sup>311</sup> Chicago Fed at 3.

<sup>312</sup> IATP at 7.

<sup>313</sup> MFA, Presentation Before the CFTC Technology Advisory Committee Meeting on Risk Controls and System Safeguards for Automated Trading Environments (Feb. 10, 2014) at 13, available at: [http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/tac021014\\_mfa.pdf](http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/tac021014_mfa.pdf).

<sup>314</sup> AIMA at 3, 20–21.

<sup>315</sup> MFA at 13.

<sup>316</sup> MFA at 13.

<sup>317</sup> CME at 25–26.

<sup>318</sup> CFE at 12.

<sup>319</sup> TCL at 11–14.

<sup>320</sup> FIX Trading Community (“FIX”) Comment Letter (December 11, 2013) at 4–5.

<sup>321</sup> Illinois Institute of Technology (“IIT”) Comment Letter (February 11, 2014) at 1–2.

<sup>301</sup> FIA at 34–38; CME at 26; CFE at 2–3; AIMA at 3, 20–21; TCL at 15; KCG at 15–16; MFA at 2, 12–13; OneChicago at 2–3.

<sup>302</sup> FIA at 34–38.

<sup>303</sup> CME at 25.

<sup>304</sup> CME at 26.

<sup>305</sup> SIG at 9.

<sup>306</sup> Gelber at 15–16.

<sup>307</sup> FIA at 34–38; CME at 25–26.

development and change management standards are impractical given the diversity of market participants, but principles such as authorization and auditability can serve as “building blocks” that market participants can use to tailor a change management process to fit their needs.<sup>322</sup>

Similarly, TCL indicated that exchanges and ATSs should have formal processes for change management, which include a production installation authorization process in which no one may change the production systems after it has been submitted for authorization, followed by a formal signoff.<sup>323</sup> KCG recommended that policies for deploying new software include staged deployment (deploying new software in phases, with explicit rollback procedures), and validation (manual and automated evaluation of whether a change is successful).<sup>324</sup>

In addition, the Concept Release requested comment on ATS monitoring and supervision. In particular, the Concept Release requested comment on the extent to which human monitors have been trained in how to respond to unexpected problems, and been given the requisite authority to intervene at these times. The Concept Release suggested that market participants operating ATSs must ensure that their ATSs are subject to continuous real-time monitoring and supervision by trained and qualified staff at all times while engaged in trading. Two commenters addressed ATS monitoring and supervision, but did not specifically express support or opposition to regulatory action. KCG recommended that a monitoring process identify “smoke signals” (unusual or abnormal behaviors), investigate the cause of the smoke signals, and, if the smoke signal is an error, the monitoring alerts should be adjusted to take that information into account.<sup>325</sup> MFA commented that there should be at least one designated individual who is available and authorized to suspend a firm’s trading program. MFA also suggested that FCMs should have “plan-of-action” protocols that include scenarios where trading is suspended based on specific types of events.<sup>326</sup>

## 2. Description of Regulation

The Commission proposes regulations requiring AT Persons to establish policies and procedures that accomplish a number of objectives with respect to

the design, testing, and supervision of Algorithmic Trading. The proposed regulations are intended to standardize a set of principles in order to reduce the operational risk of such systems. The proposed regulations require each AT Person to: Implement written policies and procedures for the development and testing of ATSs (§ 1.81(a)); implement written policies and procedures reasonably designed to ensure that each of its ATSs is subject to continuous real-time monitoring and supervision by knowledgeable and qualified staff while such ATS is engaged in trading (§ 1.81(b)); implement written policies and procedures reasonably designed to ensure that ATSs operate in a manner that complies with the CEA and the rules and regulations thereunder, and ensure that staff are familiar with the CEA and the rules and regulations thereunder, the rules of any DCM to which such AT Person submits orders through Algorithmic Trading, the rules of any RFA of which such AT Person is a member, the AT Person’s own internal requirements, and the requirements of the AT Person’s clearing member FCM, in each case as applicable (§ 1.81(c)); and implement written policies and procedures to designate and train staff responsible for Algorithmic Trading (§ 1.81(d)). The proposed rules are described in greater detail below.

As a complement to the proposed design and testing requirements, Regulation AT proposes a new requirement that DCMs (under proposed § 40.21, discussed in section IV(O) below) provide a test environment that will enable market participants to simulate production trading and conduct exchange-based conformance testing of their Algorithmic Trading systems.

Development and Testing of Algorithmic Trading Systems. Regulation AT proposes a new requirement (§ 1.81(a)(1)) that each AT Person must implement written policies and procedures for the development and testing of its Algorithmic Trading systems. Such policies and procedures must at a minimum include the following: (i) Maintaining a development environment that is adequately isolated from the production trading environment (the development environment may include computers, networks, and databases, and should be used by software engineers while developing, modifying, and testing source code); (ii) testing of all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation, including testing to identify circumstances that may

contribute to future Algorithmic Trading Events (such testing must be conducted both internally with the AT Person and on each designated contract market on which Algorithmic Trading will occur); (iii) regular back-testing of Algorithmic Trading using historical transaction, order, and message data to identify circumstances that may contribute to future Algorithmic Trading Events; (iv) regular stress tests of Algorithmic Trading systems to verify their ability to operate in the manner intended under a variety of market conditions; (v) procedures for documenting the strategy and design of proprietary Algorithmic Trading software used by an AT Person, as well as any changes to such software if such changes are implemented in a production environment; and (vi) maintaining a source code repository to manage source code access, persistence, copies of all code used in the production environment, and changes to such code (such source code repository must include an audit trail of material changes to source code that would allow AT Persons to determine, for each such material change: Who made it; when they made it; and the coding purpose of the change. The source code must also be maintained in accordance with Commission regulation § 1.31).

Monitoring of Algorithmic Trading Systems. Regulation AT proposes a new requirement (§ 1.81(b)) that each AT Person must implement written policies and procedures reasonably designed to ensure that each of its ATSs is subject to continuous real-time monitoring by knowledgeable and qualified staff while such ATS is engaged in trading. Such policies and procedures must at a minimum include the following: (i) Continuous real-time monitoring of Algorithmic Trading to identify potential Algorithmic Trading Events; (ii) automated alerts when an ATS’s AT Order Message behavior breaches design parameters, upon loss of network connectivity or data feeds, or when market conditions approach the boundaries within which an ATS is intended to operate, to the extent applicable;<sup>327</sup> (iii) monitoring staff of the AT Person shall have the ability and authority to disengage an Algorithmic Trading system and to cancel resting orders when system or market conditions require it, including the ability to contact staff of the applicable designated contract market and clearing firm, as applicable, to seek information

<sup>322</sup> FIA at 4, 36–37.

<sup>323</sup> TCL at 15.

<sup>324</sup> KCG at 17.

<sup>325</sup> KCG at 17–18.

<sup>326</sup> MFA at 14.

<sup>327</sup> For example, if an ATS is designed to operate within certain ranges of volatility, liquidity, or order or trade prices, automated alerts may be triggered when volatility or a moving average approaches the pre-determined ranges.

and cancel orders; and (iv) procedures that will enable AT Persons to track which monitoring staff is responsible for an Algorithmic Trading system during trading hours. The Commission believes that staff persons who are responsible for monitoring the trading of other AT Person staff should typically not be actively engaged in trading at the same time, because it would be difficult to adequately and consistently monitor trading of other AT Person staff while engaged in trading activities.<sup>328</sup>

Compliance of Algorithmic Trading Systems. Regulation AT proposes a new requirement (§ 1.81(c)) that each AT Person shall implement written policies and procedures reasonably designed to ensure that each of its Algorithmic Trading systems operates in a manner that complies with the CEA and the rules and regulations thereunder. AT Persons must also implement procedures requiring staff of the AT Person to review Algorithmic Trading systems in order to detect potential Algorithmic Trading Compliance Issues. Such staff must include staff of the AT Person familiar with the CEA and the rules and regulations thereunder, the rules of any DCM to which such AT Person submits orders through Algorithmic Trading, the rules of any RFA of which such AT Person is a member, the AT Person's own internal requirements, and the requirements of the AT Person's clearing member FCM, in each case as applicable. The procedures should also include a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design, changes, testing, and controls, which plan should be designed to detect and prevent Algorithmic Trading Compliance Issues.

Designation and Training of Algorithmic Trading Staff. Regulation AT proposes a new requirement (§ 1.81(d)) that each AT Person must implement written policies and procedures to designate and train its staff responsible for Algorithmic Trading. Such policies and procedures must at a minimum include the

following: (i) Procedures for designating and training all staff involved in designing, testing and monitoring Algorithmic Trading, and documenting training events (training must, at a minimum, cover design and testing standards, Algorithmic Trading Event communication procedures, and requirements for notifying staff of the applicable designated contract market when Algorithmic Trading Events occur); (ii) training policies reasonably designed to ensure that natural person monitors are adequately trained for each Algorithmic Trading system or strategy (or material change to such system or strategy) for which such monitors are responsible; and (iii) escalation procedures to inform senior staff as soon as Algorithmic Trading Events are identified. The training described in clause (ii) above must include, at a minimum, the trading strategy for the Algorithmic Trading system, as well as the automated and non-automated risk controls that are applicable to the Algorithmic Trading system or strategy. Adequate training should ensure that monitors are effectively educated regarding the typical behavior of each Algorithmic Trading system or strategy (or material change to such system or strategy) that they are responsible for overseeing in production. It should also allow monitors to understand when risk controls may be triggered, and how to respond once they are. As result of the training they receive, monitors should be capable of making rapid, appropriate decisions in real time to help contain or mitigate ATS issues.

### 3. Policy Discussion

Consistent with the comments received, the Commission is taking a principles-based approach in this area, which is intended to provide discretion to AT Persons, particularly with respect to the development and testing of Algorithmic Trading systems. The Commission acknowledges that prescriptive regulations in this area may fail to take into account the unique characteristics of various market participants' trading strategies, and may become obsolete as technology and development standards evolve. For example, the Commission recognizes that software development practices continue to evolve, and therefore is not imposing very granular coding or testing requirements. The Commission believes that this principles-based approach is consistent with other regulatory initiatives and best practice guides issued in this area, as further discussed below.

Guidelines, Best Practices and Regulatory Standards on Testing and Development

As noted above, the ESMA guidelines recommended that investment firms should make use of clearly delineated development and testing methodologies prior to deploying an electronic trading system or a trading algorithm, and should monitor their electronic trading systems, including trading algorithms, in real-time.<sup>329</sup> The MiFID II Directive requires a regulated market to have in place effective systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing. The Directive seeks to reduce the likelihood that algorithmic trading systems may create or contribute to disorderly trading conditions, and to promote effective resolution of any disorderly trading conditions that do arise from algorithmic trading systems.<sup>330</sup> With respect to MiFID II, ESMA's 2015 Final Draft Regulatory Standards include requirements relating to the role of compliance and monitoring staff, testing (including conformance testing, stress testing, and testing environments), annual review and validation of systems, change management procedures, and real-time market monitoring procedures.<sup>331</sup> These standards include, among other things, that a firm must have clear lines of accountability for the development, deployment and updates of algorithms, and effective procedures for communication of information; compliance staff must have a general understanding of how trading systems and algorithms operate, and be in continuous contact with persons with detailed technical knowledge of trading systems and algorithms; testing must ensure that systems conform with the rules and systems of the trading venue, risk controls work as intended, and systems will not contribute to disorderly trading and can continue to work effectively in stressed market conditions; firms must run an annual validation process, which includes preparation of a validation report; firms must keep records of material changes made to software, including when a change was made, who made it, who approved it, and the nature of the change; and monitoring systems must have real-time alerts that assist staff in identifying when an algorithm is not behaving as expected, and firms must

<sup>328</sup> The Commission notes that the supervision requirement of proposed § 1.81(b) is analogous to the supervision requirements for Commission registrants under the customer protection rules of Commission regulation 166.3. The Commission further notes that ESMA's draft regulatory standards for MiFID II provide that real-time monitoring should be performed by a risk function that is independent from the trader, to ensure an appropriate segregation between the trading desk and supporting functions. See ESMA September 2015 Final Draft Standards Report, *supra* note 80 at 201.

<sup>329</sup> See ESMA Guidelines, *supra* note 61 at 10.

<sup>330</sup> See MiFID II, Article 48(6).

<sup>331</sup> ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 205–16.



have a process for remedial action when alerts occur, including a process for an orderly withdrawal from the market.<sup>332</sup>

With respect to the U.S. securities markets, the SEC's Reg SCI requires SCI entities to implement a program to review and keep current systems development and testing methodology for SCI systems, and to implement standards that result in SCI systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data.<sup>333</sup> In addition, FINRA Notice 15-09, published in March 2015, offered guidance on effective supervision and control practices for market participants that use algorithmic trading strategies in the equities market. The FINRA notice provided guidance in five general areas: General risk assessment and response; software/code development and implementation; software testing and system validation; trading systems; and compliance.<sup>334</sup>

The Commission further notes that the FIA Guide provides an overview of development and testing procedures, including software development, source code management and implementation, exchange-based conformance testing, and post-deployment verification, while noting that "market participants and exchanges should have the flexibility necessary to establish procedures that are appropriate and proportional to their operations."<sup>335</sup> The IOSCO 2015 Consultation Report notes that "many regulatory authorities have introduced specific requirements and guidelines regarding the introduction of new systems and changes to existing systems," and recommends that trading venues should consider establishing policies and procedures related to the development, modification, testing and implementation of critical systems, and establishing a governance model for the management of critical systems.<sup>336</sup> The IOSCO report also notes that most trading venues have procedures and tools designed to address the operational risk associated with electronic trading, including monitoring of trading in real-time (or near real-time), and monitoring of the trading venue's system performance in real-time.<sup>337</sup> Finally, the Senior Supervisors Group Algorithmic Trading Briefing

Note, published in April 2015, recommended that market participants using algorithmic trading conduct testing during all phases of a trading product's lifecycle, namely during development, rollout to production, and ongoing maintenance.<sup>338</sup>

The rules proposed under § 1.81 are intended to be consistent with these regulatory initiatives and best practices. The Commission believes that most market participants and DCMs have implemented controls regarding the design, testing, and supervision of Algorithmic Trading systems, in light of the numerous best practices and regulatory requirements promulgated in this area. The proposed regulations are intended to standardize a set of principles relating to the design, testing, and supervision of Algorithmic Trading systems in order to reduce the operational risk of such systems. In their response to the Concept Release, IATP noted that, out of all the safeguards discussing in the Release, they believed ATS testing had the greatest potential to reduce market disruptions.<sup>339</sup> By standardizing principles in this area, Regulation AT is intended to reduce the risk of disorderly trading, including the risk that orders will be unintentionally sent into the marketplace by a poorly designed or insufficiently supervised algorithm.

For example, the regulations proposed under § 1.81 may reduce the risk of market disruptions such as the 2012 incident involving Knight Capital. The SEC later concluded that, among other failures, Knight Capital did not have adequate controls and procedures for code deployment and testing for its order router, did not have sufficient controls and written procedures to guide employees' responses to significant technological and compliance incidents, and did not have an adequate written description of its risk management controls.<sup>340</sup> As discussed above, proposed § 1.81 requires written policies and procedures relating to the following: Testing of all Algorithmic Trading code and relates systems and any changes to such code and systems prior to their implementation; regular stress tests of Algorithmic Trading systems to verify their ability to operate in the manner intended under a variety of market conditions; a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading

regarding Algorithmic Trading design, changes, testing, and controls; and procedures for documenting the strategy and design of proprietary Algorithmic Trading software used by an AT Person, among other controls. The standardization of such written policies and procedures may make disruptive events like the Knight Capital incident less likely in the future.

#### 4. Request for Comments

41. The Commission understands that the requirements for developing, testing, and supervising algorithmic systems proposed in § 1.81(a)–(d) are already widely used throughout the industry. Are any specific requirements proposed in this section not widely used by persons that would be designated as AT Persons under Regulation AT, and if not, why not? If any requirements described in § 1.81(a)–(d) are not widely used, please provide an estimate of the cost that would be incurred by an AT Person to implement such requirements.

42. Are there any aspects of § 1.81(a)–(d) that are unnecessary for purposes of reducing the risks from Algorithmic Trading, and should not be mandated by regulation? If so, please explain.

43. Are the procedures described above for the development and testing of Algorithmic Trading sufficient to ensure that algorithmic systems are thoroughly tested before being used in production, and will operate in the manner intended in the production environment?

44. Are there any additional procedures for the development and testing of Algorithmic Trading that should be required under Regulation AT?

45. Are any of the required procedures for the development and testing of Algorithmic Trading likely to become obsolete in the near future as development and testing standards evolve?

46. Are the procedures for designating and training Algorithmic Trading staff of AT Persons sufficient to ensure that such staff will be knowledgeable in the strategy and operation of Algorithmic Trading, and capable of identifying Algorithmic Trading Events and promptly escalating them to appropriate staff members?

47. Is it typical that persons responsible for monitoring algorithmic trading do not simultaneously engage in trading activity?

48. Proposed §§ 1.80, 1.81, and 1.83 would impose certain requirements on all AT Persons regardless of the size, sophistication, or other attributes of their business. The Commission requests public comment regarding

<sup>332</sup> See *id.*

<sup>333</sup> See Reg SCI, *supra* note 40 at 72437.

<sup>334</sup> See FINRA Notice 15-09, *supra* note 59 at 1.

<sup>335</sup> See FIA Guide, *supra* note 95 at 23-30.

<sup>336</sup> See IOSCO 2015 Consultation Report, *supra* note 106 at 14, 19.

<sup>337</sup> *Id.* at 21.

<sup>338</sup> See SSG 2015 Note, *supra* note 115 at 3.

<sup>339</sup> IATP at 7.

<sup>340</sup> See SEC Knight Capital Release, *supra* note 39.

whether these requirements should vary in some manner depending on the AT Person. If commenters believe proposed §§ 1.80, 1.81, and 1.83 should vary, please describe how and according to what criteria.

#### *J. Risk Management by Clearing Member FCMs—§ 1.82*

The Commission proposes a new § 1.82 to require clearing member FCMs to implement pre-trade risk and order management controls with respect to AT Order Messages originating with an AT Person. Specifically, such clearing member FCMs must make use of pre-trade risk controls reasonably designed to prevent or mitigate an Algorithmic Trading Disruption, including at a minimum, those pre-trade risk controls described in § 1.80(a)(1). The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

##### 1. Concept Release Comments

The Concept Release inquired about clearing members' use of the same pre-trade and other risk controls discussed above in section IV(H) with respect to AT Persons.

##### a. Message and Execution Throttles

FIA indicated that message and execution throttles are already widely used by clearing members. FIA PTG surveyed its members and found that all responding FCMs used message and execution throttles, either internally or at the exchange level.<sup>341</sup> FIA also indicated that most DCMs provide tools to allow FCMs to set pre-trade controls for their customers, which are a prerequisite for an FCM to provide direct access to a market participant without routing orders through the FCM's infrastructure.<sup>342</sup> FIA explained that FCMs encourage DCMs to provide pre-trade risk controls that can be set at various levels, whether at session level, customer level or account level.<sup>343</sup> CFE commented that it provides an execution throttle to clearing members.<sup>344</sup>

FIA stated that DCM message rate limits should be supplemented at the market participant or FCM level.<sup>345</sup> FIA explained that where an FCM facilitates market access, it has the ability to impose the FCM's own message rate

limits. These limits should be documented and discussed with market participants to ensure that they are appropriate for the participants' type of activity.<sup>346</sup> FIA further stated that FCMs that choose to implement message rate limits within their infrastructure should be transparent to their customers regarding the reason for the control and the maximum message rate that can be supported by the FCM.<sup>347</sup> In the case of direct access, FIA explained that the FCM should rely on DCM-provided message rate limits and any controls implemented by the market participants themselves.<sup>348</sup>

Additional commenters indicated that FCMs should implement messaging or execution limits.<sup>349</sup> For example, Gelber stated that "in many cases, FCMs receive fills from the exchanges and have no control over the amount of messaging coming from a customer controlled-and-run applications. Therefore, FCMs need to have the ability to coordinate throttle rates through the account identifier at the exchange."<sup>350</sup> Gelber indicated that such limits should take into account financial risk and FCMs' understanding of their clients' business.<sup>351</sup> MFA stated that clearing members, as the gateways to the markets, should have financial and regulatory risk management controls to reduce risks associated with market access.<sup>352</sup> Similarly, CME supported allowing clearing members to provide direct market access to their customers as long as the clearing member has appropriately vetted the client and implemented appropriate risk management controls.<sup>353</sup> CME stated that clearing firms should decide the exact nature of the throttles to impose across their customer base, taking into consideration financial risk to the extent possible and their understanding of their clients' businesses.<sup>354</sup> Finally, SIG commented that clearing firms should have the ability to throttle orders at the exchange level in connection with credit limits set by the clearing firm,

<sup>346</sup> FIA at 16.

<sup>347</sup> FIA at 12.

<sup>348</sup> FIA at 16.

<sup>349</sup> KCG at 3; Gelber at 6; MFA at 4–5; CME at 7–9; AIMA at 7; Chicago Fed at 2; SIG at 3. The Commission notes that the same concern discussed in the AT Person context that message or execution limits have potential negative effects because they can block risk-reducing orders would also apply to message or execution limits applied by an FCM. To that end, the Commission notes that FIA commented that a FCM should never reject an order cancellation request due to message rate limits. *See* FIA at 16.

<sup>350</sup> Gelber at 6.

<sup>351</sup> Gelber at 5–7.

<sup>352</sup> MFA at 4–5.

<sup>353</sup> CME at 7.

<sup>354</sup> CME at 9.

and that exchanges should make this same protection available to executing brokers executing for customers for whom they do not clear.<sup>355</sup>

##### b. Maximum Order Sizes

Commenters indicated that clearing members already use maximum order sizes. FIA explained that FIA PTG conducted a survey and all responding FCMs used this control.<sup>356</sup> CME commented that it allows clearing members to use its technology to set maximum order sizes for specific customers or accounts.<sup>357</sup> CFE stated that it allows clearing members to set maximum order size limits by product, and then set maximum order and quote size limits by the "log-in" of trading privilege holders.<sup>358</sup> FIX indicated that it is becoming increasingly common for futures and equities exchanges to provide tools that allow an FCM the ability to set checks for each client that accesses the exchange directly.<sup>359</sup> AIMA suggested that many market participants already use maximum order sizes when trading through their brokers, but may have less access to this control in the case of direct market access.<sup>360</sup> MFA commented that some FCMs already offer their customers this control, which can be set at the following levels: Each direct market access order, each individual algorithmic order, net sell and buy order limits, and total contract limits.<sup>361</sup> MFA suggested that all FCMs offer this maximum order size control at the trader-level.<sup>362</sup> Similarly, KCG believes that exchange-provided maximum order size controls should allow the market participant flexibility in setting different maximum order size levels for different users within a firm, such as based on trader ID or customer.<sup>363</sup> Chicago Fed supports a requirement that clearing firms must use this control at the account level.<sup>364</sup>

##### c. Price Collars

Most comments addressing this control focused on price collars implemented by exchanges. However, the FIA FCM Survey reflected that almost all responding FCMs used price collars, administered either internally or at the exchange level.<sup>365</sup>

<sup>355</sup> *See id.*

<sup>356</sup> FIA at 59–60.

<sup>357</sup> CME at 15.

<sup>358</sup> CFE at 7.

<sup>359</sup> FIX at 3.

<sup>360</sup> AIMA at 13.

<sup>361</sup> MFA at 9.

<sup>362</sup> *See id.*

<sup>363</sup> KCG at 8.

<sup>364</sup> Chicago Fed at 2.

<sup>365</sup> FIA at 60.

<sup>341</sup> FIA at 59–60.

<sup>342</sup> FIA at 13.

<sup>343</sup> FIA at 13.

<sup>344</sup> CFE at 7.

<sup>345</sup> FIA at 12, 16.

#### d. Order Management Controls

As noted above, the Concept Release requested comment regarding “system heartbeats” and “auto-cancel on disconnect,” and commenters that addressed this topic indicated that exchanges provide these tools. In addition, FIA indicated that it is increasingly common for FCMs to employ cancel-on-disconnect for their connections to the DCM.<sup>366</sup>

Some commenters addressed the implementation of “kill switch” functionality by FCMs. Two exchanges commented that their kill switch functionality allows clearing firms to cancel orders<sup>367</sup> and several commenters stated that kill switches should be implemented by market participants and clearing firms in addition to exchanges.<sup>368</sup> Barclays commented that if a kill switch is located at the FCM level, then the Commission should provide “clear regulatory guidance” about when the FCM should alter or cancel orders, given that altering or cancelling orders could expose the FCM to significant financial or legal liability.<sup>369</sup>

FIA explained that if a DCM cannot provide the appropriate level of granularity in the function of its kill switch, the focus of this functionality should be at the FCM level.<sup>370</sup> FIA recommended that a kill switch implemented by an FCM should be able to be invoked “at the finest resolution possible” and should include both manual and automated methods for triggering the kill switch.<sup>371</sup> FIA stressed that a kill switch should be used as a “final measure” only when other processes have not been successful, and that policies and procedures for when an FCM will invoke a kill switch should be clearly communicated to the market participant.<sup>372</sup>

#### 2. Description of Regulation

The Commission proposes a new § 1.82 to require clearing member FCMs to implement pre-trade risk controls and order management controls with respect to AT Order Messages originating with an AT Person. Specifically, such

clearing member FCMs must make use of pre-trade risk controls reasonably designed to prevent or mitigate an Algorithmic Trading Disruption, including at a minimum, those pre-trade risk controls described in § 1.80(a)(1). (Proposed § 1.80(a)(1) requires AT Persons to implement, at a minimum, maximum AT Order Message frequency per unit time and maximum execution frequency per unit time, order price parameters and maximum order size limits.) The Commission notes that proposed § 1.82 requires clearing member FCMs to address “Algorithmic Trading Disruptions,” rather than the broader “Algorithmic Trading Events” that AT Persons are required to address under proposed § 1.80. As discussed in section IV(D) above, an Algorithmic Trading Disruption is defined in proposed § 1.3(uuuu) as an event originating with an AT Person that disrupts, or materially degrades, (1) the Algorithmic Trading of such AT Person, (2) the operation of the DCM on which such AT Person is trading or (3) the ability of other market participants to trade on the DCM on which such AT Person is trading. In contrast to an Algorithmic Trading Event (defined in proposed § 1.3(vvvv)), an Algorithmic Trading Disruption does not specifically incorporate violations of the CEA or the rules thereunder. The Commission anticipates that some Algorithmic Trading Disruptions may be the result of violations of the CEA or Commission regulations, and some Algorithmic Trading Disruptions may not. Proposed § 1.82 requires clearing member FCMs to make use of pre-trade risk controls reasonably designed to prevent or mitigate an Algorithmic Trading Disruption, regardless of whether such disruptions were the result of a violation of the CEA or Commission regulations. It otherwise does not require clearing member FCMs to ensure that their customers’ order flow does not violate the CEA or Commission regulations. However, nothing in proposed § 1.82 relieves FCMs of their obligations under all other applicable Commission regulations.

Proposed § 1.82 also requires that pre-trade risk controls must be set at the level of each AT Person, or such other more granular level as the clearing FCM may determine, including but not limited to: By product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message. In addition, § 1.82 would require the clearing member FCM to have policies and procedures reasonably designed to ensure that natural person monitors at

the FCM are promptly alerted when pre-trade risk control parameters established pursuant to this section are breached, and make use of the order cancellation systems described in § 1.80(b)(1). (The order cancellation systems are the same controls that proposed § 1.80(b)(1) requires AT Persons to implement, *i.e.*, systems that have the ability to immediately disengage Algorithmic Trading, cancel selected or up to all resting orders when system or market conditions require it, and prevent the submission of new orders.)

Pursuant to proposed § 1.82(b) and (c), the location of the pre-trade and other risk controls calibrated by the clearing member FCM varies, according to whether an AT Person’s orders are placed through DEA or intermediated by its clearing FCM.

DEA Orders—Controls Reside at DCM. Proposed § 1.82(b) addresses AT Order Messages originating with an AT Person and submitted through DEA. In the case of DEA, pre-trade and other risk controls would be established by and located at the DCM, and be controlled or calibrated by the clearing FCM. This approach recognizes that clearing FCMs do not have the ability to apply market risk controls to customers’ DEA orders before they reach a DCM. With respect to financial risk, existing § 38.607 requires DCMs to establish controls facilitating FCMs’ management of financial risk, and existing § 1.73 provides requirements with respect to clearing FCMs’ implementation of such controls.<sup>373</sup> Consistent with that structure, proposed amendments to § 38.255 establish a similar structure in which DCMs must establish pre-trade and other risk controls addressing the risks of Algorithmic Trading for use by FCMs. Proposed § 1.82(b), accordingly, requires FCMs to implement such controls residing at the DCM.

Non-DEA Orders—FCM Implements and Calibrates Controls. Proposed § 1.82(c) addresses the scenario in which AT Order Messages originating with an AT Person are not submitted to a trading platform through DEA, but instead are routed through a clearing member FCM. In the case of such intermediated orders, the controls would not reside at the DCM. Instead, the clearing member FCM itself would have the obligation to implement and

<sup>373</sup> The Commission notes that § 23.609 imposes the same risk-based limit requirements on SDs and MSPs as § 1.73 does on clearing FCMs. SDs and MSPs do not carry customer accounts; accordingly, any firm that has customer accounts must be a registered FCM and implement the controls required by new § 1.82. Furthermore, any SD or MSP that engages in Algorithmic Trading for its own account will have to comply with the AT Person requirements of proposed § 1.80.

<sup>366</sup> FIA at 14.

<sup>367</sup> CME at 23–24; CFE at 11.

<sup>368</sup> Citadel at 3; CME at 22; Chicago Fed at 2.

<sup>369</sup> Barclays Capital Inc. (“Barclays”) Comment Letter (December 10, 2013) at 1. Similarly, FIA commented that where FCMs rely on DCM-provided controls, and such controls fail to operate according to the instructions of the FCM, FCMs should be deemed to have met their regulatory obligations. FIA at 19–20.

<sup>370</sup> FIA at 30.

<sup>371</sup> *Id.* at 31.

<sup>372</sup> *Id.*

calibrate pre-trade risk and other controls with respect to such orders.

The Commission notes that while the controls implemented by the FCM are the same types of controls that would be implemented by AT Persons pursuant to § 1.80 (and by DCMs pursuant to § 40.20, discussed below), each entity would be responsible for ensuring the appropriate calibration of the control. Accordingly, an FCM's setting of a maximum order size limit, for example, may be different from the setting used by an AT Person, depending on each entity's assessment of the potential for an Algorithmic Trading Event or an Algorithmic Trading Disruption, as applicable. The Commission will not mandate exactly when intervention by an FCM to modify or cancel orders is necessary; rather, the Commission believes that each FCM is best positioned to determine appropriate parameters that will prevent or mitigate an Algorithmic Trading Disruption. Furthermore, the Commission will not specify a mandate which, if complied with by an FCM, would absolve the FCM of liability (as requested by Barclays).<sup>374</sup>

### 3. Policy Discussion

The Commission agrees with comments to the Concept Release that suggested that all types of market access create risks; therefore, the same principles should apply to all types of market access. When an order does not pass through a clearing member FCM's infrastructure before entering the market, it is critical that DCMs provide clearing member FCMs with the ability to subject such orders to controls that prevent or mitigate the impact of unintended or disruptive trading. In addition, where orders pass through a clearing member FCM's infrastructure before entering the market, that clearing member FCMs should subject such orders to similar controls. The Commission believes that an order should pass through the same pre-trade risk controls regardless of trading strategy or means of market access, and that all market participants have a responsibility to implement risk controls appropriate to their role in the lifecycle of an order.

As discussed above, commenters indicated that the required controls (*i.e.*, message and execution throttles and price and size parameters) are already widely used by clearing members, either internally or as provided by the DCM. The Commission also notes that IOSCO and ESMA have stressed the importance of adequate risk controls where a user

is granted access to the market via an intermediary's systems or directly, without using the intermediary's systems. IOSCO has recommended that intermediaries (including clearing firms) have adequate operational and technical capabilities to manage appropriately the risks posed by such access.<sup>375</sup> ESMA's 2015 Final Draft Regulatory Standards require that the intermediary providing access apply pre-trade risk controls on the order flow of their clients.<sup>376</sup> ESMA's regulatory standards provide that the direct electronic access provider may use its own proprietary controls, controls purchased from a third-party, or controls offered by a trading venue, but in each of those circumstances the provider remains responsible for the effectiveness of those controls and is solely entitled to set or modify any parameters and limits.<sup>377</sup>

### 4. Discussion of Persons Subject to Proposed §§ 1.80 and 1.82

The following discussion is intended to provide detailed examples of which persons will be subject to proposed §§ 1.80 (applicable to all AT Persons when acting as such) and 1.82 (applicable only to clearing FCMs). Proposed § 1.80 would apply to AT Persons—*i.e.*, any FCM, floor broker, SD, MSP, CPO, CTA, IB or floor trader as defined in proposed § 1.3(x)(3) *when engaged in Algorithmic Trading* on or subject to the rules of a DCM. In contrast, proposed § 1.82 would apply to clearing FCMs when acting as clearing members for their customers with respect to an AT Order Message.

An entity could be subject to both § 1.80 and § 1.82 in certain circumstances. For example, in the event that a clearing FCM engages in both Algorithmic Trading for its own account and acts a clearing member with respect to its customers' AT Order Messages, such clearing FCM would be subject to both proposed § 1.80 (as an AT Person with respect to its own

<sup>375</sup> IOSCO 2015 Consultation Report, *supra* note 106 at 22–23.

<sup>376</sup> See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 218. ESMA's 2015 Final Draft Regulatory Standards further require, among other things, that direct electronic access providers have the ability to stop order flow of their clients, carry out a review of the internal risk controls systems of the client, and have the ability to identify the different trading desks and traders of its clients. The direct electronic access provider must also perform due diligence on its clients covering, among other things, the type of strategies the client will use, the operational set-up, systems and controls of the client, its historical trading pattern and behavior, an assessment of the level of expected trading and order volume, and the ability of the client to meet its financial obligations. See *id.* at 219–20.

<sup>377</sup> See *id.*

Algorithmic Trading) and to proposed § 1.82 (as a clearing member). The Commission is providing further clarity regarding who would be AT Persons for purposes of § 1.80 and other regulations, including some detailed order flow scenarios that demonstrate the application of §§ 1.80 and 1.82, below.

Question One: In the scenario in which a non-clearing FCM trading for a proprietary account submits orders to a separate clearing FCM, could the clearing FCM ever engage in Algorithmic Trading and be an AT Person?

If an FCM trading for a proprietary account submits an order to a separate clearing FCM, the separate clearing FCM could be an AT Person if it uses computer algorithms or systems to determine any of the elements of the definition of Algorithmic Trading (*e.g.*, determinations regarding order routing). If the clearing FCM is not making any of these determinations, the clearing FCM is not an AT Person.

If an FCM trading for a proprietary account submits an order to a separate non-clearing FCM who then submits it to an additional separate clearing FCM, the clearing FCM is not engaged in Algorithmic Trading, provided that it is not determining any of the elements of the definition of Algorithmic Trading.

Question Two: Is it correct to say that all FCMs using Algorithmic Trading to engage in proprietary trading are AT Persons?

Yes. A non-clearing or clearing FCM that uses Algorithmic Trading to engage in proprietary trading is an AT Person.

Question Three: Is it correct to say that an FCM accepting orders from its customer *may* be an AT Person, if its computer algorithms or systems determine any of the elements of the definition of Algorithmic Trading?

Yes. A non-clearing or clearing FCM that accepts customer orders, and that uses computer algorithms or systems to determine any of the elements of the definition of Algorithmic Trading (*e.g.*, determinations regarding order routing), would be an AT Person with respect to the customer's orders.

Below are some detailed order flow scenarios that demonstrate the application of §§ 1.80 (which applies to AT Persons) and 1.82.

*Example 1:* Order flow prior to execution by DCM: (i) Customer to (ii) non-clearing FCM to (iii) separate clearing FCM. Customer is not registered with the Commission; uses algorithms but not DEA. Neither the non-clearing FCM nor the clearing FCM make any of the determinations regarding the order described in the definition of Algorithmic Trading.

Who is an AT Person?

<sup>374</sup> See Barclays at 1.

(i) The customer is not an AT Person, because it is not registered and does not use DEA.

(ii) The non-clearing FCM is not an AT Person, because it doesn't make any determinations regarding the order and therefore doesn't engage in Algorithmic Trading.

(iii) The clearing FCM is not an AT Person, for the same reason as (ii). The clearing member FCM is also not subject to 1.82, because the customer in (i) originating orders isn't an AT Person.

*Example 2:* Order flow prior to execution by DCM: (i) Customer to (ii) non-clearing FCM to (iii) separate clearing FCM. Customer is not registered with the Commission; uses algorithms but not DEA. Non-clearing FCM's computer algorithms or systems make *some* of the determinations regarding the order described in the definition of Algorithmic Trading.

Who is an AT Person?

(i) The customer is not an AT Person, because it is not registered and does not use DEA.

(ii) The non-clearing FCM is an AT Person, because it engages in Algorithmic Trading regarding the customer's order.

(iii) The clearing FCM is not an AT Person, assuming it doesn't make any determinations regarding order and therefore doesn't engage in Algorithmic Trading. The clearing FCM is also not subject to 1.82, because the customer originating orders isn't an AT Person (even though the non-clearing FCM in the order flow *is* an AT Person).

*Example 3:* Order flow prior to execution by DCM: (i) Customer to (ii) a clearing FCM. Customer is not registered with the Commission; uses algorithms but not DEA. Clearing FCM just clears trades, and does not make any of the determinations regarding the order described in the definition of Algorithmic Trading.

Who is an AT Person?

(i) The customer is not an AT Person, because it is not registered and does not use DEA.

(ii) The clearing FCM is not an AT Person, because it doesn't make any determinations regarding the order and therefore doesn't engage in Algorithmic Trading. The clearing FCM is also not subject to 1.82, because the customer originating orders isn't an AT Person.

*Example 4:* Order flow prior to execution by DCM: (i) FCM trading for its proprietary account to (ii) a separate clearing FCM. The FCM trading for a proprietary account uses Algorithmic Trading; clearing member FCM does not make any of the determinations described in the definition of Algorithmic Trading.

Who is an AT Person?

(i) The FCM trading for the proprietary account is an AT Person,

because it engages in Algorithmic Trading.

(ii) The clearing FCM is not an AT Person, because it doesn't make any determinations regarding the order and therefore doesn't engage in Algorithmic Trading. But the clearing FCM is subject to § 1.82, because the FCM originating the orders is an AT Person.

#### 5. Request for Comments

49. Are any pre-trade or other risk controls required by § 1.82 ineffective, not already widely used by clearing member FCMs, or likely to become obsolete?

50. Are there any aspects of proposed § 1.82 that pose an undue burden for clearing member FCMs and are unnecessary for purposes of reducing the risks associated with Algorithmic Trading? If so, please explain (1) the burden; (2) why it is not necessary to reduce the risks associated with Algorithmic Trading, particularly in the case of DEA. What alternatives are available consistent with the purposes of Regulation AT?

51. Please describe the technological development that would be required by clearing member FCMs to comply with the requirement to implement and calibrate the pre-trade and other risk controls required by § 1.82(c) for non-DEA orders. To what extent have clearing member FCMs already developed the technology required by this provision, for example in connection with existing requirements under § 1.11, and §§ 1.73 and 38.607 for clearing FCMs to manage financial risks?

52. Are there additional pre-trade or other risk controls that should be specifically required pursuant to proposed § 1.82?

53. Do you believe that the pre-trade and other risk controls required in § 1.82 sufficiently address the possibility of technological advances in trading and development of new, more effective controls that should be implemented by FCMs?

54. The Commission welcomes comment on whether the requirements of § 1.82 relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

55. Proposed § 1.82 does not require FCMs to have connectivity monitoring such as "system heartbeats" or automatic cancel-on-disconnect functions. Do you believe that § 1.82 should require FCMs to have such functionality?

56. Proposed § 1.82 requires clearing FCMs to implement controls with respect to AT Order Messages

originating with an AT Person. The Commission is considering modifying proposed § 1.82 to require clearing FCMs to implement controls with respect to all orders, including orders that are manually submitted or are entered through algorithmic methods that nonetheless do not meet the definition of Algorithmic Trading. Such a requirement would correspond to the requirement under proposed § 40.20(d) that DCMs implement risk controls for orders that do not originate from Algorithmic Trading. If the Commission were to incorporate such amendments in any final rules arising from this NPRM, its intent would be to further reduce risk by ensuring that all orders, regardless of source, are screened for risk at both the clearing member FCM and the DCM level. Risk controls at the point of order origination would continue to be limited to AT Persons. The Commission requests comment on this proposed amendment to § 1.82, which the Commission may implement in the final rulemaking for Regulation AT. The Commission requests comment on the costs and benefits to clearing FCMs of this proposal, in addition to any other comments regarding the effectiveness of this proposal in terms of risk reduction.

#### K. Compliance Reports Submitted by AT Persons and Clearing FCMs to DCMs; Related Recordkeeping Requirements—§ 1.83

The Commission is proposing new § 1.83(a) and (b) of its regulations to require that AT Persons and clearing member FCMs provide the DCMs on which they operate with information regarding their compliance with §§ 1.80(a) and 1.82(a)(1). Specifically, the proposed rules would require AT Persons prepare, certify, and submit annual reports regarding their controls for: (1) Maximum AT Order Message frequency; (2) maximum execution frequency; (3) order price parameters; and (4) maximum order sizes. The proposed rules would require each FCM that is a clearing member for an AT Person to prepare, certify, and submit annual reports regarding its program for establishing and maintaining those same controls for its AT Persons (in the aggregate). As described in section IV(H) and (J) above, the use of such pre-trade risk controls would be mandatory for both AT Persons and clearing member FCMs pursuant to §§ 1.80(a)(1) and 1.82(a)(1), respectively.

The reports proposed by § 1.83, together with the DCM review program proposed by § 40.22, will enable DCMs to have a clearer understanding of the pre-trade risk controls of all AT Persons

that are engaged in Algorithmic Trading on such DCM. Furthermore, because AT Persons and clearing member FCMs will have great flexibility in how they implement their pre-trade risk controls pursuant to proposed §§ 1.80(a)(1) and 1.82(a)(1), the annual reporting obligations in proposed § 1.83 and DCM review provisions in § 40.22 will help ensure that such controls are being implemented and are reasonably designed and calibrated.

As a complement to the compliance report program described above, proposed § 1.83(c) and (d) would require AT Persons and clearing member FCMs for AT Persons to keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs).

The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments

The Concept Release requested comment on whether it would be appropriate to require periodic self-certifications by all market participants operating ATs and by clearing firms that provide clearing services to those market participants.<sup>378</sup> In the Concept Release, the Commission set forth potential areas that a self-certification for market participants might cover. The Commission stated that a certification might attest that: “(1) The ATS contains structural safeguards to provide reasonable assurance that the trading system will not be disruptive to fair and equitable trading; (2) the market participant’s ATs have been designed to avoid violations of the CEA, Commission regulations, or exchange rules related to fraud, disruptive trading practices, manipulation and trade practice violations; and (3) such systems have been sufficiently tested and documented in a manner that is appropriate to the intended design and use of that system.”<sup>379</sup> The Concept Release also requested comment on a number of different aspects of a self-certification program. These included: (1) Whether the chief executive officer or chief compliance officer, or similar ranking official of each market participant should attest to the certification; (2) how often should a market participant make the self-certification; (3) which entities should

receive the certification; and (4) should DCMs, SEFs, or clearing member FCMs be required to audit the certifications of market participants.<sup>380</sup>

Commenters were mixed in their support of a certification requirement for market participants operating ATs and for clearing firms that provide clearing services to those market participants. Some commenters, such as AFR, supported certifications.<sup>381</sup> Others, such as AIMA, FIA, and CME, oppose a certification requirement set by the Commission.<sup>382</sup> AIMA argued that a certification requirement “could merely create extra administrative costs for firms and the CFTC.”<sup>383</sup> FIA and CME stated that it should be left to individual DCMs to define certification policies for their market participants.<sup>384</sup> FIA commented that instead of formal certification, market access should depend on attestation that the highest quality standards are maintained and appropriate risk controls and escalation procedures are in place.<sup>385</sup> CME argued that “[g]iven the breadth of risk profiles across the spectrum of clients, it would be unduly burdensome and cost-prohibitive for the exchanges or the Commission to mandate specific risk management parameters and the continuous auditing or formal certification thereof.”<sup>386</sup>

With respect to what information might be included in the certifications, Gelber argued that “[a] market participant should certify that each of its ATS employs pre-trade risk controls, post-trade reports and system safeguards.”<sup>387</sup> FIA and CME also commented that if the Commission were to impose a certification requirement, the standards for such requirement should be principles-based.<sup>388</sup>

Most commenters support requiring senior management to make the certification. FIA argued that if a certification requirement is imposed, this certification should be the responsibility of senior management at the market participant, DCM or FCM.<sup>389</sup> Gelber commented that the certification should be from a chief technology officer or equivalent, and attested to by another c-level executive officer.<sup>390</sup> AFR commented that certifications “should be made by the CEO, as well as both the

CCO and CRO to make certain that responsibility for the underlying systems and algorithms is taken by those officers having direct responsibility.”<sup>391</sup> CME commented that any attestation should lie with the supervisors with business line responsibility for, and knowledge of, the systems at issue. CME also stated that the certifications “should be tendered to each level of the supply chain with supervisory authority.”<sup>392</sup>

With respect to the frequency of the certifications, Gelber commented that market participants should certify twice per year and whenever there has been a material change to a program that they employ.<sup>393</sup> TCL stated that ATs should be required to make the certification annually, or whenever a major functional change to their business environment is implemented.<sup>394</sup> With respect to the auditing of the certifications, FIA argued that audit responsibilities should only be determined after standards are in place.<sup>395</sup> Alternatively, Gelber argued that exchanges should require firms to maintain certifications and produce them upon request. Gelber stated that it should be at the exchanges’ discretion as to whether they audit such certifications.<sup>396</sup>

#### 2. Description of Regulation

Compliance Report Program. Proposed § 1.83(a) and (b) would require that AT Persons and clearing member FCMs, respectively, provide the DCMs on which they operate with information regarding their compliance with §§ 1.80(a) and 1.82(a)(1). Specifically, the proposed rules would require AT Persons to prepare, certify, and submit annual reports regarding their controls for: (1) Maximum AT Order Message frequency; (2) maximum execution frequency; (3) order price parameters; and (4) maximum order sizes. The proposed rules would require each FCM that is a clearing member for one or more AT Persons to prepare, certify, and submit annual reports regarding its program for establishing and maintaining those same controls for its AT Persons in the aggregate. As described in section IV(H) and (I) above, the use of such pre-trade risk controls would be mandatory for AT Persons pursuant to § 1.80(a)(1), and mandatory for clearing member FCMs pursuant to § 1.82(a)(1).

<sup>380</sup> *Id.*

<sup>381</sup> AFR at 8.

<sup>382</sup> AIMA at 21; FIA at 4; CME at 27.

<sup>383</sup> AIMA at 21.

<sup>384</sup> FIA at 4; CME at 27.

<sup>385</sup> FIA at 40.

<sup>386</sup> CME at 28.

<sup>387</sup> Gelber at 17.

<sup>388</sup> FIA at 4; CME at 27.

<sup>389</sup> FIA at 39.

<sup>390</sup> Gelber at 17.

<sup>391</sup> AFR at 8.

<sup>392</sup> CME at 28.

<sup>393</sup> Gelber at 17.

<sup>394</sup> TLC at 15.

<sup>395</sup> FIA at 40.

<sup>396</sup> Gelber at 17.

<sup>378</sup> Concept Release, 78 FR 56559.

<sup>379</sup> *Id.*

The Commission is also proposing a new § 40.22 (discussed in more detail below) to require that each DCM that receives a report described in § 1.83 establish a program for effective review and evaluation of the reports. The reports proposed by § 1.83 and the review program proposed by § 40.22 would enable DCMs to have a clearer understanding of the pre-trade risk controls and compliance procedures of all AT Persons that are engaged in Algorithmic Trading on such DCM. The proposed reports and review program will also give DCMs a better understanding of the program for establishing and maintaining the pre-trade risk controls used by any FCM of an AT Person that is engaged in Algorithmic Trading on such DCM.

The Commission notes that the SEC's Market Access Rule, as discussed in greater detail above, has a similar certification requirement for certain broker-dealers.<sup>397</sup> The Market Access Rule requires that certain broker-dealers maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by the Market Access Rule. It also requires that the Chief Executive Officer (or equivalent officer) of a broker-dealer subject to the Market Access Rule certify, on an annual basis, that the risk management controls and supervisory procedures established by the broker-dealer comply with the Market Access Rule, and that the broker-dealer conducted the required review of the risk management controls and supervisory procedures. The certification required by the Market Access Rule must be preserved by the broker-dealer as part of its books and records.

The Commission also notes that ESMA's 2015 Final Draft Regulatory Standards require an annual self-assessment and validation process in which investment firms must review their algorithmic trading systems and trading algorithms, and overall compliance with Article 17 of Directive 2014/65/EU (MiFID II's requirements on firms that engage in Algorithmic Trading).<sup>398</sup> ESMA sets out elements that investment firms should consider in its self-assessment, which include elements relating to the nature of its business (e.g., level of automation, types of strategies it employs, latency sensitivity), the scale of its business (e.g., number of algorithms, number of trading desks, messaging volume capabilities), and the complexity of its

business (e.g., diversity of trading systems and connectivity methods, and the speed of trading). The validation report must be approved by the firm's senior management and the firm must remedy any deficiencies identified.

While not identical to the certification required of broker-dealers in the Market Access Rule or ESMA's annual self-assessment process for investment firms, the compliance report program proposed by § 1.83 and § 40.22 is similarly designed to ensure that market participants have effective risk controls in place and that these risk controls are regularly reviewed. Specifically, proposed § 1.83(a) would require each AT Person to annually prepare a report, and submit such report by June 30 to each DCM on which such AT Person engaged in Algorithmic Trading, that covers from May 1 of the previous year to April 30 of the year such report is submitted. Together with the annual report, each AT Person would be required to submit copies of the written policies and procedures developed to comply with § 1.81(a) and (c). The report must include descriptions of the AT Person's pre-trade risk controls required by proposed § 1.80(a)(1), and the parameters and specific quantitative settings used for the risk controls. The report would also be required to include a certification by the chief executive officer or chief compliance officer of the AT Person that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

Proposed § 1.83(b) would require each FCM that is a clearing member for an AT Person to annually prepare a report, and submit such report by June 30 to each DCM on which such AT Person engaged in Algorithmic Trading, that covers from May 1 of the previous year to April 30 of the year such report is submitted. The report must include a description of the FCM's program for establishing and maintaining the pre-trade controls required by proposed § 1.82(a)(1) for its AT Persons (in the aggregate) at the DCM. The requirements of proposed § 1.83(b) apply to the pre-trade risk controls implemented by the FCM for AT Persons using DEA, as well as for AT Persons that do not use DEA. The report would also be required to include a certification by the chief executive officer or chief compliance officer of the FCM that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete. Related to these reporting requirements in proposed § 1.80(a) and (b), proposed

§ 40.22(c)<sup>399</sup> would require DCMs to establish a program for effective periodic review and evaluation of AT Person and clearing member FCM reports.

**Recordkeeping Requirements.** As a complement to the compliance report review program, proposed § 1.83(c) and (d) would require AT Persons and clearing member FCMs for AT Persons to keep and provide upon request to DCMs books and records regarding their compliance with proposed §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). Related to these provisions, the Commission is also proposing a new § 40.22(d) (discussed in more detail below) to require DCMs to implement rules that require each AT Person to keep and provide to the DCM books and records regarding such AT Person's compliance with all requirements pursuant to § 1.80 and § 1.81, and require each clearing member FCM to keep and provide to the DCM books and records regarding such clearing member FCM's compliance with all requirements pursuant to § 1.82. Finally, proposed § 40.22(e) would require DCMs to review and evaluate, as necessary, books and records maintained by AT Persons and clearing member FCMs regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs).

### 3. Policy Discussion

The Commission is proposing § 1.83 because it believes that Regulation AT must include a mechanism to ensure that AT Persons and clearing member FCMs are complying with the requirement to implement certain pre-trade risk controls. Moreover, an assessment of such compliance requires an adequate level of expertise and knowledge of markets and market participants' technological systems and trading strategies. In this regard, the Commission notes that reports proposed by § 1.83 will enable DCMs to have a better understanding of the pre-trade risk controls of all AT Persons engaged in Algorithmic Trading. Furthermore, because the Commission's pre-trade risk control requirements in proposed §§ 1.80(a)(1) and 1.82(a)(1) offer substantial flexibility, the annual reporting obligations in proposed § 1.83 will help ensure that such controls are reasonably designed and calibrated. The Commission believes that a review program requiring AT Persons and clearing member FCMs to provide information concerning compliance

<sup>397</sup> 17 CFR 240.15c3-5(e).

<sup>398</sup> ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 210, 224-26.

<sup>399</sup> See section IV(P) below for a discussion of DCMs' obligations under proposed § 40.22.

with §§ 1.80(a) and 1.82(a)(1), and requiring DCMs to review such information, is the most effective method to ensure that all market participants are implementing measures that are reasonably designed to prevent an Algorithmic Trading Event or Algorithmic Trading Disruption.

The recordkeeping requirements proposed under § 1.83(c) and (d) and § 40.22(d) and (e) complement the compliance report program. These provisions will enable DCMs to review the compliance of AT Persons and clearing member FCMs with their various obligations under §§ 1.80, 1.81, and 1.82, by inspecting the books and records of AT Persons and clearing member FCMs as necessary. For example, a DCM may find it necessary to conduct such a review if: It becomes aware if an AT Person's kill switch is frequently activated, or otherwise performs in an unusual manner; if a DCM becomes aware that an AT Person's algorithm frequently performs in a manner inconsistent with its design, which may raise questions about the design or monitoring of the AT Person's algorithms; if a DCM identifies frequent trade practice violations at an AT Person, which are related to an algorithm of the AT Person; or if an AT Person represents significant volume in a particular product, thereby requiring heightened scrutiny, among other reasons.

#### 4. Request for Comments

57. The Commission welcomes comment on the type of information that should be included in the reports required by proposed § 1.83. Should different or additional descriptions be included in the reports, which will be evaluated by DCMs under proposed § 40.22?

58. How often should the reports required by proposed § 1.83 be submitted to the relevant DCMs? Should the report be submitted more or less frequently than annually?

59. When should the reports required by proposed § 1.83 be submitted to the relevant DCMs? Should the reports be submitted on a date other than June 30 of each year?

60. Should a representative of the AT Person or clearing member FCM other than the chief executive officer or the chief compliance officer be responsible for certifying the reports required by proposed § 1.83? Should only the chief executive officer be permitted to certify the report? Alternatively, should only the chief compliance officer be permitted to certify the report?

61. Are there any aspects of proposed § 1.83(b) that pose an undue burden for

clearing member FCMs and are unnecessary for purposes of reducing the risks associated with Algorithmic Trading? If so, please explain (1) the burden; (2) why it is not necessary to reduce the risks associated with Algorithmic Trading, particularly in the case of DEA. What alternatives are available consistent with the purposes of Regulation AT, including in particular Regulation AT's intent that § 1.83 reports benefit from the third-party SRO review performed by DCMs with respect to such reports?

62. Should the reports required by proposed § 1.83 be sent to any entity other than each DCM on which the AT Person operates, such as the Commission or an RFA? For example, should the Commission require that AT Persons that are members of a RFA send compliance reports to RFA upon NFA's request?

63. Proposed § 1.83(c) includes recordkeeping requirements imposed on AT Persons, and proposed § 1.83(d) includes recordkeeping requirements imposed on clearing member FCMs. Should the recordkeeping requirements of § 1.83(c) be distributed throughout the sections of the Commission's regulations that contain recordkeeping requirements for various categories of Commission registrants that will be classified as AT Persons? Should § 1.83(d) be transferred to section 1.35 of the Commission's regulations, which contains recordkeeping requirements for clearing member FCMs?

#### *L. Risk Controls for Trading: Direct Electronic Access Provided by DCMs—§ 38.255(b) and (c)*

The Commission proposes to amend § 38.255 (Risk controls for trading) by adding new § 38.255(b) requiring DCMs to implement systems and controls reasonably designed to facilitate a clearing FCM's management of Algorithmic Trading risks arising from its DEA customers. The Commission also proposes to amend § 38.255 by adding new paragraph (c), which would require that DCMs who permit DEA also mandate the use of § 38.255(b) risk controls by all clearing member FCMs with respect to the Algorithmic Trading of their DEA customers. The Commission notes that the risk controls and requirements described in proposed § 38.255(b) and (c), while provided by and residing at the DCM, are fundamentally intended to facilitate a clearing member FCM's management of the risks posed by the clearing member FCM's DEA customers. In this regard, proposed § 38.255(b) and (c) should be read in conjunction with proposed § 1.82(b), which would require clearing

member FCMs to make use of the systems provided by DCMs pursuant to § 38.255(b). The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.<sup>400</sup>

#### 1. Concept Release Comments

As noted above in section IV(D)(7), in the Commission's discussion of its proposed definition of Direct Electronic Access, several commenters agreed that any potential risk controls should also apply to those with direct access to the markets.<sup>401</sup> FIA stated, for example, that all types of market access create risks.<sup>402</sup> Similarly, CME stated that all entities—whether they have direct market access or not—must “share in the effort to preserve market integrity.”<sup>403</sup> In addition, commenters indicated that exchanges already provide certain pre-trade risk controls for use by clearing firms. Please see the discussion at section IV(H)(1) above for a discussion of Concept Release comments with respect to clearing firms' use of exchange-provided pre-trade and other risk controls.

#### 2. Description of Regulation

The Commission proposes to amend § 38.255 (Risk controls for trading) to require DCMs to have in place systems and controls designed to facilitate a clearing member FCM's management of the risks that may arise from Algorithmic Trading by its AT Person customers using DEA (as defined in proposed § 1.3(yyyy)). The DCM regulations already address financial risk using a similar structure. Existing § 38.607 provides that, in the context of direct electronic access, a DCM must have in place systems and controls designed to facilitate an FCM's management of “financial risk.” The DCM must also require FCMs to use such controls.

The pre-trade risk controls and order cancellation systems that DCMs must provide to clearing member FCMs are the same as those that proposed § 1.80(a) requires AT Persons to implement, *i.e.*, maximum AT Order Message frequency per unit time and maximum execution frequency per unit time, and order price parameters and maximum order size limits. The order

<sup>400</sup> The proposed amendments would also re-designate the existing requirements in § 38.255 as § 38.255(a).

<sup>401</sup> FIA at 12, 15; KCG at 2; CME at 7–8; VFL at 2; AIMA at 1.

<sup>402</sup> FIA at 12, 15.

<sup>403</sup> CME at 7–8.



cancellation systems that DCMs must establish for implementation by the clearing member FCM are the same controls that proposed § 1.80(b)(1) requires AT Persons to implement, *i.e.*, systems that have the ability to immediately disengage Algorithmic Trading, cancel selected or up to all resting orders when system or market conditions require it, and prevent the submission of new orders.

The proposed regulation text is articulated broadly enough to allow DCMs the flexibility to design controls for use by clearing member FCMs that are appropriate to their markets and market participants. Proposed § 38.255(b)(1)(ii) provides that the pre-trade risk controls established by the DCMs must enable the clearing member FCM to set the controls at the level of each AT Person, product, account number or designation, and one or more identifiers of natural persons associated with an AT Order Message. DCM rules should permit clearing member FCMs to choose the level at which they place the control, as long as clearing member FCMs use at least one of the levels. Similarly, proposed § 38.255(b)(2) provides that the DCM-provided order cancellation systems should enable the clearing member FCM to apply such systems to orders from each AT Person, product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message. A DCM that permits DEA must require FCMs to use the § 38.255(b) controls with respect to all AT Order Messages originating with an AT Person that are submitted through DEA.

### 3. Policy Discussion

The Commission believes that its proposed amendments to § 38.255, and corresponding proposed § 1.82 applicable to clearing member FCMs, is consistent with those comments to the Concept Release that suggested that pre-trade risk controls should apply to those with direct market access.<sup>404</sup> As FIA explained, all types of market access create risks; therefore, the same principles should apply to all types of market access.<sup>405</sup> In addition, the Commission's approach to controls that should exist in the context of DEA is consistent with recommendations of or steps taken by other regulatory organizations. For example, IOSCO has recommended that intermediaries (including clearing firms) should have adequate operational and technical

capabilities to manage appropriately the risks posed by direct electronic access.<sup>406</sup> In addition, as discussed above, ESMA's 2015 Final Draft Regulatory Standards require direct electronic access providers to apply pre-trade controls on the order flow of their clients consistent with the controls that ESMA requires for investment firms.<sup>407</sup> ESMA's standards further provide, among other things, that trading venues must have public rules pursuant to which direct electronic access providers provide their service, and in the case of sponsored access (where a client transmits orders directly to a trading platform without such orders passing through an intermediary's infrastructure), the trading venue must require such firms to implement the same pre-trade risk controls as the trading venue's members.<sup>408</sup> The Commission believes that requiring DCMs to establish pre-trade risk controls and order management controls for use by clearing member FCMs with respect to their direct access customers will ensure that all orders, regardless of access method, are subjected to the same tools that mitigate the risks posed by Algorithmic Trading.

### 4. Request for Comments

64. Are there any pre-trade and other risk controls required by § 38.255(b) and (c) that will be ineffective, not already widely provided by DCMs for use by FCMs, or likely to become obsolete?

65. Are there additional pre-trade or other risk controls that DCMs should be specifically required to provide to FCMs pursuant to proposed § 38.255(b) and (c)?

66. Do you believe that the pre-trade and other risk controls required pursuant to § 38.255(b) sufficiently address the possibility of technological advances in trading? For example, do they appropriately address the potential for the future development of additional effective controls that should be provided by DCMs and implemented by FCMs?

67. The Commission welcomes comment on whether § 38.255(b)'s requirements relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

68. Proposed § 38.255(b) and (c) do not require DCMs to provide to FCMs connectivity monitoring systems such as "system heartbeats" or automatic

cancel-on-disconnect functions. Should § 38.255 require such functionality?

### M. Disclosure and Transparency in DCM Trade Matching Systems—§ 38.401(a)

Regulation AT proposes to amend § 38.401(a) of the Commission's regulations to enhance public transparency regarding the design and operation of a DCM's electronic matching platform. Currently, § 38.401(a) requires DCMs to have procedures, arrangements, and resources for disclosing to the Commission, market participants, and the public accurate information on the rules and specifications of their electronic matching platforms or trade execution facilities. The proposed amendments to § 38.401(a) would clarify that such existing obligations include disclosure of any attributes of an electronic matching platform or trade execution facility that materially impact market participant orders, but which are not readily apparent to a market participant. The proposed amendments recognize that the structure, architecture, mechanics, characteristics, attributes, or other elements of an electronic matching platform or trade execution facility—elements that are under the design control of the DCM—may affect how market participant orders are received or executed. The Commission believes that each market participant should have ready access to information that explains the existence and operation of any attribute within an electronic matching platform or trade execution facility that will impact how a market participant experiences the market. The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

### 1. Concept Release Comments

As noted above, the proposed amendments to § 38.401(a) focus in large measure on attributes of an electronic matching platform or trade execution facility that impact the timing and sequencing of specific events on the exchange. While the Concept Release did not directly address proposed § 38.401(a), it did ask for public comment on latencies in the transmission of various types of messages between exchanges, firms and vendors wherein differences in latency could provide opportunities for informational advantage.<sup>409</sup> It pointed to press reports that one exchange sent confirmations to the traders involved in

<sup>404</sup> FIA at 12, 15; KCG at 2; CME at 7–8; VFL at 2; AIMA at 1.

<sup>405</sup> FIA at 12, 15.

<sup>406</sup> IOSCO 2015 Consultation Report, *supra* note 106 at 22–23.

<sup>407</sup> See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 218.

<sup>408</sup> See *id.* at 269–70.

<sup>409</sup> Concept Release, 78 FR 56546.

an executed transaction before the DCM posted the transaction on its market data feed to the marketplace as a whole.<sup>410</sup> The Commission asked for comments on: (a) Whether the extent of latency in message transmission can have an adverse impact on market quality or fairness; and (b) whether exchanges, vendors and firms should be required to audit their systems and processes on a periodic basis to identify and resolve such latencies.<sup>411</sup>

The Concept Release also asked for public comment on the advisability of requiring each trading platform to provide market quality indicators on a periodic basis for each product traded on its platform.<sup>412</sup> The Concept Release also asked for comments on what types of market quality data would be helpful to market participants and promote market efficiency through transparency and market competition.

Several commenters supported increased transparency by the exchanges in the operation of their electronic matching platforms. AIMA, for example, would welcome new requirements for transparency by exchanges on issues of latency, noting that market participants without DMA are currently not able to calculate many measures of latency and market quality that are available to those with DMA.<sup>413</sup> Bell noted that the disclosure of latencies in CME's electronic matching platform removed the informational advantage held by those market participants who knew of the latency compared to those who did not.<sup>414</sup> However, Bell also cautioned that the threat of sanctions against an exchange for the existence of a latency arbitrage opportunity in an electronic matching platform could discourage that exchange from publicly disclosing such information. FIA noted that real-time access to additional information regarding the order book creates a more transparent marketplace, which ultimately breeds confidence among market participants.<sup>415</sup>

CME and FIA noted that latency is a natural component of market structure because of the time it takes computer systems to process information as well as the communications systems involved in transmitting order message

information.<sup>416</sup> Even if no latencies existed within an exchange's infrastructure, market participants may still face latencies in clearing and executing firms' systems.<sup>417</sup>

Several commenters addressed the specific issue of whether participants in a trade should receive confirmations of that trade before, or at least not after, the trade is reflected in market data sent to all market participants ("confirmation-first latency").<sup>418</sup> FIA commented that the confirmation-first latency on one exchange was not hidden, and that it could be measured and understood by anyone with the proper market access.<sup>419</sup> FIA stated that it is imperative that the market data broadcast to all market participants not be sent before the participants to a trade know that the trade was executed ("market data-first latency").<sup>420</sup> FIA also stated that market data-first latency would cause liquidity providing participants to be unaware of their positions and therefore hamper their ability to hedge risk effectively. The commenter believed that this would cause market makers to widen the spreads they offer. OneChicago suggested that confirmation-first latency should not be considered an unfair advantage.<sup>421</sup> SIG suggested that confirmation-first latency would encourage liquidity by allowing an executing trader to hedge a position before quickly responding momentum traders exhausted available liquidity in the market.<sup>422</sup>

## 2. Description of Regulation

Current § 38.401(a) requires DCMs to have procedures, arrangements, and resources for disclosing to the Commission, market participants, and the public accurate information on, *inter alia*, the rules and specifications concerning the operation of the DCM's electronic matching platform or trade execution facility. Current § 38.401(b) requires DCMs to provide such information that "it believes, to the best of its knowledge, is accurate and complete, and must not omit material information." Current § 38.401(c) requires DCMs to make publicly available on their Web sites any new

product listings, rules, rule amendments, or other changes to previously-disclosed information, concurrent with filing such submissions with the Commission. The proposed amendments to § 38.401 build on these disclosure, accuracy, and timing requirements, and extend the disclosure requirements to cover certain attributes of the operation of electronic matching platforms.

The Commission proposes to amend § 38.401(a)(1)(iii) to require DCMs to disclose to the Commission, market participants and the public accurate information pertaining to rules or specifications pertaining to the operation of the electronic matching platform or trade execution facility, including but not limited to those pertaining to the operation of its electronic matching platform that materially affect the time, priority, price, or quantity of execution, or the ability to cancel, modify, or limit display of market participant orders.

The Commission also proposes to amend § 38.401(a)(1) by adding a new requirement (§ 38.401(a)(1)(iv)) that DCMs must disclose to all market participants any known attributes of the electronic matching platform, other than those already disclosed in rules or specifications under section (a)(1)(iii), that materially affect the time, priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or the dissemination of real-time market data to market participants, including but not limited to latencies or other variability in the electronic matching platform and the transmission of message acknowledgements, order confirmations, or trade confirmations, or dissemination of market data. The Commission notes, however, that proposed § 38.401(a)(1)(iii) and (iv) are not intended to require the disclosure of trade secrets by any DCM.

Finally, the Commission also proposes to amend § 38.401(c) by adding a new requirement (§ 38.401(c)(3)) that a DCM, in making available on its Web site information pursuant to paragraphs (a)(1)(iii) and (iv) of § 38.401(c), must place such information and submissions on its Web site within a reasonable time, but no later than 10 business days, following the identification of or changes to such attributes. Such information shall be disclosed prominently and clearly in plain English. The Commission emphasizes that the disclosure of information prominently and clearly by a DCM precludes such DCM from placing information required by this

<sup>410</sup> Scott Patterson, Jenny Strasburg, & Liam Plevin, "High-Speed Traders Exploit Loophole," *Wall St. J.* (May 1, 2013), available at <http://www.wsj.com/articles/SB10001424127887323798104578455032466082920>.

<sup>411</sup> Concept Release, 78 FR 56546.

<sup>412</sup> *Id.* at 56561.

<sup>413</sup> AIMA at 7.

<sup>414</sup> Bell at 3.

<sup>415</sup> FIA at 51.

<sup>416</sup> CME at 6–7; FIA at 47–48.

<sup>417</sup> CME at 48.

<sup>418</sup> FIA at 47–48; SIG at 2; OneChicago at 1. The Commission is using the term "confirmation-first latency" for ease of reference; it was not used in the comment letters.

<sup>419</sup> FIA at 48.

<sup>420</sup> *Id.* The Commission is using the term "market data-first latency" for ease of reference; it was not used in the comment letters.

<sup>421</sup> OneChicago at 1.

<sup>422</sup> SIG at 2.

rule behind registration, log in, user name, password or other walls on the DCM's Web site.

#### a. What Must Be Disclosed Under the Proposed Regulations

The proposed § 38.401(a)(1)(iii) and (iv) would apply to all known attributes of an electronic matching platform that materially affect the time, priority, price, or quantity of execution of market participant order messages, or the ability to cancel, modify, or limit display of, market participant order messages. The Commission proposes a "materiality" threshold to such obligations so that the disclosure requirements would not capture aspects of exchange systems that do not have a discernible effect on how orders are entered or executed.<sup>423</sup>

An "attribute" for purposes of proposed § 38.401(a)(1)(iv) would mean any aspect of the structure, architecture, mechanics, characteristics, or other elements of the design or operation of an electronic matching platform that materially affects how market participant orders are received and executed, and how information on such orders and executed trades are communicated to other market participants. "Attributes" would include, but are not limited to, aspects of the platform that may provide an advantage or disadvantage to a category of market participants.<sup>424</sup> "Attributes" would also include aspects of the platform that affect orders from all market participants regardless of access method or membership status, such as

<sup>423</sup> In evaluating what attributes of a platform would be material, the Commission would look to the substantial case law on the issue of materiality. See, e.g., *R&W Tech. Servs., Ltd. v. CFTC*, 205 F.3d 165, 169 (5th Cir. 2000) ("A statement or omitted fact is 'material' if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest."); see also *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1332 (11th Cir. 2002) (finding misrepresentations material where "an objectively reasonable investor's decision-making process would be substantially affected" by them and the misrepresentations would "as a matter of law, alter the total mix of relevant information available to the potential . . . investor."). Materiality in the context of attributes of an electronic matching platform would include those attributes whose existence or degree a reasonable market participant would consider when making a decision on whether, when or how to place orders on an exchange's platform.

<sup>424</sup> For purposes of this discussion, "categories of market participants" may be based on access method, colocation, involvement in a market maker incentive program, or membership status, among other things. DCMs are currently required to submit as rule changes under Part 40 any changes to these programs. As discussed more fully below, the proposed transparency requirement would only require disclosure of attributes not already disclosed through submissions under Part 40, 17 CFR 40.1, *et seq.* (2014).

latencies within the matching engine and any data feeds.<sup>425</sup>

The Commission's proposals under § 38.401(a)(1)(iii) and (iv) apply to "electronic matching platforms," which comprise all systems under the control or operation of the DCM that interact with market participant order messages and are involved in market data dissemination. Such systems are not limited to matching engines, but would apply more broadly to the network architecture that accepts and processes order messages, and disseminates market data and messages to market participants. To the extent that they impact order entry and execution, the electronic matching platform would also include pre-trade risk management systems and controls such as self-trade prevention tools.<sup>426</sup>

The Commission's proposals under § 38.401(a)(1)(iii) and (iv) are intended to apply to various aspects of how an electronic platform operates, beyond the technical process of how any order is actually matched. The proposed regulations explicitly require the disclosure of information relating to latencies in the matching of orders and transmission of that information to market participants. In addition, if they have a material impact on market participants, exchanges must disclose information on exchange functions such as self-trade prevention, implied spread markets, and priority assignment of orders in a central limit order book, where applicable. Exchanges also must disclose how available order types would be executed (or not) under different market conditions, where applicable. The Commission is mindful that DCMs should only be required to describe attributes of their own systems. However, such systems would include

<sup>425</sup> As an illustration of attributes that should be disclosed to market participants (and acknowledging the more complex order types and modes of execution in the equities market), the Commission notes two recent SEC enforcement actions against the operators of alternative trading systems for selective disclosure or non-disclosure regarding how certain order types operate under different market conditions. See *In the Matter of UBS Securities LLC.*, No. 3-16338 (SEC, Jan. 15, 2015); *In the Matter of EDGA Exchange, Inc.*, No. 3-16332 (SEC, Jan. 12, 2015).

<sup>426</sup> The Commission notes that the proposed disclosure requirements in large part would address IOSCO's recommendation relating to sound practices on controls surrounding the development of new or changes to critical systems at trading venues. IOSCO, after reviewing current member state regulations, recommended "[e]stablishing and implementing communication protocols that govern the sharing of information regarding the introduction of new, or changes to, critical systems[,]" including information on the timing of such new systems or changes to provide market participants sufficient lead time to make changes or adjustments to their own systems. See IOSCO 2015 Consultation Report, *supra* note 106 at 13-20.

platform systems or components that are monitored, leased from, or otherwise operated by an affiliate or third party.<sup>427</sup>

The Commission has also proposed under amended § 38.401(a)(2) that a DCM must provide a description of *known* attributes of its electronic trading platform under paragraph (a)(1)(iv). However, this may not relieve an exchange of the obligation to disclose information if the exchange should have known of an attribute. The Commission notes that DCMs must regularly test and review their automated systems,<sup>428</sup> monitor trading on their facilities, and identify any market or system anomalies.<sup>429</sup> The Commission cautions, however, that compliance with Regulation AT's disclosure requirements may not absolve a DCM of other statutory or regulatory obligations. For instance, DCMs must promote fair and equitable trading and protect markets and market participants from abusive practices.<sup>430</sup>

#### b. How Information Should Be Disclosed

The Commission proposes under § 38.401(a)(1)(iv) that DCMs be required to disclose any known attributes of their electronic matching platform, other than those already disclosed pursuant to § 38.401(a)(1)(iii). This description should, at a minimum, identify what the attribute is and how it may affect market participant orders. To the extent such information is necessary for market participants to understand the significance of an attribute, the description may need to provide statistics or examples. As with all information provided to market participants under current regulation 38.401, the description must include information that the DCM believes, to the best of its knowledge, to be accurate and complete, and not omit material

<sup>427</sup> The Commission is mindful that some DCMs use electronic matching platforms leased from or otherwise provided by other DCMs or non-DCM entities. However, each DCM would be required under this provision to provide information on any electronic matching platform it uses, regardless of whether that platform is owned or leased by the DCM.

<sup>428</sup> Both DCMs and SEFs are obligated to "conduct regular, periodic, objective testing and review of their automated systems to ensure that they are reliable, secure, and have adequate scalable capacity." Regulations §§ 37.1401(g) and 38.1051(h), 17 CFR 37.1401(g) and 38.1051(h) (2014).

<sup>429</sup> See regulation 37.203(e), 17 CFR 37.203(e) (2014), for real-time market monitoring obligations of SEFs. See regulation 38.157, 17 CFR 38.157 (2014), for real-time monitoring obligations of DCMs.

<sup>430</sup> DCM Core Principle 12, Section 5(d)(12) of the Act, 7 U.S.C. 7(d)(12) (2012).

information.<sup>431</sup> Cost estimates for the Commission amendments to § 38.401 are provided in this NPRM's cost-benefit considerations below.

The Commission proposes under § 38.401(c)(3) that DCMs be required to disclose information on the attributes of their platforms "prominently and clearly" on their Web sites. The Commission also proposes under § 38.401(c)(3) that information regarding attributes of the electronic matching platforms be provided in "plain English." Because market participants may have different degrees of technical understanding, the Commission aims to make information on the electronic matching platforms accessible to market participants regardless of their technical proficiency or sophistication. Providing highly complex information on the platforms may allow more technically-proficient market participants to understand the operations of the platform, but may be inaccessible to other market participants.

#### c. When Information Should Be Disclosed

The Commission's proposals on DCM transparency are intended to account for two situations: (1) Where the DCM makes a change to the platform, resulting in an impact on the execution of market participant orders, and (2) where the DCM becomes aware of an existing attribute within the platform that affects the execution of such orders. Under the first situation, as clarified in the proposed amendment to the definition of "rule" under § 40.1(i), information submitted to the Commission under §§ 40.5(a) or 40.6(a) would be public information, except to the extent that confidential treatment is granted pursuant to § 40.8. Furthermore, a DCM would be required to post the relevant submission on its Web site concurrent with the provision of such submission to the Commission pursuant to current § 38.401(c). Under the second situation, the Commission's proposals would require the DCM to make the relevant information available "within a reasonable time, but no later than 10 days" following the identification or change to the attribute. DCMs must also ensure that information can be accessed by visitors to the Web site without the need to register, log in, provide a user name, or obtain a password.

#### d. Changes in Definition of "Rule"

The Commission also proposes amending the definition of "rule" under § 40.1(i), which is relevant to

regulations common to all registered entities.<sup>432</sup> The proposed change to the definition of "rule" would track language in the transparency requirements under proposed § 38.401(a)(1)(iv) (which applies only to DCMs). The proposed change to the definition would make clear that "trading protocols" includes "any operation of an electronic matching platform that materially affects the time, priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or the dissemination of real-time market data to market participants." As with any other rule change, changes to a registered entity's trading protocols must be submitted to the Commission pursuant to existing §§ 40.5 or 40.6.

The Commission notes that this proposed amendment to the definition of "rule" also adds a reference to market maker and trading incentive programs. This change clarifies and codifies the Commission's current interpretation of the definition of "rule" under § 40.1(i), in which registered entities are required to submit new rules and rule amendments to the Commission when changes are made to, among other things, matching algorithms, market maker or trading incentive program agreements, and available order types. This proposed change to § 40.1(i), which reflects the Commission's understanding of "rule", should be distinguished from the proposed regulations regarding market maker and trading incentive programs under §§ 40.25–40.28, which represent new requirements that apply only to DCMs.

#### 3. Policy Discussion

With the proposed transparency requirements, the Commission aims to increase the relevant information

<sup>432</sup> Part 40 of the Regulations applies to all registered entities, which include DCMs, SEFs, derivative clearing organizations ("DCOs"), swap data repositories ("SDRs"), and certain electronic trading facilities and boards of trade registered under Section 5c of the Act. As discussed below in the cost benefit consideration section (sections V(E)(9) and (11)), none of the proposed amendments to § 40.1(i) should create new costs for any registered entity, because the amendments merely clarify and codify the Commission's interpretation of the definition of "rule." See, e.g., the Final Rule for Provisions Common to Registered Entities, published in the *Federal Register* in 2011, in which the Commission stated with respect to market maker and trading incentive programs, "The Commission continues to view such programs as 'agreements \* \* \* corresponding' to a 'trading protocol' within the § 40.1 definition of 'rule' and, as such, all market maker and trading incentive programs must be submitted to the Commission in accordance with procedures established in part 40." Final Rule, Provisions Common to Registered Entities, 76 FR 44776, 44778 (July 27, 2011).

available to market participants that may influence their choice of trading venue. The Commission believes that such will foster competition among exchanges by incentivizing them to provide the most efficient and fairest venue for trading. Should an exchange intentionally or unintentionally structure its trading systems to potentially or actually advantage one category of market participant over others, the potentially disadvantaged market participants may opt to trade on another venue.

One Concept Release commenter noted that market participants, if they have direct market access, could calculate market quality metrics including latencies and therefore would be aware of many of the attributes of a platform that affect order execution. The requirements proposed under § 38.401(a)(1)(iii) and (iv) give all market participants an equal footing in terms of understanding how the platform operates independent of access methods and services such as colocation.

#### 4. Request for Comments

69. The Commission has proposed that certain components of an exchange's market architecture should be considered part of the "electronic matching platform" for purposes of the DCM transparency provision. Are there any additional systems that should fall within the meaning of "electronic matching platforms" for purposes of proposed § 38.401(a)?

70. The Commission has specifically identified, as "attributes" that must be disclosed, latencies within a platform and how a self-trade prevention tool determines whether to cancel an order. Are there any other attributes that would materially affect the execution of market participant orders and therefore should be made known to all market participants? Should the Commission revise the final rule so that it only applies to latencies within a platform and how a self-trade prevention tool determines whether to cancel an order?

71. What information should be disclosed as part of the description of relevant attributes of the platform? For instance, with latencies within a platform, should statistics on latencies be required? If so, what statistics would help market participants assess any impact on their orders? Would a narrative description of attributes be preferable, including a description of how the attributes might affect market participant orders under different market conditions, such as during times of increased messaging activity?

<sup>431</sup> See regulation 38.401(b), 17 CFR 38.401(b) (2014).

72. The Commission notes that proposed § 38.401(a)(1)(iii) and (iv) are not intended to require the disclosure of a DCM's trade secrets. The Commission requests comments on whether the proposed rules might inadvertently require such disclosure, and if so, how they might be amended to address this concern. Furthermore, the Commission anticipates that the mechanisms and standards for requesting confidential treatment already codified in existing § 40.8 could be used by DCMs to identify and request confidential treatment for information otherwise required to be disclosed pursuant to proposed § 38.401(a)(1)(iii) and (iv), for example by incorporating § 40.8's mechanisms and standards into any final rules arising from this NPRM. If commenters believe that the mechanisms and standards in § 40.8 are inappropriate for this purpose, please describe any other mechanism that should be included in any final rules to facilitate DCM requests for confidential treatment of information otherwise required to be disclosed pursuant to proposed § 38.401(a)(1)(iii) and (iv).

73. The Commission notes that DCMs are required, as part of voluntary submissions of new rules or rule amendments under § 40.5(a) and self-certification of rules and rule amendment under § 40.6(a), to provide *inter alia* an explanation and analysis of the operation, purpose and effect of the proposed rule or rule amendment. Would the information required under §§ 40.5(a) or 40.6(a) provide market participants and the public with sufficient information regarding material attributes of an electronic matching platform?

74. The Commission recognizes that DCMs are required to have system safeguards to ensure information security, business continuity and disaster recovery under DCM Core Principle 20. The Commission understands that some attributes of an electronic matching platform designed to implement those safeguards should be maintained as confidential to prevent cybersecurity or other threats. Does existing § 40.8, 17 CFR 40.8 (2014) provide sufficient basis for DCMs to publicly disclose the relevant attributes of their platforms while maintaining as confidential information concerning system safeguards?

75. With respect to material attributes affecting market participant orders caused by temporary or emergency situations, such as network outages or the temporary suspension of certain market functionality, what is the best way for DCMs to alert market

participants? How are DCMs currently handling these situations?

76. The Commission proposes that DCMs provide a description of the relevant material attributes in a single document "disclosed prominently and clearly" on the exchange's Web site. The Commission also proposes that this document be written in "plain English" to allow market participants, even those not technically proficient, to understand the attributes described. Would these requirements be practical and help market participants locate and understand the information provided?

77. The Commission proposes requiring DCMs to disclose information on the relevant attributes: (a) When filing a rule change submission with the Commission for changes to the electronic matching platform; or (b) within a "reasonable time, but no later than ten days" following the identification of such attribute. Do the proposed timeframes provide sufficient time for DCMs to disclose the relevant information? Do the proposed timeframes offer sufficient notice of changes or discovered attributes to market participants to allow them to adjust any systems or strategies, including any algorithmic trading systems?

78. The Commission proposes requiring disclosure of newly identified attributes within 10 days of discovery. Does this provide DCMs sufficient time to analyze the attribute and provide a description? Should DCMs be required to provide notice of the existence of the attribute and supplement as further analysis is performed?

#### *N. Pre-Trade and Other Risk Controls at DCMs—§ 40.20*

The Commission proposes a new § 40.20 to require DCMs to establish pre-trade and other risk controls specifically designed to address the risks that may arise from Algorithmic Trading. The Commission is also proposing to codify in § 40.20 basic pre-trade risk control requirements and order cancellation capabilities for orders that do not originate from Algorithmic Trading. In this regard, the Commission recognizes that natural person traders manually entering orders also have the potential to cause market disruptions. While the majority of the pre-trade and other risk controls in Regulation AT address Algorithmic Trading, the Commission believes it is also important to promote a basic degree of risk control for all trading regardless of source.

The pre-trade and other risk controls required of DCMs pursuant to proposed § 40.20 reflect Regulation AT's layered approach to risk mitigation in

automated trading. In particular, the measures required of DCMs in § 40.20 are similar to those required of AT Persons in proposed § 1.80(a)(1) and (b)(1), and also similar to those required of clearing member FCMs in § 1.82(a). The Commission intends to offer AT Persons, clearing member FCMs and DCMs the flexibility to design and calibrate such controls according to their own distinct priorities and understanding of the risks to themselves, their customers, and the broader market. In this regard, while certain proposed rules may appear duplicative on their face, Regulation AT is designed to address the diverse needs of market participants trading across multiple markets, by spreading the requirement to impose risk controls across AT Persons, clearing member FCMs and DCMs and encouraging them to each independently calibrate such controls.

The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments

The Concept Release requested comment on various pre-trade and other types of risk controls, including message and execution throttles, maximum order sizes, price collars, and order management controls, such as connectivity monitoring services, automatic cancellation of orders on disconnect and kill switches. The Concept Release contemplated that such controls would apply at the trading firm, clearing member and trading platform levels. As explained above, proposed § 1.80 requires AT Persons to implement certain pre-trade risk controls and order management controls. By reference to the proposed § 1.80 regulations, proposed § 40.20 will require DCMs to establish similar pre-trade and other risk controls specifically designed to address the risks that may arise from Algorithmic Trading, and to establish similar controls for orders entered manually. Relevant comments to the Concept Release addressing pre-trade and other risk controls for DCMs are discussed below.

##### a. Message and Execution Throttles

As discussed above, the Concept Release described message throttles as establishing maximum message rates per unit of time and execution throttles as establishing limits on the maximum number of orders that an ATS can execute in a given direction per unit in time. The Concept Release also sought

comment on a particular form of execution throttle, the repeated automated execution throttle, which would disable a trading system after a configurable number of repeated executions until a human re-enables the system.<sup>433</sup> The Concept Release stated that the throttles would be calibrated to address the potential for unintended message flow or executions from a malfunctioning ATS.<sup>434</sup>

Commenters indicated that DCMs are already implementing messaging rate limits. Two exchanges described their own message rate limits<sup>435</sup> and four commenters stated generally that many exchanges have messaging rate limits in place.<sup>436</sup> Commenters generally discussed throttles at the exchange as being “messaging” limits. KCG explained that many participants’ trading strategies include trading activity on multiple markets, and thus the responsibility for establishing limits on executions must reside with the market participant and its clearing firm.<sup>437</sup> Benefits of exchange-based messaging limits noted by commenters include identifying potentially malfunctioning ATSS, preventing a platform overload that would impact the processing of messages across all market participants, ensuring a level playing field for all market participants, mitigating risk to the DCO, and deterring predatory and disruptive activities that require high message traffic.<sup>438</sup> SIG cautioned that exchanges should not impose “speed-bump” throttles on order messaging as a means to “slow down trading for its own sake.”<sup>439</sup> FIA suggested that a DCM should never reject an order cancellation request due to message rate limits.<sup>440</sup>

Commenters indicated that exchanges should have flexibility in setting messaging limits because exchanges are in the best position to respond to the dynamics of the market, monitor the activity of all participants, and determine the impact of messaging.<sup>441</sup> Commenters indicated that throttle limits implemented by DCMs should be based on the unique characteristics of each product; the capacity and

performance of a DCM’s network and matching engine and the matching algorithm; and the market participant’s role (*i.e.*, liquidity providers may be excluded from limits).<sup>442</sup> FIA noted that a DCM’s message rate limit should not adjust to market conditions because participants must always know what the limit is.<sup>443</sup> Chicago Fed commented that regulators should assess the methodology that trading venues use to set throttle limits, the reasonableness of those limits, and the procedures followed when they are breached.<sup>444</sup> Finally, IATP commented on the difficulty in setting standardized throttle thresholds, and alternatively suggested standardizing a graduated levy on order cancellations.<sup>445</sup>

#### b. Maximum Order Sizes

Commenters indicated that exchanges already implement maximum order size limits. Two exchanges, CME and CFE, stated that they apply order size limits on each of their products.<sup>446</sup> AIMA also stated that maximum order sizes are normally applied per product at the DCM or FCM level to all customers.<sup>447</sup> Chicago Fed commented that exchanges should implement maximum order size limits.<sup>448</sup> MFA also recommended that maximum order size controls be implemented at the FCM and/or exchange level, and apply to both manual and automated traders.<sup>449</sup> FIA commented that while it “has been a proponent of standardization of pre-trade risk controls across DCMs we understand that each DCM needs to have discretion on how these controls are implemented.”<sup>450</sup>

#### c. Price Collars

The Concept Release requested comment on price collars, a control in which trading platforms would assign a range of acceptable order and execution prices for each product and all market participants would establish similar limits to ensure that orders outside of a particular price range are not transmitted to the trading platform. Commenters indicated that exchanges already implement price collars. CME

and CFE described their own price collar mechanisms.<sup>451</sup>

FIA indicated that price collars are a “widely adopted” DCM-hosted risk control and are effective at preventing orders from disrupting the market and affecting the price discovery process.<sup>452</sup> FIA further explained that they have been proven to minimize erroneous trading by controlling the range of execution prices and can ensure the integrity of trades cleared through the DCO by dramatically reducing the chance that a trade may be deemed erroneous and subsequently adjusted or busted.<sup>453</sup> FIA recommended that price collars be used on all contracts, set by the DCM based on estimates of volatility and market conditions.<sup>454</sup> FIA cautioned that price collars should not be mandated at the same levels across all products.<sup>455</sup>

Other commenters made similar points. KCG stated that “the futures markets’ price collars work well,” and reduce the potential for erroneous trades.<sup>456</sup> KCG supports requiring exchanges to establish price collars on all contracts, but believes that exchanges should have discretion in setting the price collars.<sup>457</sup> Gelber stated that exchanges should establish price collars and that this control protects DCOs and market participants from volatile markets.<sup>458</sup> MFA stated that price collars in the futures markets have been effective in maintaining fair and orderly markets, and have fewer unintended consequences than trading pauses.<sup>459</sup> SIG also stated that the markets benefit from price collars.<sup>460</sup> Finally, Chicago Fed and AFR recommended that trading venues implement price collars.<sup>461</sup>

In contrast to the above comments, AIMA acknowledged that price collars may be beneficial, but explained that price collars have potentially negative consequences in that they may impede the efficient price discovery process.<sup>462</sup> In particular, AIMA suggested that market participants should be encouraged to place bids and offers far above or below the current market price.<sup>463</sup> Among other things, AIMA

<sup>451</sup> CME at 13–14; 16–17, CME at Appendix A–6; CFE at 6–8.

<sup>452</sup> FIA at 18.

<sup>453</sup> FIA at 18.

<sup>454</sup> *Id.* at 13–14.

<sup>455</sup> *Id.* at 18.

<sup>456</sup> KCG at 7–8.

<sup>457</sup> *See id.*

<sup>458</sup> Gelber at 9.

<sup>459</sup> MFA at 8–9.

<sup>460</sup> SIG at 8–9.

<sup>461</sup> Chicago Fed at 3; AFR at 7.

<sup>462</sup> AIMA at 12–13.

<sup>463</sup> *See id.*

<sup>433</sup> Concept Release, 78 FR 56571.

<sup>434</sup> Concept Release, 78 FR 56569.

<sup>435</sup> CME at 8–9; CME at Appendix A, 3–4, 6; CFE at 5–6.

<sup>436</sup> TCL at 6; KCG at 4; MFA at 7; AIMA at 8.

<sup>437</sup> KCG at 5.

<sup>438</sup> FIA at 12, 15–17, 65; MFA at 7; CME at 8; Gelber at 5–7; AFR at 6–7; SIG at 3.

<sup>439</sup> SIG at 3.

<sup>440</sup> FIA at 16.

<sup>441</sup> FIA at 12, 15–17; CME at 8–9; MFA at 13; Gelber at 5–7; KCG at 3–4; AIMA at 8; OneChicago at 5.

<sup>442</sup> FIA at 15; CME at 8–9; Gelber at 5–7; KCG at 4; AIMA at 8.

<sup>443</sup> FIA at 12, 16.

<sup>444</sup> Chicago Fed at 2.

<sup>445</sup> IATP at 3–5.

<sup>446</sup> CME at 15, Appendix A–1; CFE at 7.

<sup>447</sup> AIMA at 13.

<sup>448</sup> Chicago Fed at 2; MFA at 2, 9; Gelber at 10; KCG at 8.

<sup>449</sup> MFA at 9.

<sup>450</sup> FIA at 18–19.

suggested that brief trading pauses were preferable to price collars, and that if a collar or pause is activated, market participants should be notified as soon as possible.<sup>464</sup>

#### d. Connectivity Indications and Cancel on Disconnect

As noted above, the Concept Release requested comment regarding “system heartbeats” that would indicate proper connectivity between a trading firm’s automated trading system and the trading platform, and “auto-cancel on disconnect,” an exchange tool that allows trading firms to determine whether their orders will be left in the market upon disconnection. Two exchanges stated that they provide an optional cancel-on-disconnect functionality<sup>465</sup> and FIA characterized cancel-on-disconnect as a “widely adopted DCM-hosted pre-trade risk control.”<sup>466</sup> Several commenters indicated that they support exchanges offering system heartbeats and/or cancel-on-disconnect to their market participants.<sup>467</sup>

#### e. Order Cancellation Systems

As discussed above, the Concept Release addressed selective working order cancellation, a tool in which an exchange can immediately cancel one, multiple, or all resting orders from a market participant as necessary in an emergency situation and well as order cancellation mechanisms that would immediately cancel all working orders and prevent submission (by the market participant), transmittal (by the clearing member), or acceptance (by the trading platform) of any new orders from a market participant or a particular trader or ATS of such market participant. The Commission notes that comments to the Concept Release generally discussing the design and implementation of kill switches are addressed above with respect to order cancellation systems requirements on AT Persons.

Specifically as to exchanges, the Commission notes that one exchange indicated that it has two kill switch tools: A kill switch used by the exchange, clearing firm, or trading firm to remove an entity from the market completely; and an order management tool that enables clearing firms and end-users to cancel orders at a more granular level.<sup>468</sup> Another exchange explained that it can cancel orders and quotes in an emergency and also provides a kill

switch to clearing members that cancels all orders and quotes from a market participant.<sup>469</sup>

Some commenters noted the importance of placing kill switches at the DCM level.<sup>470</sup> For example, Citadel noted that “kill switches can operate at a number of levels—at the market participant, at the clearing firm, or at the trading platform. While all are advisable, their use at the trading platform level is of paramount importance. Trading platforms sit at the center of trading and are therefore best positioned to efficiently and consistently monitor activity across a wide variety of market participants.”<sup>471</sup> While commenters generally opposed prescriptive kill switch requirements and indicated the challenges of standardization, several noted that there could be some benefits to standardized kill switch processes across exchanges.<sup>472</sup>

Commenters also stressed the importance of clear, transparent procedures governing use of the kill switch.<sup>473</sup> FIA stated that “a failure to communicate policies that govern the use of kill switches, any potential changes to such policies, or the utilization of a kill switch in a live trading environment without prior notification can introduce significant risk to a market participant’s trading operation as well as the wider marketplace.”<sup>474</sup> MFA commented that trading platforms should have clear and objective policies detailing the circumstances that warrant use of a kill switch.<sup>475</sup> In contrast, CME stressed that the kill switch tool must be free of restrictive policies and procedures, because time is of the essence in use of the kill switch. However, CME stated that if policies do govern an exchange’s use of a kill switch, such policies should define a hierarchy of authority for who can send kill instructions.<sup>476</sup>

Regarding activation of the kill switch, FIA cautioned that this tool should only be used as a “final safeguard” that should be a redundant control as long as appropriate risk controls are implemented at the FCM and DCM levels.<sup>477</sup> FIA suggested that a kill switch have both automated and manual triggers, but a DCM should

contact the market participant before activating the kill switch.<sup>478</sup> FIA also suggested that a DCM be allowed to terminate market access without contacting the participant if necessary to protect market integrity or the financial integrity of participants.<sup>479</sup> Citadel commented that exchange systems should employ robust and reliable systems that automatically identify potentially erroneous activity, and this activity could trigger automatic notifications to the participant; review by exchange staff; automatic blocks of further activity; and, under appropriate circumstances, a confidential notification to other trading platforms that a firm’s trading is halted.<sup>480</sup> KCG stressed that market participants should establish thresholds for kill switches,<sup>481</sup> and Gelber cautioned that exchanges should apply kill switches on an ATS, not firm-wide, level.<sup>482</sup> SIG suggested that exchanges set kill switches at the gateway level, firm level, or an account level.<sup>483</sup>

An issue related to pre-trade and other risk controls implemented by DCMs is the testing of exchange systems. The Concept Release did not directly explore the testing of DCM automated systems. Moreover, commenters did not raise the issue. Nevertheless, the Commission notes that there have been incidents following automated system changes that might have been prevented or mitigated by additional testing. For example, in early 2015, certain European futures exchanges experienced outages in their trading platforms following updates to their automated systems.<sup>484</sup> In September 2010, 30,000 test orders were accidentally submitted to the CME Globex system (due to human error), resulting in numerous executed trades.<sup>485</sup> In April 2014, the Globex system halted, forcing traders to execute futures trades on the trading floor.<sup>486</sup>

<sup>478</sup> FIA at 29–33.

<sup>479</sup> FIA at 29–33.

<sup>480</sup> Citadel at 3–4.

<sup>481</sup> KCG at 13.

<sup>482</sup> Gelber at 14.

<sup>483</sup> SIG at 8.

<sup>484</sup> See “Euronext Derivatives Trading Resumes Following One-Hour Halt,” Bloomberg (March 30, 2015), available at <http://www.bloomberg.com/news/articles/2015-03-30/euronext-derivatives-trading-halted-because-of-technical-issue>.

<sup>485</sup> See “CME Test Orders Went Live,” Wall St. J. (September 15, 2010), available at <http://www.wsj.com/articles/SB10001424052748703376504575491971336921954>.

<sup>486</sup> See “Technical Glitch Hits CME Trading,” Wall St. J. (April 8, 2014), available at <http://www.wsj.com/articles/SB10001424052702304819004579489683245107384>. The Commission notes that moving to the floor will no longer be available

<sup>464</sup> See *id.*

<sup>465</sup> CME at Appendix A–4; CFE at 9–10.

<sup>466</sup> FIA at 14.

<sup>467</sup> FIA at 14; KCG at 12; MFA at 12; Chicago Fed at 2.

<sup>468</sup> CME at 23–24.

<sup>469</sup> CFE at 11.

<sup>470</sup> FIA at 29–33; Citadel at 3; AIMA at 3, 18; MFA at 12–13; KCG at 13.

<sup>471</sup> Citadel at 3.

<sup>472</sup> FIA at 29–33; CME at 23; AIMA at 18; SIG at 8; Gelber at 14–15.

<sup>473</sup> FIA at 29; MFA at 12; Citadel at 3.

<sup>474</sup> FIA at 29.

<sup>475</sup> MFA at 12.

<sup>476</sup> CME at 23.

<sup>477</sup> FIA at 29–33; Gelber at 14–15.

The Commission further notes that IOSCO published in April 2015 a consultation report recommending that exchanges consider “establishing policies and procedures related to the development, modification, testing and implementation of new, or changes to, critical systems.”<sup>487</sup> Existing § 38.1051(h) requires DCMs to “conduct regular, periodic, and objective testing of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity” and § 38.1051(a)(5) requires exchanges to address risk analysis and oversight for “systems development and quality assurance.” While the Commission is not proposing any amendments to § 38.1051 in this NPRM, the Commission requests comment on whether the existing rule provides the Commission with adequate authority to require DCMs to adequately test planned changes to their matching engines and other automated systems.

## 2. Description of Regulation

Existing § 38.255 requires DCMs to establish risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including market restrictions that pause or halt trading. The Commission proposes a new § 40.20 to require DCMs to establish pre-trade and other risk controls specifically designed to address the risks that may arise from Algorithmic Trading, and to establish similar controls for orders entered manually.

The controls required by § 40.20 are consistent with the controls that Regulation AT would require AT Persons and clearing member FCMs to implement. By reference to the pre-trade and other risk controls required of AT Persons pursuant to § 1.80(a)(1), proposed § 40.20 would require message and execution throttles and controls establishing price and size parameters. Proposed § 40.20 would also require DCMs to implement the above risk controls for orders that do not originate from Algorithmic Trading.

The proposed regulation, by reference to § 1.80(b) and (c), would also require DCMs to establish certain order cancellation and connectivity monitoring systems. The cancellation systems must have the ability to: (i) Immediately disengage Algorithmic Trading; (ii) cancel selected or up to all resting orders when system or market conditions require it; (iii) prevent

acceptance or submission of any new orders; and (iv) cancel or suspend all resting orders from AT Persons in the event of disconnect with the trading platform. The connectivity monitoring systems established by the DCM must enable the systems of AT Persons with DEA to indicate to the AT Persons on an intermittent or continuous basis whether they have proper connectivity with the trading platform, including any systems used by a DCM to provide the AT Person with market data.

Finally, the Commission is amending the Acceptable Practices for Core Principle 4 in part 38 of the DCM regulations. The existing Acceptable Practices provide that the DCM may choose from risk controls, including pre-trade limits on order size, price collars or bands around the current price, message throttles and daily price limits, to comply with Core Principle 4. Such controls are now required. Accordingly, the Acceptable Practices will be revised to correspond to the new requirements set forth in § 40.20.

## 3. Policy Discussion

Consistent with its multi-layered approach to regulations intended to mitigate the risks of automated trading, the Commission proposes in § 40.20 to require that DCMs establish and implement certain pre-trade risk controls and order management controls that are broadly similar to those that would be required of AT Persons and clearing member FCMs. The Commission’s determination to require DCM-implemented controls is consistent with several Concept Release comments that indicated that pre-trade risk and order management controls should be placed at the exchange level, with one commenter explaining that exchanges sit at the center of trading, and are therefore best positioned to monitor activity across a wide variety of participants.<sup>488</sup> The Commission notes that its approach is consistent with ESMA’s 2015 Final Draft Regulatory Standards, in that ESMA requires pre-trade risk controls at both the investment firm and trading venue level.<sup>489</sup> In addition, with respect to kill switch functionality, ESMA’s 2015 Final Draft Regulatory Standards set out two different obligations: Trading venues must have their own kill functionality, and separately, investment firms must have the ability to cancel unexecuted orders.<sup>490</sup>

The Commission believes that the controls required in proposed § 40.20 are in many cases largely consistent with controls already used by DCMs. As discussed above, commenters to the Concept Release addressing this topic generally indicated that exchanges already use message rate limits, maximum order size limits, and price limits. Comments to the Concept Release indicated that order cancellation systems and connectivity monitoring systems are already used by DCMs as well. Although some commenters did indicate that execution throttles are more appropriate for trading firms than for DCMs, the Commission believes that pre-trade risk controls and other measures serve different functions and may be designed or calibrated distinctly at each entity in the life-cycle of an AT Order Message. As noted above, proposed § 40.20 and other elements of Regulation AT reflect the proposed rules’ layered approach to risk mitigation in automated trading. In this regard, Regulation AT is designed to address the diverse needs of market participants trading across multiple markets, by spreading the requirement to impose risk controls across AT Persons, clearing member FCMs and DCMs and encouraging them to each make independent use of such controls.

The Commission notes that IOSCO has recently explained that most trading venues have tools used to mitigate the operational risks of electronic trading, and such tools include price and volume controls, messaging throttles, and kill switches.<sup>491</sup> In addition, ESMA’s 2015 Final Draft Regulatory Standards require that trading venues have price collars that automatically block or cancel orders that do not meet set price parameters with respect to different financial instruments, on an order-by-order basis; and maximum order value and maximum order volume limits.<sup>492</sup> ESMA’s regulatory standards also require throttles limiting the number of orders each member may submit per second.<sup>493</sup> Trading venues must also determine a maximum ratio of unexecuted orders to transactions at a level they deem appropriate, consistent with a calculation methodology provided by ESMA.<sup>494</sup> ESMA standards further require a kill functionality to cancel unexecuted orders upon request of a market participant that is technically unable to delete its own

<sup>491</sup> IOSCO 2015 Consultation Report, *supra* note 106 at 21.

<sup>492</sup> See ESMA September 2015 Final Draft Standards Report Annex 1 at 269.

<sup>493</sup> See *id.* at 266.

<sup>494</sup> See *id.* at 285–88.

as a backup as the CME was planning to close most futures trading pits in July 2015.

<sup>487</sup> See IOSCO 2015 Consultation Report, *supra* note 106 at 19.

<sup>488</sup> FIA at 29–33; Citadel at 3; AIMA at 3, 18; MFA at 12–13; KCG at 13.

<sup>489</sup> ESMA September 2015 Final Draft Standards Report, *supra* note 80 at 201–02.

<sup>490</sup> See *id.*



orders, when the order book is corrupted by erroneous duplicated orders, or following a suspension initiated by the market operator or the competent authority.<sup>495</sup>

The Commission's proposed rules do not impose a "one-size-fits-all" standard on DCMs for compliance. Rather, the DCM's pre-trade risk controls must be set at the level of each AT Person, and exchanges must evaluate whether the controls should be set at a more granular level, including by product or one or more identifiers of natural persons associated with an AT Order Message, and then take appropriate action to set the controls at that more granular level. The Commission expects that it will often be beneficial to set controls at a more granular level. As noted above, while some commenters to the Concept Release indicated that Commission involvement in setting thresholds for these controls might be useful, the Commission agrees with those commenters indicating that exchanges need discretion to determine how these controls are implemented. The Commission believes that it is not in the best position to determine the appropriate control parameters for each trading strategy, product, capacity of exchange matching engine, and every other potentially relevant factor that should be taken into account by a DCM when establishing thresholds. The proposed rules do not prescribe particular limits or thresholds. Rather, they require that the DCM set the controls at levels intended to prevent an Algorithmic Trading Event.

The Commission believes that allowing DCMs discretion in the design and implementation of risk controls is particularly important in the area of order cancellation functions. FIA has stated that "[a]ctivation of a kill switch is based on a decision that such action protects market integrity or the financial integrity of the counterparties involved," and should "only be invoked based on a qualitative decision taken as a last resort when other actions have failed or may not be feasible."<sup>496</sup> Furthermore, FIA has explained that the conditions under which a kill switch may be used by an exchange should be clearly communicated to the counterparties.<sup>497</sup> Similarly, MFA commented that trading platforms should have clear and objective policies detailing when a kill switch will be used.<sup>498</sup> CME indicated that restrictive policies governing use of a kill switch

could be detrimental, given the speed with which a kill switch may need to be implemented.<sup>499</sup> The Commission believes that exchanges should have clear and public policies governing use of a kill switch, but understands that the specifics of such policies may differ depending on the nature of an exchange's market and market participants. Therefore, the Commission has determined that its proposed rules in this area should provide exchanges with the discretion to design policies and procedures appropriate to their market. The Commission stresses that exchanges should clearly communicate such policies and procedures to market participants.

The Commission notes that § 40.20(d) would require a DCM to implement the pre-trade and other risk control mechanisms described in § 40.20(a) and (b)(1)(i) (meaning, message and execution throttles and order and price parameters and order cancellation systems) for orders that do not originate from Algorithmic Trading, after making any adjustments to such controls that the DCM determines are appropriate for such orders. The Commission recognizes that certain activity that such controls are designed to address can be caused by manual order entry in addition to Algorithmic Trading. For example, fat-finger errors are a commonly-cited example of an unintentional error that can have a significant disruptive effect, which can be caused by, and may even be more likely to occur in the context of, manual order entry.

#### 4. Request for Comments

79. The Commission proposes to require DCMs to set pre-trade risk controls at the level of the AT Person, and allows discretion to set controls at a more granular level. Should the Commission eliminate this discretion, and require that the controls be set at a specific, more granular, level? If so, please explain the more appropriate level at which pre-trade risk controls should be set by a DCM.

80. The Commission requests public comment on the pre-trade and other risk controls required of DCMs in proposed § 40.20. Are any of the risk controls required in the proposed rules unhelpful to operational or other risk mitigation, or to market stability, when implemented at the DCM level?

81. Are there additional pre-trade or other risk controls that should be specifically enumerated in proposed § 40.20?

82. The Commission proposes, with respect to its kill switch requirements, to allow DCMs the discretion to design a kill switch that allows a market participant to submit risk-reducing orders. The Commission also does not mandate particular procedures for alerts or notifications concerning kill switch triggers. Does the proposed rule allow for sufficient flexibility in the design of kill switch mechanisms and the policies and procedures concerning their implementation? Should the Commission consider more prescriptive rules in this area?

83. Does existing § 38.1051 provide the Commission with adequate authority to require DCMs to adequately test planned changes to their matching engines and other automated systems?

#### O. DCM Test Environments for AT Persons—§ 40.21

The Commission proposes a new § 40.21 to require DCMs to provide a test environment that will enable AT Persons to simulate production trading.

##### 1. Concept Release Comments

The Concept Release contemplated that trading platforms must provide to their market participants test environments that simulate the production environment. FIA supports DCMs providing robust test environments and market participants using such environments.<sup>500</sup> SIG also indicated that DCMs should provide test environments.<sup>501</sup> MFA indicated that many, if not all, exchanges currently provide market participants a test facility to test trading software and algorithms.<sup>502</sup>

##### 2. Description of Regulation

Regulation AT proposes a new requirement that DCMs (under proposed § 40.21) provide a test environment that will enable AT Persons to simulate production trading. The required test environment should provide access to historical transaction, order and message data. The test environment should also enable AT Persons to conduct conformance testing of their Algorithmic Trading systems to verify compliance with the requirements of proposed § 1.80(a)–(c) (which address pre-trade risk controls and other measures), § 1.81(a)(1)(ii)–(iv) and § 1.81(c)(1) (which address the testing and compliance of algorithmic trading systems). The Commission anticipates that AT Persons would use the DCM test environment in connection with the

<sup>495</sup> See *id.* at 266–67.

<sup>496</sup> See FIA Guide, *supra* note 95 at 14.

<sup>497</sup> See *id.*

<sup>498</sup> MFA at 12.

<sup>499</sup> CME at 23.

<sup>500</sup> FIA at 34–38.

<sup>501</sup> SIG at 9.

<sup>502</sup> MFA at 13.

testing of their Algorithmic Trading systems, to identify issues that may arise in a production environment that may not have been identified through testing in the AT Person's development environment.

### 3. Request for Comments

84. Should the test environment provided by DCMs under proposed § 40.21 offer any other functionality or data inputs that will promote the effective design and testing of Algorithmic Trading by AT Persons?

*P. DCM Review of Compliance Reports by AT Persons and Clearing FCMs; DCM Rules Requiring Certain Books and Records; and DCM Review of Such Books and Records as Necessary—§ 40.22*

The Commission proposes a new § 40.22 that complements the requirement under § 1.83 for AT Persons and clearing member FCMs to submit compliance reports to DCMs. Sections 40.22(a) and (b) would require a DCM to require each AT Person that trades on the DCM, and each FCM that is a clearing member for such AT Person, to submit the reports described in § 1.83(a) and (b) annually. Further, § 40.22(c) would require each DCM to establish a program for effective review of such reports and remediation of any deficiencies found. DCMs would have considerable latitude, however, in the design of their review programs. Proposed § 40.22(d) would require DCMs to implement rules that require each AT Person to keep and provide to the DCM books and records regarding such AT Person's compliance with all requirements pursuant to § 1.80 and § 1.81, and require each clearing member FCM to keep and provide to the DCM books and records regarding such clearing member FCM's compliance with all requirements pursuant to § 1.82. Finally, proposed § 40.22(e) would require DCMs to review and evaluate, as necessary, books and records maintained by AT Persons and clearing member FCMs regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). This proposed provision also provides DCMs with considerable latitude in the implementation of their review function. The remainder of this section presents Concept Release comments on this topic, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments

As noted in the discussion of proposed § 1.83 above, the Concept Release requested comment on whether it would be appropriate to require periodic self-certifications by all market participants operating ATs and by clearing firms that provide clearing services to those market participants.<sup>503</sup> Comments addressing this topic are addressed in section IV(I)(1) above.

#### 2. Description of Regulation

Proposed § 40.22 complements the requirement under § 1.83 for AT Persons and clearing member FCMs to submit compliance reports to DCMs. Proposed § 40.22(a) requires a DCM to implement rules that require each AT Person that trades on the DCM, and each FCM that is a clearing member of a DCO for such AT Person, to submit the reports described in § 1.83(a) and (b), respectively. Under proposed § 40.22(b), a DCM must require the submission of such reports by June 30th of each year. Proposed § 40.22(c) requires a DCM to establish a program for effective periodic review and evaluation of reports described in paragraph (a) of § 40.22, and of the measures described therein. An effective program must include measures by the DCM reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures described in such reports, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons pursuant to § 1.80(a).

In addition, as an additional complement to the compliance report review program described above, proposed § 40.22(d) requires DCMs to implement rules requiring each AT Person to keep and provide to the DCM books and records regarding their compliance with all requirements pursuant to § 1.80 and § 1.81, and requires each clearing member FCM to keep and provide to the DCM market books and records regarding their compliance with all requirements pursuant to § 1.82. Finally, proposed § 40.22(e) requires DCMs to review and evaluate, as necessary, books and records required to be kept pursuant to proposed § 40.22(d), and the measures described therein. A DCM could find it necessary to conduct such a review if: It becomes aware if an AT Person's kill switch is frequently activated, or otherwise performs in an unusual manner; if a DCM becomes aware that an AT Person's algorithm frequently

performs in a manner inconsistent with its design, which may raise questions about the design or monitoring of the AT Person's algorithms; if a DCM identifies frequent trade practice violations at an AT Person, which are related to an algorithm of the AT Person; or if an AT Person represents significant volume in a particular product, thereby requiring heightened scrutiny, among other reasons. An appropriate review pursuant to § 40.22(e) should include measures by the DCM reasonably designed to identify and remediate any insufficient mechanisms, policies, and procedures described in such books and records.

#### 3. Policy Discussion

In proposing this regulation, the Commission disagrees with comments to the Concept Release opposing such a review requirement and suggesting that it would merely create extra administrative costs.<sup>504</sup> The Commission acknowledges that the review program required by § 40.22 would impose costs on DCMs, but believes that Regulation AT must include a mechanism to ensure that AT Persons and clearing member FCMs are complying with the requirement to implement certain pre-trade and other risk controls. Moreover, an assessment of such compliance requires an adequate level of expertise and knowledge of markets and market participants' technological systems and trading strategies. The Commission believes that a review program requiring AT Persons to describe the pre-trade risk controls required by § 1.80(a) and clearing member FCMs to describe their program for establishing and maintaining the pre-trade risk controls required by 1.82(a)(1), and requiring DCMs to review such information, is the most effective method to ensure that all market participants are implementing measures that are reasonably designed to prevent an Algorithmic Trading Event or Algorithmic Trading Disruption. The requirements of proposed § 40.22(d) and (e) will enable DCMs to perform a more intensive review, as necessary, of AT Persons' compliance with §§ 1.80 and 1.81, and clearing member FCMs' compliance with § 1.82, by among other factors, helping to ensure that necessary books and records are maintained and available to a DCM.

The Commission notes, in particular, that DCMs are best positioned to assess the measures taken by market participants on their exchange, and identify outliers that may not have implemented adequate measures or

<sup>503</sup> Concept Release, 78 FR at 56559.

<sup>504</sup> See, e.g., AIMA at 21; FIA at 4; CME at 47.

particular parameters as compared to other market participants. The Commission believes that it is in the interest of the DCM, as well as all market participants trading on the DCM, to ensure that no market participants are conducting Algorithmic Trading without adequate protections in place.

Some commenters indicated that any certification requirements should be principles-based.<sup>505</sup> The Commission agrees that a DCM should have discretion in the design and implementation of its review program. Accordingly, proposed § 40.22 provides a general framework for the DCM's review program: *e.g.*, a DCM must require the submission of reports by June 30 of each year; and the DCM must establish a program for effective periodic review and evaluation of the reports, including measures by the DCM reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures described in such reports. Beyond the specific requirements set forth in proposed § 40.22, however, each DCM may tailor its review program in the manner it believes will be most effective to understand the measures its market participants have taken to address the risks of Algorithmic Trading, and evaluate whether they are sufficient.

#### 4. Request for Comments

85. In lieu of a DCM's affirmative obligation in proposed § 40.22 to review AT Person and clearing member FCM compliance reports, should DCMs instead be permitted to rely on the CEO or CCO representations required by proposed § 1.83(a)(2)? If so, what events in the Algorithmic Trading of an AT Person should trigger review obligations by the DCM?

86. Should § 40.22(c) provide more specific requirements regarding a DCM's establishment of a program for effective periodic review and evaluation of AT Person and clearing member FCM reports? For example, § 40.22(c) could require review at specific intervals (*e.g.*, once every two years). Alternatively, § 40.22(c) could provide greater discretion to DCMs in establishing their programs for the review of reports. Please comment on the appropriateness of these alternative approaches.

87. Should § 40.22(e) provide more specific requirements regarding the triggers for a DCM to review and evaluate the books and records of AT Persons and clearing member FCMs required to be kept pursuant to § 40.22(d)? For example, § 40.22(e) could require review at specific

intervals (*e.g.*, once every two years), or it could require review in response to specific events related to the Algorithmic Trading of AT Persons. Please comment on the appropriateness of these alternative approaches.

88. Does § 40.22 leave enough discretion to the DCM in determining how to design and implement an effective compliance review program regarding Algorithmic Trading? Alternatively, is there any aspect of this regulation that should be more specific or prescriptive?

89. Should § 40.22 specifically authorize a DCM to establish further standards for the organization, method of submission, or other attributes of the reports described in § 40.22(a)?

#### Q. Self-Trade Prevention Tools—§ 40.23

The Commission understands that self-trade activity has grown as trading has migrated to an electronic trading environment. The Commission has determined to propose rules in this area, which would address both intentional and unintentional self-trading activity, with the goal of benefiting market participants and enhancing the price discovery process. Specifically, the Commission is proposing § 40.23(a) to require DCMs to implement rules reasonably designed to prevent self-trading, excluding certain "permitted self-trades" described below. Proposed § 40.23(a) defines self-trading as the matching of orders for accounts that have common beneficial ownership<sup>506</sup> or are under common control. As discussed below, a trade that results from the matching of opposing orders both generated by a firm or a single or commonly owned account does not shift risk between different market participants. There is a possibility that such trades may inaccurately signal the level of liquidity in the market and may result in a non-bona fide price. Risk controls that identify and limit self-trading may result in more accurate indications of the level of market interest on both sides of the market and help ensure arms-length transactions that promote effective price discovery.

The Commission recognizes that there could be legitimate reasons for self-

trades, and hence is proposing to provide DCMs and market participants the appropriate flexibility in implementation of the self-trade prevention tools. DCMs have begun offering self-trade prevention tools to market participants in recent years, and a large fraction of market participants have started using these tools. Analysis of self-match use at DCMs has found that the majority of orders in many liquid contracts already make use of this tool. While acknowledging the growing use of such tools, the Commission is interested in strengthening regulatory standards to increase transparency and ensure more effective limitation of unintentional self-trades. By standardizing self-trade prevention use across firms, it should be easier for the marketplace as a whole to differentiate permitted self-trading. The Commission's proposed rules on self-trade prevention are also intended as a complement to the prohibition under the CEA regulations regarding wash trades.<sup>507</sup> Wash trading has been defined as "entering into, or purporting to enter into, transactions to give the appearance that purchases and sales have been made, without incurring market risk or changing the trader's market position."<sup>508</sup> Therefore, intentional self-trades could constitute wash trades.

The remainder of this section presents Concept Release comments on this topic, a Commission analysis of the amount of self-trading in the marketplace, a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

#### 1. Concept Release Comments

The Concept Release requested comment on self-trading controls. The Concept Release considered whether trading platforms should provide, and market participants apply, technologies to identify and limit the transmission of orders from their systems to a trading platform that would result in self-trades. Numerous commenters addressed self-trading controls, including the extent of their use by industry; the types of trades that self-trade controls should prevent; and the appropriate design of self-trade controls. Commenters disagreed as to whether there should be regulation in this area, but most either oppose regulation or express concern about how it would be implemented, for reasons similar to those stated by FIA: "To

<sup>506</sup> The Commission is requesting public comment in the questions below regarding whether it should define "common beneficial ownership" in any final rules arising from this NPRM, and if so, how the term should be defined. The Commission notes in its request for public comment that its aggregation rules in § 150.4 are a potential model for defining common beneficial ownership in any final rules. The Commission is also requesting public comment regarding whether the definition of common beneficial ownership for purposes of § 40.23 should be left to the individual discretion of each DCM.

<sup>507</sup> See Section 4c(a) of the CEA, 7 U.S.C. 6c(a)(2)(A), and Commission regulation 1.38(a).

<sup>508</sup> See CFTC Glossary, available at: <http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/index.htm#W>.

<sup>505</sup> See, *e.g.*, FIA at 4, CME at 27.

require the adoption of DCM-based self-match prevention as a 'one-size-fits-all' approach may result in unnecessary financial exposure caused by the inherent blocking of legitimate transactions. . . . The options for this type of functionality must be flexible enough so that market participants can choose the method that best suits their business and preserves legitimate trading."<sup>509</sup>

Commenters indicated that exchange-provided self-trading controls are widely used by market participants.<sup>510</sup> The FIA PTG Survey reflected that 25 of 26 responding firms use such controls.<sup>511</sup> Both CME and ICE provide self-trade prevention controls, a capability which was introduced, and refined, in recent years.<sup>512</sup> CME's self-trade control is optional rather than required. It allows market participants to prevent buy and sell orders for the same account, or accounts with common beneficial ownership, from matching with each other. CME noted that its self-trade control can be applied by market participants at the executing firm level or at more granular levels, including at an individual user level.<sup>513</sup> CME stated that more than 100 firms have registered for this control since it was launched in June 2013.<sup>514</sup> ICE noted that its self-trade prevention tool is mandatory for proprietary traders with DEA.<sup>515</sup> Another exchange, CFE, commented that it will be employing self-trade prevention functionality in the near future.<sup>516</sup>

While FIA believes that DCMs should offer self-trading controls, FIA and four other commenters (including CME) oppose self-trading regulation at this time.<sup>517</sup> Reasons articulated by FIA and other commenters included: The technology supporting this risk control is not sufficiently developed, although industry is already working to improve it and is in the best position to do so; regulating self-trading controls would lock in standards or technology that will become obsolete; self-trade controls may cause an accumulation of either resting orders or new orders, depending on how the controls are calibrated, which does not advance the regulatory goal of protecting the marketplace; and there are ways to prevent self-trades without

using a self-trade prevention tool (*i.e.*, trading firms may choose to simply modify their trading strategies).<sup>518</sup> OneChicago commented that self-trading controls should be implemented and calibrated at the clearing firm level, not at the DCM level.<sup>519</sup>

In contrast, IATP and AFR support the Commission requiring exchanges and market participants to use self-trading controls.<sup>520</sup> SIG believes that exchanges should offer self-trade prevention functionality, with parameters set by firms.<sup>521</sup>

As to cost considerations, CME stated that self-trade controls require significant investments in technology and resources by exchanges and trading firms.<sup>522</sup> MFA noted that it is more cost-effective for exchanges, rather than market participants, to develop self-trade controls.<sup>523</sup>

Finally, comments addressed the specific functionality of self-trade controls currently used by exchanges and firms. For example, five comments addressed the type of trades that such controls should prevent.<sup>524</sup> FIA explained that self-trading controls should only address trades submitted by the same trading desk that are matched despite best efforts to avoid self-trading. This is different from wash trades, which are intentional self-trades that Commission and DCM rules already effectively address, and bona fide self-trades, which are buy and sell orders for accounts with common beneficial ownership that are independently initiated for legitimate business purposes, but which coincidentally cross.<sup>525</sup> FIA and Gelber stated that CME's November 19, 2013 advisory notice on wash trades<sup>526</sup> provides an accurate description of when self-matching is acceptable.<sup>527</sup> SIG stated that exchanges should focus on trades that would create material, not immaterial, market misperceptions.<sup>528</sup> Finally, KCG stated that it does not believe the CFTC needs to prohibit all

self-trading, but that "market participants must be able to demonstrate, through information barriers or other effective policies and procedures, that any self-trading is between unrelated strategies and not designed with a manipulative intent."<sup>529</sup>

Commenters also addressed the appropriate level at which self-trade controls should be calibrated.<sup>530</sup> Several stressed that DCMs should allow market participants to tailor this control to their own needs.<sup>531</sup> FIA commented that self-trade controls should be offered at varying levels of granularity (*i.e.*, firm level, group level, trader ID level, customer account level and strategy level), and certain levels can be combined.<sup>532</sup> AIMA stated that self-trade controls set at the firm trader ID level could be "gamed" by traders creating a shell company under a different ID.<sup>533</sup> SIG suggested that the controls be customizable at the "aggregation unit level" and "user-defined tag level."<sup>534</sup>

Six comments addressed whether exchanges should require market participants to use the exchanges' self-trading controls.<sup>535</sup> CME noted that it is optional for market participants to use its self-trade tools, and FIA supported this approach.<sup>536</sup> In contrast, AIMA suggested mandatory confidential flagging of self-trades to the market participant, but only optional cancellations of orders.<sup>537</sup> Gelber and KCG support mandatory use at the "trader ID" level.<sup>538</sup> Gelber noted that ICE's controls are mandatory for some market participants.<sup>539</sup> Finally, IATP suggested requiring exchanges to provide self-trading controls and apply them to all participants and all products, arguing that requiring such controls for some but not others creates arbitrage opportunities.<sup>540</sup>

Comments also addressed order cancellation options in order to prevent self-trading, which can include cancel resting, cancel new, cancel both, and decrement order quantity (canceling the smaller order and reducing the larger

<sup>518</sup> FIA at 25–27; CME at 11–12; AIMA at 11–12; Gelber at 7.

<sup>519</sup> OneChicago at 2.

<sup>520</sup> IATP at 5; AFR at 7.

<sup>521</sup> SIG at 9.

<sup>522</sup> CME at 10.

<sup>523</sup> MFA at 8.

<sup>524</sup> FIA at 25; Gelber at 9; KCG at 7; AIMA at 11; SIG at 9.

<sup>525</sup> FIA at 25.

<sup>526</sup> See the CME Group Advisory Notice RA 1308-5 (Nov. 19, 2013), available at <http://www.cmegroup.com/rulebook/files/cme-group-ra1308-5.pdf>. The FAQ in the Advisory Notice discusses various types of acceptable self-matching that would not violate CME Rule 534 ("Wash Trades Prohibited").

<sup>527</sup> FIA at 25; Gelber at 9.

<sup>528</sup> SIG at 9.

<sup>529</sup> KCG at 7.

<sup>530</sup> FIA at 25–27; Gelber at 7–9; CME at 12; AIMA at 10–12; SIG at 9.

<sup>531</sup> FIA 25–27; Gelber at 7–9; CME at 12; SIG at 9.

<sup>532</sup> FIA at 27.

<sup>533</sup> AIMA at 10–12.

<sup>534</sup> SIG at 9.

<sup>535</sup> FIA at 25–27; CME at 13, Appendix A–4; Gelber at 7–9; KCG at 7; AIMA at 2, 10–11; IATP at 5.

<sup>536</sup> CME at 13, Appendix A–4; FIA at 25–27.

<sup>537</sup> AIMA at 2, 10–11.

<sup>538</sup> Gelber at 7–9; KCG at 7.

<sup>539</sup> Gelber at 7–9.

<sup>540</sup> IATP at 5.

<sup>509</sup> FIA at 27–28.

<sup>510</sup> FIA at 26; Gelber at 7–9.

<sup>511</sup> FIA at 26, 59–60.

<sup>512</sup> FIA at 25–27; MFA at 8; Gelber at 7–9; FAIMA at 10; IATP at 5.

<sup>513</sup> CME at 12.

<sup>514</sup> *Id.* at 11–12.

<sup>515</sup> ICE at 2.

<sup>516</sup> CFE at 6.

<sup>517</sup> FIA at 25–27; CME at 10–12; Gelber at 7–9; MFA 5, 8; AIMA at 11–12.

order by the size of the smaller order).<sup>541</sup> As described below, the Commission's proposed self-trade prevention requirements do not mandate a particular technological approach, nor do they specify which order or set of orders should be canceled in order to prevent a self-trade.

## 2. Commission Analysis of Amount of Self-Trading in the Marketplace

The pervasive growth of algorithmic trading by firms deploying large numbers of strategies has likely increased the incidence of self-trading activity. In order to estimate the percentage of self-trading in the marketplace, the Commission recently reviewed twelve months of trade data received from several large DCMs, focusing primarily on the most active products. Among other findings, the Commission learned that intra-firm self-trades, including both proprietary and customer trades, can comprise a meaningful percentage of daily trading activity in individual futures contracts.<sup>542</sup> For example, in February 2015 intra-firm self-trades in one examined futures contract were almost 10 percent of all trades in that contract, increasing to almost 15 percent on individual days. Self-trade rates for a few other contracts were around 5 percent of total activity. The Commission found similar patterns at individual firm levels, with cumulative self-trade volumes at times in the millions of contracts for some market participants over the course of the 12-month sample period. The average size of a firm's self-trades ranged from approximately two contracts per trade to over two thousand contracts per trade.

<sup>541</sup> FIA at 26; CME at 11. FIA, Gelber and SIG support the DCM offering cancellation options to the market participant. FIA at 26; Gelber at 7-9; SIG at 9. In its comment letter, CME stated that its self-match prevention system was, at the time of the comment letter, structured to cancel the resting order, retaining orders based on more current market information. (CME has more recently expanded the number of cancellation choices.) The benefit of the opposite approach, canceling the taking order, is that it favors the priority of orders resting in the order book. CME at 11. Similarly, MFA stated that it disagrees with the approach of canceling the resting order, because it causes a participant to lose its resting orders even if the orders have been working in the queue. MFA noted that other exchanges, such as NYSE Euronext, offer options such as cancelling the taking order and decrementing order quantity. MFA at 8. AFR supports cancellation of the taking order, reasoning that the taking order is more likely to be the erroneous order. AFR at 7. Finally, AIMA favors rejection of both the resting order and the taking order. AIMA at 11.

<sup>542</sup> Self-trading identified in the Commission's analysis could include trading between accounts controlled by separate independent decision makers.

## 3. Description of Regulation

The Commission is proposing new requirements under § 40.23 that would require DCMs to apply, or provide and require the use of, tools reasonably designed to prevent self-trading. Proposed § 40.23 defines self-trading for purposes of this regulation as the matching of orders for accounts that have common beneficial ownership or are under common control. These requirements are intended to prevent self-trading, while still allowing what FIA has characterized as "bona fide and desirable self-match trades," *i.e.* buy and sell orders for accounts with common beneficial ownership that are independently initiated for legitimate business purposes, but which coincidentally cross.<sup>543</sup> While the proposed rules contain exceptions for bona fide self-match trades (described in § 40.23(b)), they are intended to address all unintentional self-trading, and do not include a *de minimis* exception for a certain percentage of unintentional self-trading. In addition, the proposed rules would provide for an important new element of transparency around bona fide self-match trades to furnish all market participants with greater information regarding the markets on which they trade.

Description of § 40.23(a). Regulation 40.23(a) would require a DCM to implement rules reasonably designed to prevent self-trading by market participants, except as specified in paragraph (b). The regulation defines "self-trading," for purposes of § 40.23, as the matching of orders for accounts that have common beneficial ownership or are under common control. Regulation 40.23(a) would require that a DCM shall either apply, or provide and require the use of, self-trade prevention tools that are reasonably designed to prevent self-trading and are applicable to all orders on its electronic trade matching platform. If a DCM does not implement and apply self-trade prevention tools, then it must provide such tools to its market participants and require all market participants to use the tools. For purposes of complying with the requirements of proposed § 40.23, a DCM could either determine for itself which accounts should be prohibited from trading with each other, or require market participants to identify to the DCM which accounts should be

<sup>543</sup> FIA at 25. *See also* FIA Guide, *supra* note 95 at 13, which describes bona fide and allowable self-match trades as "buy and sell orders for accounts with common beneficial ownership that are independently initiated for legitimate and separate business purposes by independent decision makers and which coincidentally cross with each other in the competitive market."

prohibited from trading with each other. The proposed regulations allow DCMs to exercise discretion in the design and implementation of self-trade prevention tools, in response to Concept Release commenter concerns that the technology supporting this control is still being developed, and overly prescriptive regulations in this area may lock in standards or technology that will become obsolete.

Description of § 40.23(b). The requirements of proposed § 40.23(a) are subject to the proviso in § 40.23(b) that a DCM may, in its discretion, implement rules that permit a self-trade resulting from the matching of orders for accounts with common beneficial ownership where such orders are initiated by independent decision makers. A DCM could, through its rules, further define for its market participants "independent decision makers." This exception is closely based on FIA's comment letter description of how a bona fide self-trade that should be permitted to occur.<sup>544</sup> The Commission considered FIA's concept of permissible self-trading to be a reasonable one, which would be easily understood by exchanges and market participants. In addition to the foregoing exception relating to common beneficial ownership, § 40.23(b) allows a DCM to permit a self-trade resulting from the matching of orders for accounts under common control where such orders comply with the DCM's cross-trade, minimum exposure requirements or similar rules, and are for accounts that are not under common beneficial ownership.

Description of § 40.23(c). Under proposed § 40.23(c), a DCM must require market participants to receive approval from the DCM to forego self-trade prevention tools with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of paragraph (b). The DCM must require that such approval request be provided to it by a compliance officer or senior officer of the market participant. The Commission emphasizes that the approval request to not apply self-trade prevention tools to certain orders should not be made by an individual trader or other non-management or more junior employee of the trading firm. Market participants must withdraw or amend an approval request if any change occurs that would cause the information provided in such approval request to be no longer accurate or complete. The Commission notes that any approval request submitted to the DCM would be subject to section 9(a)(4)

<sup>544</sup> *See* FIA at 25.

of the Act, 7 U.S.C. 13(a)(4) (2012), which prohibits, *inter alia*, making false, fictitious, or fraudulent statements to a registered entity.

Description of § 40.23(d). Finally, proposed § 40.23(d) would require that for each product and expiration month traded on a DCM in the previous quarter, the DCM must prominently display on its Web site the following information: (i) The percentage of trades in such product including all expiration months that represent self-trading approved (pursuant to paragraph (c) of § 40.23) by the DCM, expressed as a percentage of all trades in such product and expiration month; (ii) the percentage of volume of trading in such product including all expiration months that represents self-trading approved (pursuant to paragraph (c) of § 40.23) by the DCM, expressed as a percentage of all volume in such product and expiration month; and (iii) the ratio of orders in such product and expiration month whose matching was prevented by the self-trade prevention tools described in paragraph (a) of § 40.23, expressed as a ratio of all trades in such product and expiration month. The Commission emphasizes that the “prominent display” of information by a DCM precludes such DCM from placing information required by this rule behind registration, log in, user name, password or other walls on the DCM’s Web site.

#### 4. Policy Discussion

The Commission understands that for various reasons, firms might operate multiple algorithms, each following a different trading strategy, but transacting in the same instrument/futures contract. This can cause buy and sell orders for the same instrument to be generated at the same instant by different algorithms, which in turn can get matched with each other as self-trades. Certain firms might choose to prevent these self-trades from occurring, or limit the extent of self-trades. They could choose to do this by building tools that scan all orders being generated from within the firm and stop those that could potentially result in self-trades. But there are challenges in building efficient firm-level solutions, especially in modern low latency markets. In response, DCMs have implemented self-trade prevention tools to help firms manage and limit the extent of self-trades that would otherwise be generated by these algorithms. These trading system-level solutions appear to be more efficient in helping firms manage their self-trade activity.

The Commission has included self-trade prevention requirements in Regulation AT to ensure that there are regulatory standards to more effectively and fairly limit unintentional self-trading across Commission-regulated markets, aiding in the risk management and trading efficiency of individual firms.

In addition, while existing Commission regulations address market manipulation and wash sales, these types of violative behavior require some level of intent. Therefore, the Commission has determined to propose regulations in the area of self-trading that address both matching of orders for accounts that have common beneficial ownership or are under common control, independent of intent.

The proposed regulations are intended to take into account Concept Release comments advising that the Commission should not be overly prescriptive in requiring specific types of self-trade prevention tools, or specific settings or controls in connection with such tools, because such tools are still technologically evolving. Furthermore, the Commission agrees with comments stating that exchanges are in the position, from a technology standpoint, to develop these types of controls. Accordingly, the Commission proposes to require the use of self-trade prevention tools in proposed § 40.23, but allow exchanges and market participants the discretion to tailor the design of such tools and how to most effectively calibrate them in order to prevent unintentional self-matching. The Commission believes that the requirements of proposed § 40.23 are generally consistent with how exchange-provided self-trade prevention tools currently operate, as indicated by comment letters.<sup>545</sup> The proposed regulations would also require DCMs to publish statistics on their Web site regarding self-trading that they have both authorized and prevented on their platform. The Commission is proposing this Web site reporting requirement because it understands that the design of self-trade prevention tools may vary among DCMs. These statistics will serve a critical purpose in disclosing to market participants the extent of self-trading that occurs in each product. The Commission believes that such transparency is a key element of the proposed rules as it will help furnish all market participants with better information regarding the markets in which they trade.

While some commenters to the Concept Release were not supportive of

Commission action in this area, the commenters also indicated that self-trade prevention tools are already widely implemented in industry.<sup>546</sup> Moreover, FINRA Rules already address self-trade prevention. In June 2014, FINRA published a regulatory notice stating that the SEC had approved new supplementary material to FINRA Rule 5210 (Publications of Transactions and Quotations) to address transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in the beneficial ownership of the security (self-trades).<sup>547</sup> Effective August 25, 2014, firms must have policies and procedures in place that are reasonably designed to review their trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks.

In addition, the FIA Guide sets forth guidelines for self-trade prevention, and recommends that exchanges should offer participants a selection of self-trade tools to allow market participants to tailor self-trade prevention to their individual needs by offering various options (*e.g.*, cancel resting, cancel new, cancel both, and decrement order size) and various levels of granularity (*e.g.*, firm level, group level, trader ID level, customer account level and strategy level).<sup>548</sup> The FIA Guide recommends that the use of such self-trade tools by market participants should remain optional.<sup>549</sup> The new Regulation AT requirements, by contrast, would make use of exchange-provided self-trade prevention tools mandatory by market participants.

#### 5. Request for Comments

90. The Commission seeks to require self-trade prevention tools that screen out unintentional self-trading, while permitting bona-fide self-matched trades that are undertaken for legitimate business purposes. Under the regulations proposed above, DCMs shall implement rules reasonably designed to prevent self-trading (“the matching of orders for accounts that have common beneficial ownership or are under common control”), but DCMs may in their discretion implement rules that permit “the matching of orders for

<sup>546</sup> See, *e.g.*, FIA at 26; Gelber at 7–9; CME at 11–12; ICE at 2.

<sup>547</sup> See FINRA, “Regulatory Notice 14–28: Self Trades; SEC Approves FINRA Rule Concerning Self-Trades” (June 2014), available at <http://www.finra.org/sites/default/files/NoticeDocument/p540972.pdf>.

<sup>548</sup> See FIA Guide, *supra* note 95 at 13.

<sup>549</sup> *Id.*

<sup>545</sup> See, *e.g.*, CME at 11–12; ICE at 2.

accounts with common beneficial ownership where such orders are initiated by independent decision makers.”

a. Do these standards accomplish the goal of preventing only unintentional self-trading, or would other standards be more effective in accomplishing this goal? For example, should the Commission consider adopting in any final rules arising from this NPRM an alternative requirement modeled on FINRA Rule 5210 and require market participants to implement policies and procedures to review their trading activity for, and a prevent a pattern of, self-trades?

b. While the regulations contain exceptions for bona fide self-match trades (described in § 40.23(b)), the regulations are intended to prevent all unintentional self-trading, and do not include a *de minimis* exception for a certain percentage of unintentional self-trading. Should the regulations permit a certain *de minimis* amount of unintentional self-trading, and if so, what amount should be permitted (*e.g.*, as a percentage of monthly trading volume)?

c. The following terms are used in proposed § 40.23(a) and (b): (1) Self-trading, (2) common beneficial ownership, (3) independent decision makers, and (4) common control. Do any of these terms require further definition? If so, how should they be defined? Should any alternatives be used and, if so, how should such substitute terms be defined?

d. With respect to “common beneficial ownership,” the Commission requests comment on the minimum degree of ownership in an account that should trigger a determination that such account is under common beneficial ownership. For example, should an account be deemed to be under common beneficial ownership between two unrelated persons if each person directly or indirectly has a 10% or more ownership or equity interest in such account? The Commission refers commenters to the aggregation rules in part 150 of its regulations, including specifically § 150.4, and requests comment on a potential Commission definition of common beneficial ownership that is modeled on § 150.4.

e. The Commission also requests comment on whether “common beneficial ownership” should be defined in any final rules arising from this NPRM, or whether such definition should be left to each DCM with respect to its program for implementing proposed § 40.23.

91. Are there any other types of self-trading that should be permitted in

addition to the exceptions permitted in § 40.23(b)(1) and (2)? If so, please describe such other types of acceptable self-trading and explain why they should be permitted.

92. Proposed § 40.23 provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission’s principal goal is to prevent unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the account that should be prohibited from trading from each other, so long as this goal is met. Should any other identification methods be permitted in § 40.23? For example, please comment on whether the opposite approach is preferable: market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other).

93. The Commission believes that its requirements concerning self-trade prevention tools must strike the appropriate balance between flexibility (allowing market participants with diverse trading operations and strategies the discretion in implementation so as effectively prevent only unintentional self-trades) and simplicity (a variety of design and implementation options may render this control too complex to be effective).<sup>550</sup> Does the Commission allow sufficient discretion to exchanges and market participants in the design and implementation of self-trade prevention tools? Is there any area where the Commission should be more prescriptive? The Commission is particularly interested in whether there is a particular level at which it should require implementation of self-trade prevention tools, *i.e.*, if the tools must prevent matching of orders from the same trading firm, the same trader, the same trading algorithm, or some other level.

94. Proposed § 40.23(a) would require DCMs to either apply, or provide and require the use of, self-trade prevention tools. Please comment whether § 40.23(a) should, in addition, permit market participants to use their own self-trade prevention tools to meet the requirements of proposed § 40.23(a),

<sup>550</sup> See FIA Guide, *supra* note 95 at 13 (discussing balance between flexibility and complexity with respect to self-trade prevention tools).

and if so, what additional regulations would ensure that DCMs are able to: Ensure that such tools are comparable to DCM-provided tools; monitor the performance of such tools; and otherwise review such tools and ensure that they are sufficiently rigorous to meet the requirements of § 40.23.

95. Is it appropriate to require implementation of self-trade prevention tools with respect to all orders? Should such controls be mandatory for only a particular subset of orders, *i.e.*, orders from AT Persons or orders submitted through DEA?

96. Please comment on the requirement that DCMs disclose self-trade statistics. Is the data required to be disclosed appropriate? Is there any other category of self-trade data that DCMs should be required to disclose?

97. Should DCMs be required to disclose the amount of unintentional self-trading that occurs each month, alongside the self-trade statistics required to be published under proposed § 40.23(d)?

98. As noted above, the Commission understands that there is some potential for self-trade prevention tools to be used for wrongful activity that may include disruptive trading or other violations of the Act or Commission regulations on DCMs. Are there ways to design self-trade prevention tools so that they do not facilitate disruptive trading (such as spoofing) or other violations of the Act or Commission regulations on DCMs? Are additional regulations warranted to ensure that such tools are not used to facilitate such activities?

#### R. DCM Market Maker and Trading Incentive Programs—§§ 40.25–40.28

Proposed §§ 40.25–40.28 would require DCMs to provide additional public information regarding their market maker and trading incentive programs, restrict certain types of payments by DCMs in connection with such programs, and require DCMs to perform surveillance of such programs to prevent abusive practices. The remainder of this section presents a description of the proposed regulation, a discussion of the policy justification for the proposal, and a request for comments on the proposal.

##### 1. Policy Discussion

Although not discussed in the Concept Release, the Commission has determined to address in Regulation AT certain aspects of DCM market maker and trading incentive programs that it believes are particularly relevant in the

context of automated trading.<sup>551</sup> Formal market making and incentive programs were not common in the days of pit trading. In the modern trading environment, DCM trading incentive programs (which may also be called a liquidity provider program) typically compensate one or more market participants with financial or non-financial incentives or benefits for meeting certain volume thresholds or providing liquidity. A market maker program (which may also be called, for example, a market specialist, designated market maker, lead market maker, or liquidity provider program) is a more focused offering that involves a contractual agreement between the DCM and a market participant. It typically compensates one or more market participants with financial or non-financial incentives or benefits for fulfilling certain affirmative obligations in a particular product or products, such as maintaining two way prices and volumes or a pre-determined minimum bid/ask spread for a specified period of the trading day.

The number of such programs self-certified to the Commission has risen sharply in recent years, as has the complexity of the programs and size of the incentives. In 2010, 56 market maker and incentive programs were self-certified by DCMs; in 2013, DCMs had self-certified 341 programs, an increase by over 600 percent compared to the number of programs self-certified by DCMs in 2010. In 2012, nearly every contract at one DCM was part of a market maker or incentive program, including highly liquid contracts.

The Commission understands that DCMs have launched market making and other incentive programs to encourage liquidity provisioning and order flow to their electronic trading platforms. While the Commission does not object to such goals, the Commission's proposed regulations in §§ 40.25–40.28 reflect its concern that market maker and trading incentive programs could have the potential to spur market participants to trade in ways designed to collect program benefits, independently of any contribution they may be making to liquidity or price discovery. Such practices may potentially also lead to abusive trading practices in violation of

DCM and Commission rules. Notably for purposes of Regulation AT, market participants using ATs can magnify these concerns in several respects. First, the automation and speed of ATs can allow market participants to quickly reach market-maker or trading incentive program thresholds, depending on the liquidity of a market and threshold levels. Second, the trading strategies pursued through ATs can sometimes result in a large number of trades between the same ATs or between two or more ATs owned or controlled by the same market participants. In this regard, the Commission is also proposing new § 40.23 to help prevent self-trading on DCMs, and provide market participants with greater transparency around DCM depth and liquidity when self-trading does occur.<sup>552</sup>

Proposed §§ 40.25–40.28 will further the Commission's policy objectives in three key areas: (1) transparency; (2) market integrity; and (3) effective self-regulation by all DCMs. The proposed regulations would further transparency through proposed §§ 40.25 and 40.26, which would require greater disclosure of information to the public and to the Commission regarding market maker and trading incentive programs. Together with proposed amendments to the definition of "rule" in § 40.1(i) to explicitly include market maker and trading incentive programs, the proposed regulations would also help eliminate any potential ambiguity that may exist regarding the Commission's authority over such programs.<sup>553</sup>

<sup>552</sup> See Section IV(Q) above for a discussion of self-trading and proposed § 40.23.

<sup>553</sup> In the Final Rule for Provisions Common to Registered Entities, the Commission stated with respect to market maker and trading incentive programs, "The Commission continues to view such programs as "agreements \* \* \* corresponding" to a "trading protocol" within the § 40.1 definition of "rule" and, as such, all market maker and trading incentive programs must be submitted to the Commission in accordance with procedures established in part 40." In this Final Rule, the Commission also stated, specifically with respect to DCMs, that "[a] DCM's rules implementing market maker and trading incentive programs fall within the Commission's oversight authority. Indeed, a number of core principles touch upon trading issues that may be implicated by the design of such programs. Core Principle 9, for example, establishes the Commission's framework for regulating the execution of transactions, requiring DCMs . . . to provide a competitive, open, and efficient market and mechanism for execution. The newly-amended Core Principle 12 also requires DCMs to establish and enforce rules to protect markets and market participants from abusive practices and to promote fair and equitable trading on designated contract markets. In addition, market maker and trading incentive programs frequently touch upon Core Principle 19, which requires that DCMs avoid adopting any rules or taking any actions that result in unreasonable restraints of trade." Final Rule,

Proposed § 40.25 will enhance the types of information that DCMs should expect to provide the Commission when requesting approval or self-certifying market-maker or trading incentive programs, and will also require that information regarding market-maker and trading incentive programs be easily located on a DCM's Web site.

The Commission notes that in June 2012 it adopted core principles and final rules modernizing the regulatory regime applicable to all DCMs ("DCM Final Rules"). The DCM Final Rules emphasized DCMs' obligations as the front-line regulators of their markets, including extensive trade practice and market surveillance responsibilities. In addition, the Commission codified new requirements that a DCM offer its "members [and] persons with trading privileges . . . with impartial access to its markets and services," including: (1) "Access criteria that are impartial, transparent and applied in a non-discriminatory manner" and (2) "comparable fee structures . . . for equal access to, or services from" the DCM. Taken together, proposed §§ 40.25–40.28 will facilitate the Commission's oversight of DCMs' market maker and trading incentive programs, and will also help the Commission ensure that market maker and trading incentive programs are in compliance with Commission rules regarding trade practice and market surveillance and impartial access requirements.

Importantly, the proposed regulations would promote market integrity by requiring in proposed § 40.27(a) that DCMs implement policies and procedures reasonably designed to prevent payment of market maker or trading incentive program benefits for self-trades. In this regard, the proposed regulations are designed to ensure that market maker or trading incentive programs do not incentivize abusive, manipulative, or disruptive trading practices, and also do not encourage or facilitate behavior that distorts markets and give the appearance of false market depth. Proposed § 40.28 clarifies DCMs' surveillance obligations regarding market maker or trading incentive programs and their participants. Separately, the Commission believes that proposed §§ 40.25–40.28 will also provide DCMs and market participants with greater certainty as to what types of trading incentive and market maker programs are inappropriate. The proposed regulations are described in detail below. The proposed rules will

Provisions Common to Registered Entities, 76 FR 44776, 44777–8 (July 27, 2011).

<sup>551</sup> The Commission notes that ESMA's 2015 Final Draft Regulatory Standards address market maker schemes. The standards address the circumstances under which an investment firm must enter into a market making agreement with a trading venue, and the content that should be included in such an agreement. See ESMA September 2015 Final Draft Standards Report Annex 1, *supra* note 80 at 279–80.



work in conjunction with the proposed amendments to the definition of “rule” in proposed § 40.1(i) to explicitly include market maker and trading incentive programs.

In sum, the Commission’s proposed amendments to § 40.1(i) and new §§ 40.25–40.28 will increase transparency around DCM market-maker and trading incentive programs, underline existing regulatory expectations, and introduce basic safeguards in the conduct of such programs. The proposed regulations would make clear that market-maker and trading incentive programs are “rules” for purposes of part 40, and establish information and disclosure requirements when DCMs request Commission approval or self-certify new rules pursuant to part 40. They would also make clear that DCMs’ existing surveillance responsibilities in part 38 apply equally to market-maker and trading incentive programs. Finally, the proposed regulations would codify the Commission’s expectation that DCM market-maker and trading incentive programs should not provide payments or incentives for market-maker or trading activity between accounts under common ownership.

## 2. Description of Regulations

Proposed §§ 40.25–40.28 would require DCMs to provide additional public information regarding their market maker and trading incentive programs. Proposed § 40.25(a) would require that, when submitting a rule regarding a market maker or trading incentive program pursuant to § 40.5 or § 40.6, a DCM must, in addition to information required by such sections, include specific additional information in its public rule filing.<sup>554</sup> Additional information to be provided would include: (1) The name of the market maker program or trading incentive program, the date on which it will begin, and the date on which it will terminate (if applicable); (2) an explanation of the specific purpose for the program; (3) a list of the product(s) the trading of which is eligible for benefits under the market maker or trading incentive program, and list of

<sup>554</sup> The Commission is cognizant that a DCM may consider certain information required by proposed § 40.25(a) to be non-public. In this regard, the Commission notes that § 40.8 of its existing regulations provides a mechanism for registered entities to request confidential treatment when submitting rule filings pursuant to §§ 40.5 or 40.6. Among other requirements, a registered entity must file a “detailed written justification” for its confidential treatment request. Regulation 40.8 remains available to DCMs for any § 40.25(a) filings that may be required in the future. See 17 CFR 40.8; see also 17 CFR 145.9.

the potential service(s) rendered by a market participant to which the market maker or trading incentive program applies (*e.g.*, trading at certain hours; trading originating from certain geographic zones; trading originating with certain types or categories or market participants; or the bid/ask spread to be maintained by a market participant); (4) a description of any eligibility criteria or categories of market participants defining who may participate in the program; (5) for any market maker or trading incentive program that is not open to all market participants, an explanation of why the program is limited to the chosen eligibility criteria or categories of market participants, and an explanation of how such limitation complies with the impartial access and comparable fee structure requirements of § 38.151(b) for DCMs; (6) an explanation of how persons eligible for the market maker or trading incentive program may apply to participate, and how eligibility will be evaluated by the DCM; (7) a description of any payments, incentives, discounts, considerations, inducements or other benefits that program participants may receive, including any non-financial incentives (non-financial incentives may include, for example, enhanced trading priorities or preferential access to market data, including order and trade data); (8) a description of the obligations, benchmarks, or other measures that a participant in a market maker or trading incentive program must meet to receive the benefits described in paragraph (a)(7) of this section; and (9) a description of any legal affiliation between the DCM and any entity acting as a market maker or participating in a market maker or trading incentive program.<sup>555</sup> Proposed § 40.25(b) would require that, in addition to any public notice required pursuant to part 40 (including without limitation the requirements of § 40.5(a)(6) and § 40.6(a)(2)), a DCM must ensure that the information required by § 40.25(a)(1)–(8) is easily located on its public Web site during the lifetime of the market maker or trading incentive program, that is, from the time that the DCM begins accepting participants in the program through the time the program ceases operation.

<sup>555</sup> Commission staff has historically required enhanced DCM surveillance procedures when a DCM market maker is operated by an affiliate of the DCM. Proposed § 40.25(a)(9) will assist the Commission in identifying potential conflicts of interest between a DCM, its market makers, and participants in market maker or trading incentive programs, and also assist the Commission in promoting appropriate surveillance in such circumstances.

Proposed § 40.25(c) would require a DCM to notify the Commission upon the termination of a market maker or trading incentive program when such program terminates prior to the date previously notified the Commission. Any extension or renewal of a market maker or trading incentive program beyond its original termination date would require a new rule filing pursuant to this part.

Proposed § 40.26 would require that, upon request by the Commission or the Director of the Division of Market Oversight, a DCM must provide such information and data as may be requested regarding participation in market maker or trading incentive programs offered by the DCM, including but not limited to, individual program agreements, names of program participants, benchmarks achieved by program participants, and payments or other benefits conferred upon program participants.

Proposed § 40.27(a) would require a DCM to implement policies and procedures reasonably designed to prevent payment of market maker or trading incentive program benefits, including but not limited to payments, discounts, or other considerations, for trades between accounts that are: (1) Identified to the DCM as under common beneficial ownership pursuant to the approval process described in § 40.23(c); or (2) otherwise known to the DCM as under common ownership.<sup>556</sup>

Finally, proposed § 40.28 would require that a DCM, consistent with its obligations pursuant to subpart C of part 38, must review all benefits accorded to participants in market maker and trading incentive programs, including but not limited to payments, discounts, or other considerations, to ensure that such benefits are not earned through abusive practices. The Commission notes that such determination is not intended as a substitute for DCMs’ trade practice surveillance, market surveillance, and other surveillance obligations with respect to all trading.

## 3. Request for Comments

99. To what extent do market participants currently trade in ways designed primarily to collect market maker or trading incentive program benefits, rather than for risk management purposes?

<sup>556</sup> The Commission notes that proposed § 40.27(a) prohibits payments for trades between accounts (i) *identified* to the DCM as under common *beneficial* ownership or (ii) *known* to the DCM as under common ownership. This distinction reflects that the Commission’s belief that DCMs may not always have beneficial ownership information unless it has been provided to them, pursuant for example to proposed § 40.23.

100. To what extent do that market maker and trading incentive programs currently provide benefits for self-trades? To what extent do market participants collect such benefits for self-trades?

101. The Commission requests comment regarding whether the information proposed to be collected in § 40.25 would be sufficient for it to determine whether a DCM's market-maker or trading incentive program complies with the impartial access requirements of § 38.151(b). If additional or different information would be helpful, please identify such information.

102. The Commission requests comment regarding whether DCMs should be required to maintain on their public Web sites the information required by proposed § 40.25(a) and (b) for an additional period beyond the end of the market maker or trading incentive program. The Commission may determine to include in any final rules arising from this NPRM a requirement that such information remain publicly available pursuant to proposed § 40.25(b) for an additional period up to six months following the end of a market maker or trading incentive program.

103. The Commission requests comment regarding whether the text of proposed § 40.27(a) identifies with sufficient particularity the types of trades that are not eligible for payments or benefits pursuant to a DCM market-maker or trading incentive program. What amendments, if any, are necessary to clearly identify trades that are not eligible?

104. Section 40.27(a) provides that DCMs shall implement policies and procedures that are reasonably designed to prevent the payment of market-maker or trading incentive program benefits for trades between accounts under common ownership. Are there any other types of trades or circumstances under which the Commission should also prohibit or limit DCM market-maker or trading incentive program benefits?

105. The Commission is proposing in § 40.27(a) certain requirements regarding DCM payments associated with market maker and trading incentive programs. Please address whether the proposed rules will diminish DCMs' ability to compete or build liquidity by using market maker or trading incentive programs. Does any DCM consider it appropriate to provide market maker or trading incentive program benefits for trades between accounts known to be under common beneficial ownership?

106. In any final rules arising from this NPRM, should the Commission also prohibit DCMs from providing trading incentive program benefits where such benefits on a per-trade basis are greater than the fees charged per trade by such DCMs and its affiliated DCO (if applicable)? The Commission also specifically requests comment on the extent, if any, to which one or more DCMs engage in this practice.

107. Proposed § 40.25(b) imposes certain transparency requirements with respect to both market maker and trading incentive programs. The Commission requests public comment regarding:

- a. The most appropriate place or manner for a DCM to disclose the information required by proposed § 40.25(b);
- b. The benefits or any harm that may result from such transparency, including any anti-competitive effect or pro-competitive effect among DCMs or market participants;
- c. Whether transparency as proposed in § 40.25(b) is equally appropriate for both market maker programs and trading incentive programs, or are the proposed requirements more or less appropriate for one type of program over the other?
- d. Whether any of the enumerated items required to be posted on a DCM's public Web site pursuant to proposed § 40.25(b) could reasonably be considered confidential information that should not be available to the public, and if so, what process should be available for a DCM to request from the Commission an exemption from the requirements of proposed § 40.25(b) for that specific enumerated item?

## V. Related Matters

### A. Calculation of Number of Persons Subject to Regulations

AT Persons. The Related Matters discussion below includes a number of hourly burden estimates and cost estimates for persons subject to new or revised regulations under Regulation AT. In order to estimate the number of AT Persons, the Commission used a sample of orders sent to DCMs. This data includes new orders, modifications to orders, and cancellations of the same. Of those available to the Commission, this data set is the one most closely related to the requirements included in the proposed rules. It includes the data elements potentially generated by an algorithm, often routed through a clearing member, and accepted by the matching engine for execution. The data set includes identifiers for the firm that generated and/or routed the order to the

exchange, and indicators of whether the order is associated to an automated system. Using this participant-identified data, the Commission estimated the number of unique firms actively sending in algorithmic orders to the DCMs, making them potentially subject to requirements of AT Persons.

Some of the firms included in this count, although they use automated systems, may not fully satisfy the requirements for an AT Person, possibly making the current estimate higher than the actual number of AT Persons. For example, firms identified in the data set as submitting algorithmic orders may not be required to register with the Commission under current or proposed rules and thus would not be AT Persons (e.g., registration triggers under proposed § 1.3(x)(3)(ii) include a DEA component in addition to an Algorithmic Trading component). However, because the Commission does not historically receive the complete order book audit trail, the estimate by necessity only used a subset of all orders sent into the DCMs. To generate an accurate estimate of automated order activity, the estimate included many of the most active products on the DCMs, where participant diversity would be greatest. This analysis resulted in approximately 350 potential AT Persons. To further address AT Persons that may not be identified in its data set, the Commission increased its finding of approximately 350 potential AT Persons by 20 percent, yielding a total of 420 potential AT Persons subject to the rules proposed herein. The Commission understands and acknowledges that this could lead to estimates which are incomplete, and welcomes any comments which might provide a more complete and/or more accurate count of AT Persons. This estimate of 420 AT Persons is used for purposes of the calculations in the Related Matters discussion below.

Floor Traders (A Component of AT Persons). As noted in section IV(E) above, the Commission proposes to require the registration of proprietary traders using DEA for Algorithmic Trading on a DCM. In order to achieve registration, the Commission proposes amending the definition of "Floor trader" in Commission Regulation 1.3(x). Newly registered floor traders would be included in the definition of AT Persons. In order to estimate the number of these firms, the Commission made use of reference information for the connection methods used by active futures trading firms. These data files include information about the characteristics of the connection, including the location where orders are

generated. In order to identify direct connections, the Commission isolated those connections associated with co-location or other services likely related to DEA. These filters generated an estimate of approximately 100 potential firms that may need to register under proposed § 1.3(x)(3). This calculation did not exclude those firms which may already be registered with the Commission in some capacity. As a result, the 100 estimate is potentially higher than the actual number of floor traders that would register under the new provision.

Clearing member FCMs and DCMs. Finally, the Commission estimated the number of clearing member FCMs and DCMs that would be subject to proposed Regulation AT. The Commission arrived at an estimate of 57 clearing member

FCMs, based on the financial data for FCMs reported on the CFTC Web site. This data states that there were 57 FCMs in March 2015 that required “Customer’s Segregation of Funds.”<sup>557</sup> The Commission arrived at an estimate of 15 DCMs, based on the list of designated DCMs as of the date of this NPRM, as reported on the CFTC Web site.<sup>558</sup> This number does not include dormant or pending DCMs.

1. Request for Comments

108. The Commission requests comment on its calculation of the number of AT Persons, newly registered floor traders, clearing member FCMs, and DCMs that will be subject to Regulation AT.

*B. Calculation of Hourly Wage Rates Used in Related Matters*

The Related Matters discussion below estimates the cost of various regulations proposed under Regulation AT. These costs incorporate hourly wage rates derived from salary information compiled by the Securities Industry and Financial Markets Association (“SIFMA”). Specifically, the hourly wage rates are based on salaries and bonuses across different professions that are listed in the SIFMA Report on Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits.<sup>559</sup> The following professions and hourly wages are referenced throughout the Related Matters:

2013 SIFMA report profession and code	Description of role in related matters	Total mean 2012 compensation with bonus—2013 SIFMA report	Hourly wage rate (rounded) <sup>560</sup>
Project Manager (1030)	Project Manager	561 97,138	\$70
Business Analyst (Intermediate) (602)	Business Analyst	562 72,650	52
Business Analyst (Intermediate) (602)	Tester	563 72,650	52
Programmer Analyst (Senior) (1607)	Developer	564 103,851	75
Compliance Examiner (Senior) (409)	Senior Compliance Examiner	565 79,992	58
Compliance Specialist (Senior) (406)	Senior Compliance Specialist	566 78,250	57
Chief Compliance Officer (Mutual Funds/Investment Advisory Services) (413)	Chief Compliance Officer	567 192,367	139
Compliance Attorney (1103)	Compliance Attorney	568 133,059	96

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (“RFA”) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis regarding the impact.<sup>569</sup> A regulatory flexibility analysis or certification is typically required for “any rule for which the agency publishes a general notice of proposed rulemaking” pursuant to the notice-and-comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b).<sup>570</sup>

1. FCMs and DCMs

The Commission has previously determined that FCMs and clearing members are not small entities for purposes of the RFA.<sup>571</sup> The Commission has also previously determined that DCMs are not small entities for purposes of the RFA.<sup>572</sup> Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules proposed in Regulation AT imposing requirements on FCMs and DCMs would not have a significant economic impact on a substantial number of small entities. The

Commission invites public comment on this determination.

2. AT Persons

Regulation AT would also impose requirements on “AT Persons,” a definition that includes: FCMs, floor brokers, SDs, MSPs, CPOs, CTAs or IBs, as well as “floor traders” as defined in proposed § 1.3(x)(3), that engage in Algorithmic Trading.

The Commission has previously determined that FCMs, foreign brokers, SDs, MSPs, CPOs, and natural persons are not small entities for purposes of the RFA.<sup>573</sup> As indicated above, the Commission believes that it is likely that no natural persons will be AT

<sup>557</sup> See CFTC, Financial Data for FCMs, available at <http://www.cftc.gov/MarketReports/FinancialDataforFCMs/index.htm>.

<sup>558</sup> See CFTC, DCM Industry Filings, available at <http://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=TradingOrganizations&implicit=true&type=DCM&CustomColumnDisplay=TTTTTTTT>.

<sup>559</sup> The SIFMA Report on Management & Professional Earnings in the Securities Industry (2013) (“2013 SIFMA Report”), available at <http://www.sifma.org/research/item.aspx?id=8589940603>.

<sup>560</sup> The hourly wage rate represents the total mean 2012 compensation with bonus divided by 1800 hours and multiplied by 1.3 to account for overhead and other benefits.

<sup>561</sup> See 2013 SIFMA Report, *supra* note 559 at 273.

<sup>562</sup> See *id.* at 136.

<sup>563</sup> *Id.*

<sup>564</sup> See *id.* at 395.

<sup>565</sup> See *id.* at 113.

<sup>566</sup> See *id.* at 104.

<sup>567</sup> See *id.* at 119.

<sup>568</sup> See *id.* at 279.

<sup>569</sup> 5 U.S.C. 601 *et seq.*

<sup>570</sup> 5 U.S.C. 601(2), 603, 604 and 605.

<sup>571</sup> See 47 FR 18618 (April 30, 1982) (FCMs); and 76 FR 71626 at 71680 (November 18, 2011) and 76

FR 43851 at 43860 (July 22, 2011) (clearing members).

<sup>572</sup> 76 FR 44776, 44789 (July 27, 2011) (“Provisions Common to Registered Entities”); see 66 FR 45064, 45609 (Aug. 29, 2001); 47 FR 18618, 18619 (Apr. 30, 1982).

<sup>573</sup> See respectively and as indicated: 47 FR 18618, 18619 (April 30, 1982) (FCMs, CPOs); 72 FR 34417 at 34418 (June 22, 2007) (foreign brokers); 76 FR 71626 at 71680 (November 18, 2011) (SDs); 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs). See also 5 U.S.C. 601(6) (natural persons are not entities for purposes of the RFA).

Persons, given the technological and personnel costs associated with Algorithmic Trading. The Commission, pursuant to question #106 below, asks whether this assumption is correct.

The Commission has previously decided to evaluate, within the context of a particular rule proposal, whether all or some floor brokers, floor traders, CTAs, and IBs should be considered to be small entities, and if so, to analyze the economic impact on them of any such rule.<sup>574</sup> In 2012, the Commission stated that it has not made a determination regarding floor traders, since all registered traders at the time were individuals, and individuals are not subject to the small entity analysis under the RFA.<sup>575</sup>

Accordingly, the Commission must address whether, in the context of Regulation AT, floor brokers, floor traders, CTAs, and IBs that engage in Algorithmic Trading should be considered small entities for purposes of the RFA. As discussed below, the Commission believes that the proposed rules regarding pre-trade and other risk controls, as well as standards relating to the design, testing, and supervision of Algorithmic Trading, are already being widely implemented in industry. Accordingly, while Regulation AT would have a significant economic impact on entities that are not currently implementing such measures, based on its best understanding, the Commission believes that it would not have a significant economic impact on a substantial number of small entities. However, the Commission is not in a position to determine how many of such entities would be affected, or the extent of such impact, given the varying sizes, technological systems, and business strategies of such entities. Therefore, pursuant to 5 U.S.C. 603, the Commission offers for public comment this initial regulatory flexibility analysis addressing the impact of Regulation AT on small entities:

#### i. A Description of the Reasons Why Action Is Being Considered

The Commission is taking action because the increased use of algorithmic trading and increasingly interconnected nature of markets means that a technological malfunction or error can have widespread, significant impact on many market participants. In this time of technological change, the Commission believes that it is necessary

<sup>574</sup> See 47 FR 18618, 18620 (Apr. 30, 1982) (floor brokers); and 58 FR 19575, 19588 (Apr. 15, 1993) (floor traders); 47 FR at 18619 (CTAs); 48 FR 35248, 35276–77 (Aug. 3, 1983) (IBs).

<sup>575</sup> See Commission, Final Rule: Registration of Intermediaries, 77 FR 51898, 51901 (Aug. 28, 2012).

to enact new and amended regulations requiring risk controls, testing standards and other measures that will safeguard the integrity of markets.

#### ii. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposals

The objective of Regulation AT is to address the risks of algorithmic trading through a series of pre-trade risk controls and other measures that AT Persons, clearing member FCMs and DCMs must implement. The legal authority for the proposed rules is Sections 4c(a)(6), 4s(b)(4) 1a(23), 3(b) and 8a(5) of the CEA.<sup>576</sup>

#### iii. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The small entities to which the proposed amendments may apply are those floor brokers, floor traders (as defined in proposed § 1.3(x)(3)), CTAs and IBs that engage in Algorithmic Trading and fall within the definition of a “small entity” under the RFA, including size standards established by the Small Business Administration.<sup>577</sup> Each of the categories of persons discussed below would fall within the definition of “AT Persons.” As discussed in section V(A) above, the Commission estimates that approximately 420 persons will be AT Persons.

- *Floor brokers.* The Commission’s best understanding is that at this time, all floor brokers are natural persons. Given the technological and personnel costs associated with Algorithmic Trading, the Commission’s expectation is that only entities, not natural persons, will meet the definition of “AT Person.” Accordingly, the Commission estimates that no floor brokers will be “small entities” for purposes of the RFA.

- *Floor traders.* The Commission estimates that there is a maximum of 100 proprietary firms engaged in Algorithmic Trading that will be considered “floor traders” under proposed § 1.3(x)(3) of Regulation AT. See section V(A) above for a discussion

<sup>576</sup> 7 U.S.C. 6c(a)(6) (rulemaking authority with respect to disruptive trading practices); 7 U.S.C. 6s(b)(4) (rulemaking authority with respect to swap dealers and major swap participants); 7 U.S.C. 1a(23) (Definitions); 7 U.S.C. 5(b) (Findings and purpose); 7 U.S.C. 12a(5) (Rules and Regulations).

<sup>577</sup> 15 U.S.C. 601(3) (defining “small business” to have the same meaning as the term “small business concern” in the Small Business Act); 15 U.S.C. 632(a)(1) (defining “small business concern” to include an agricultural enterprise with annual receipts not in excess of \$750,000); 13 CFR 121.201 (establishing size standards for small business concerns).

of how the Commission generated this estimate.

- *CTAs.* Based on NFA’s registration directory, the Commission estimates that there are approximately 2,464 CTAs.<sup>578</sup> The Commission notes that some registered CTAs are individuals, and not all CTAs will be engaged in Algorithmic Trading. It is not feasible for the Commission to estimate what portion of the 420 AT Persons will be CTAs.

- *IBs.* Based on NFA’s registration directory, the Commission estimates that there are approximately 1,375 IBs.<sup>579</sup> The Commission notes that some registered IBs are individuals, and not all IBs will be engaged in Algorithmic Trading. It is not feasible for the Commission to estimate what portion of the 420 AT Persons will be IBs.

Beyond the above estimates of the maximum number of floor brokers, floor traders (as defined in proposed § 1.3(x)(3)), CTAs and IBs, it is not feasible for the Commission to provide a more exact estimate of the number of small entities to which Regulation AT will apply. The Commission estimates that no floor brokers will be “small entities” for purposes of the RFA, and that a maximum of 100 proprietary firms engaged in Algorithmic Trading will be considered “floor traders” under § 1.3(x)(3) of the proposed rulemaking. The Commission estimates that the information collection will apply to no more than a total of 320 CTAs and IBs, and likely significantly less than 320. Based on the numbers described above, the Commission does not believe that a substantial number of small entities will be impacted by the information collection. Further, the definition of AT Person is limited to entities that conduct Algorithmic Trading and, the definition of new floor traders under proposed § 1.3(x)(3) is further limited to those entities with Direct Electronic Access. The Commission believes that entities with such capabilities are generally not small entities. This NPRM asks specific questions on the issue of how the proposed regulations may affect small entities, in particular, whether sole proprietorships would be considered AT Persons and whether Regulation AT requirements should vary depending on the size, sophistication or other attributes of the AT Person.

<sup>578</sup> See NFA Directories, available at: <http://www.nfa.futures.org/NFA-registration/NFA-directories.HTML>.

<sup>579</sup> See *id.*

iv. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rules, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

The following section discusses the projected reporting, recordkeeping, and other compliance requirements that will be imposed upon AT Persons under the proposed rules.

• § 1.3(x)(3)—New Registration of Floor Traders

Regulation AT would impose new registration requirements on certain entities with Direct Electronic Access as a result of the proposed amendment to the definition of “Floor trader” in Commission Regulation 1.3(x). The Commission provides detailed estimates of the costs associated with registration as a floor trader in section E below. As discussed more fully below, the Commission estimates that new registrants will incur a one-time cost of approximately \$2,106 per registrant (\$1,050 in application fees plus \$1,056 in preparation costs). Accordingly, assuming (as discussed above) that there are 100 new registrants as Floor traders, the total one-time cost of registration would be approximately \$210,600.<sup>580</sup>

• § 170.18—AT Persons Must Become Members of an RFA

Regulation AT would require all registrants that are AT Persons that are not otherwise required to become members of an RFA pursuant to §§ 170.15, 170.16, or 170.17 to become members of an RFA. Taken together, §§ 170.15, 170.16, and 170.17 require most registrants who may be considered AT Persons to become RFA members. The Commission estimates that the requirements of proposed § 170.18 will

<sup>580</sup> Pursuant to part 3 of its regulations, the Commission has delegated its registration functions to the National Futures Association (NFA). Non-natural person floor trader entities register with the Commission and apply for membership in NFA via CFTC Form 7-R. Principals of non-natural person floor trader entities register via Form 8-R. Based on a review of the principals associated with registered FCMs, the Commission estimates that each non-natural person floor trader entity will have approximately 10 principals and therefore need to file approximately 10 Forms 8-R. In the event that a natural person meets the definition of Floor Trader in proposed § 1.3(x)(3), and is therefore required to register with the Commission and become a member of NFA, such person would only be required to complete Form 8-R and would face substantially lower costs than those estimated here. Because registration with the Commission and membership in NFA make use of the same forms and process, the Commission anticipates that the costs associated with proposed § 1.3(x)(3) and proposed § 170.18 will be one and the same.

result in requiring the 100 new floor traders that will be registered pursuant to § 1.3(x)(3) to become members of an RFA. The Commission estimates that the floor trader registrants will incur initial and annual RFA membership dues of \$5,625.<sup>581</sup> Accordingly, assuming (as discussed above) that there are 100 new floor trader members, the total initial cost of RFA membership would be approximately \$562,500 and the annual cost would be approximately \$562,500.

• § 1.80—Pre-Trade Risk Controls

Based on Concept Release comments, best practices documents issued by industry or regulatory organizations, as well as existing regulations, the Commission believes that a significant number of trading firms already implement the specifically-enumerated pre-trade and other risk controls required pursuant to proposed § 1.80. For example, in its survey of member firms, PTG found the following: (i) 25 out of 26 responding firms use message and execution throttles; (ii) all 26 responding firms use maximum order size limits, either using their own technology, the exchange’s technology, or some combination;<sup>582</sup> and (iii) 24 out of 26 responding firms use either price collars or trading pauses.<sup>583</sup> As to order management controls, two comments to the Concept Release from exchanges stated that they provide an optional cancel-on-disconnect functionality.<sup>584</sup> Those exchanges also indicated that they provide kill switch functionality to market participants.<sup>585</sup> In addition, the types of controls required by proposed § 1.80 have been included in best practices documents for years, such as those best practices documents issued by FIA PTG,<sup>586</sup> ESMA,<sup>587</sup> the CFTC TAC<sup>588</sup> and the TMPG.<sup>589</sup> Finally, many trading firms that do securities trading in addition to futures trading

<sup>581</sup> The Commission notes that NFA is currently the only entity registered as an RFA. The Commission estimates for RFA membership dues are based on its analysis of NFA dues.

<sup>582</sup> AIMA indicated that many market participants use maximum order size limits, and Gelber, a trading firm, stated that it uses this risk control. See AIMA at 13; Gelber at 10.

<sup>583</sup> FIA at 59–60.

<sup>584</sup> CME at Appendix A–4; CFE at 9–10. In addition, FIA characterized cancel-on-disconnect as a “widely adopted DCM-hosted pre-trade risk control.” See FIA at 14.

<sup>585</sup> CME at 23–24; CFE at 11.

<sup>586</sup> FIA PTG, “Recommendations for Risk Controls for Trading Firms,” (Nov. 2010) at 4–5.

<sup>587</sup> ESMA Guidelines, *supra* note 61 at 14–15.

<sup>588</sup> CFTC TAC Recommendations, *supra* note 34 at 2–3.

<sup>589</sup> TMPG, “Best Practices for Treasury, Agency Debt, and Agency Mortgage-Backed Securities Markets” (June 2015).

may already have these systems in place in order to comply with the SEC’s Market Access Rule, which requires brokers and dealers to have risk controls that prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.<sup>590</sup>

Nevertheless, the Commission recognizes that there may be some trading firms within a given registration category that do not yet implement the risk controls required by Regulation AT, or that may need to upgrade their systems in order to comply with Regulation AT. Accordingly, Regulation AT would impose technology and personnel costs on this subset of trading firms; these costs would likely include both initial risk control creation costs and ongoing maintenance costs.

The Commission provides detailed estimates of the implementation costs of risk controls in section E below.<sup>591</sup> The Commission considered the possibility that a trading firm already implements the controls required by proposed § 1.80, but the controls may not comply with every aspect of the regulation. In such a case, as discussed in greater detail below, the Commission estimates that it will cost an AT Person approximately \$79,680 to upgrade its controls (*i.e.*, evaluate current systems, modify or create new code, and test systems) in order to comply with § 1.80. Accordingly, assuming (as discussed above) that there are 420 AT Persons, the Commission estimates that the total industry cost to implement § 1.80 would be approximately \$33,465,600.

• § 1.81—Standards for Development, Testing and Monitoring of Algorithmic Trading Systems

The Commission believes that most market participants and DCMs have implemented controls regarding the design, testing, and supervision of ATs, in light of the numerous best practices and regulatory requirements promulgated in this area. These efforts include the FIA PTG’s November 2010 “Recommendations for Risk Controls for Trading Firms,” FIA’s March 2012 “Software Development and Change Management Recommendations,” ESMA and MiFID II guidelines and

<sup>590</sup> See SEC, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access, *supra* note 37.

<sup>591</sup> The Commission notes that trading firms can choose not to develop these controls internally, but rather may purchase a solution from an outside vendor (or DCM or clearing member) in order to comply with § 1.80. The Commission has requested comments providing estimates of such costs.

directives on the development and testing of algorithmic systems, Reg SCI requirements on the development, testing, and monitoring of SCI systems, FINRA's March 2015 Notice 15-09 on effective supervision and control practices for market participants that use algorithmic trading strategies in the equities market, IOSCO's April 2015 Consultation Report, summarizing best practices that should be considered by trading venues when developing and implementing risk mitigation mechanisms, and the Senior Supervisors Group (SSG) April 2015 Algorithmic Trading Briefing Note, which described how large financial institutions currently monitor and control for the risks associated with algorithmic trading during the trading day.

Notwithstanding the standards described above, the Commission has calculated a maximum cost to an AT Person that has not implemented any of the design, testing, and supervision standards required by proposed § 1.81.

**Development and Testing.** The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(a) (development and testing of Algorithmic Trading Systems) would incur a total cost of \$349,865 to implement these requirements. This cost is broken down as follows: 1 Project Manager, working for 1,707 hours ( $1,707 \times \$70 = \$119,490$ ); 2 Business Analysts, working for 853 hours ( $853 \times \$52 = \$44,356$ ); 3 Testers, working for a combined 2,347 hours ( $2,347 \times \$52 = \$122,044$ ); and 2 Developers, working for a combined 853 hours ( $853 \times \$75 = \$63,975$ ).<sup>592</sup>

**Monitoring.** The Commission estimates that an AT Person that has not implemented any of the requirements of § 1.81(b) (monitoring of Algorithmic Trading Systems) would incur a total cost of \$196,560 to implement these requirements. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 2,080 hours ( $2,080 \times \$57 = \$118,560$ ); and 1 Business Analyst, working for 1,500 hours ( $1,500 \times \$52 = \$78,000$ ).

**Compliance.** The Commission estimates that an AT Person that has not implemented any of the requirements of § 1.81(c) (compliance of Algorithmic Trading Systems) would incur a total cost of \$174,935 to implement these requirements. This cost is broken down as follows: 1 Project Manager, working for 853 hours ( $853 \times \$70 = \$59,710$ ); 2 Business Analysts, working for a combined 427 hours ( $427 \times \$52 =$

$\$22,204$ ); 3 Testers, working for a combined 1,173 hours ( $1,173 \times \$52 = \$60,996$ ); and 2 Developers, working for a combined 427 hours ( $427 \times \$75 = \$32,025$ ).

**Designation and Training of Staff.** The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(d) (designation and training of Algorithmic Trading staff) would incur a total cost of \$101,600 to implement these requirements. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 500 hours ( $500 \times \$57 = \$28,500$ ); 1 Project Manager, working for 500 hours ( $500 \times \$70 = \$35,000$ ); 1 Developer, working for 300 hours ( $300 \times \$75 = \$22,500$ ); and 1 Business Analyst, working for 300 hours ( $300 \times \$52 = \$15,600$ ).

Notwithstanding these estimates, the Commission believes that proposed § 1.81 standardizes existing industry practices in this area, but does not impose additional requirements that are not already followed by the majority of market participants. As a result, the Commission does not believe that § 1.81 would impose additional costs on AT Persons.

• § 1.83(a)—Compliance Reports Submitted by AT Persons

Proposed § 1.83 would require AT Persons and FCMs that are clearing members for AT Persons to annually submit reports regarding their compliance with § 1.80(a) and pursuant to § 1.82(a)(1), respectively, to each DCM on which they operate. The report prepared by an AT Person pursuant to § 1.83(a) would include a description of the AT Person's pre-trade risk controls and the parameters and specific quantitative settings used for such pre-trade risk controls. Together with the annual report, each AT Person would be required to submit copies of the written policies and procedures developed to comply with § 1.81(a) and (c). The report would also be required to include a certification by the chief executive officer or chief compliance officer of the AT Person that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

**AT Person Compliance Reports.** AT Persons will incur the cost of annually preparing and submitting the reports to their DCMs. The Commission estimates that an AT Person will incur a total annual cost of \$4,240 to draft the report required by proposed § 1.83(a). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 50 hours ( $50 \times \$57$  per hour = \$2,850) and 1 Chief Compliance Officer, working for

10 hours ( $10 \times \$139$  per hour = \$1,390) for a total cost of \$4,240 per year. The approximately 420 AT Persons to which § 1.83(a) would apply would therefore incur a total annual cost of \$1,780,800 ( $420 \times \$4,240$ ) to prepare and submit the report required by § 1.83(a).

• § 1.83(c)—AT Person Recordkeeping Requirements

Proposed § 1.83(c) would require each AT Person to keep, and provide upon request to each DCM on which such AT Person engages in Algorithmic Trading, books and records regarding such AT Person's compliance with all requirements pursuant to proposed §§ 1.80 and 1.81.

The Commission estimates that, on an initial basis, an AT Person will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours ( $30 \times \$96 = \$2,880$ ); and 1 Developer, working for 30 hours ( $30 \times \$75 = \$2,250$ ). The 420 AT Persons would therefore incur a total initial cost of \$2,154,600 ( $420 \times \$5,130$ ).

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,670 to ensure continued compliance with DCM recordkeeping rules relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and in respond to DCM record requests. This cost is broken down as follows: 1 Compliance Attorney, working for 20 hours ( $20 \times \$96 = \$1,920$ ); and 1 Developer, working for 10 hours ( $10 \times \$75 = \$750$ ). The 420 AT Persons would therefore incur a total annual cost of \$1,121,400 ( $420 \times \$2,670$ ).

• § 40.23(c)—Approval Requests Submitted by Market Participants re: Self-Trading Controls

Market participants will incur costs in the event that they prepare and submit the self-trading approval requests contemplated by proposed § 40.23(c). This provision, which is discussed in more detail in section IV(Q) above, requires market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control. The Commission estimates that, on an annual basis, a market participant will incur a cost of \$3,810 to prepare and submit these approval requests. This cost is broken down as follows: 1 Business Analyst, working for 30 hours ( $30 \times \$52$  per hour = \$1,560); and 1

<sup>592</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

Developer, working for 30 hours (30 × \$75 per hour = \$2,250).<sup>593</sup>

The Commission cannot predict how many market participants would likely submit the approval requests contemplated by proposed § 40.23(c) on an annual basis. The Commission believes that not all market participants trading on a DCM would submit such requests. In the view of the Commission, for example, a limited subset of market participants will own two or more accounts, but operate them through “independent decision makers,” as contemplated by proposed § 40.23(b). Similarly, a limited subset of market participants will find it advantageous to incur the costs associated with the self-trading described by § 40.23(b), such as trading costs and clearing fees. In addition, the Commission believes that market participants submitting orders through Algorithmic Trading are more likely than traders submitting orders manually to inadvertently self-trade through independent decision-makers. The Commission estimates that, notwithstanding the fact that the DCM rules described in § 40.23(c) are directed to all market participants, the number of market participants that will submit the approval requests described therein are equivalent to the number of AT Persons calculated above (420).<sup>594</sup> On this basis, the Commission estimates that market participants will incur a total annual cost of \$1,600,200 to submit the approval requests contemplated by § 40.23(c) (\$3,810 per market participant × 420 market participants).

#### v. An Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Rules

The Commission is unaware of any Federal rules that could duplicate, overlap, or conflict with the proposal.

vi. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant impact of the proposed rule on small entities. These may include, for example, (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

A potential alternative to Regulation AT that would minimize any significant impact on small entities would be to amend or propose new rules requiring trading firms implement pre-trade and other risk controls, but limit application of such requirements to entities that would not be considered “small entities” for purposes of the RFA. However, the Commission does not believe that this is a viable alternative. A principal basis for Regulation AT’s risk control requirements is that a technological malfunction or error can have a significant, detrimental impact on other market participants across Commission-regulated markets. Importantly, such a technological malfunction or error can arise from any size of firm, including a very small proprietary trading firm with few employees. In today’s interconnected markets, where a small error can cause a severe disruption in minutes, it is equally important that small firms have risk controls as large firms. The Commission believes that the risk controls required by Regulation AT will help ensure that all entities—not just large entities with the most technological and financial resources—will have effective risk controls. The Commission is aware that smaller firms may have different trading strategies and technology than larger firms; accordingly, the proposed regulations allow all trading firms, including small entities, the discretion to design controls appropriate to their own business and to implement them in the most cost-effective manner.

The Commission is also considering alternatives with respect to proposed § 1.83, which would require AT Persons to submit compliance reports to DCMs on an annual basis. Such reports would need to be submitted and certified annually by the chief executive officer or the chief compliance officer of the AT

Person. Proposed § 40.22 would require DCMs to establish a program for effective periodic review and evaluation of these reports. The Commission has proposed these regulations, using the deadlines described above, because it believes they represent an appropriate balancing of the transparency and risk reduction provided by the reports against the burden placed on AT Persons and DCMs of providing and reviewing the reports. The Commission is considering the alternative of requiring AT Persons to submit such reports more or less frequently than annually. The Commission is also considering the alternatives of placing the responsibility for certifying the reports required by proposed § 1.83 only on the chief executive officer, only on the chief compliance officer, or permitting certification from other officers of the AT Person. The Commission notes that it considered the alternative of requiring additional information to be included in the § 1.83 reports, such as descriptions of how AT Persons comply with § 1.81 requirements and how clearing member FCMs comply with all § 1.82 requirements. In the interest of minimizing costs to AT Persons and clearing member FCMs, the Commission determined at this time to require, pursuant to proposed § 1.83(c) and (d), that AT Persons and clearing member FCMs instead retain and provide to DCMs books and records regarding their compliance with §§ 1.80, 1.81 and 1.82 requirements. Proposed § 40.22(d) includes a corresponding requirement that DCMs implement rules requiring AT Persons and clearing member FCMs to keep and provide such books and records.

Finally, the Commission is considering alternatives with respect to proposed § 40.23. This proposed regulation provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission’s principal goal is to prevent unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the account that should be prohibited from trading from each other, so long as this goal is met. The Commission has considered whether other identification methods should be made available to market participants

<sup>593</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>594</sup> See section V(A) above for the calculation of the number of person subject to Regulation AT.

when submitting the approval requests described in § 40.23. For example, the Commission has requested comment on whether the opposite approach is preferable: Market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other).

### 3. Request for Comments

109. The Commission requests comment on each element of its RFA analysis. In particular, the Commission specifically invites comment on the accuracy of its estimates of potential firms that could be considered “small entities” for RFA purposes.

110. The Commission also requests comment on whether any natural persons will be designated as AT Persons under the proposed definition of that term.

#### D. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”)<sup>595</sup> imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The following requirements of this rulemaking will result in new collection of information requirements within the meaning of the PRA: § 1.83(a) would require AT Persons to submit reports to DCMs concerning compliance with § 1.80(a), as well as copies of the written policies and procedures developed to comply with § 1.81(a) and (c); § 1.83(b) would require clearing member FCMs to submit reports to DCMs concerning compliance with § 1.82(a)(1); § 1.83(c) and (d) would require AT Persons and clearing member FCMs, respectively, to keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs); § 40.23(c) states that a DCM must require market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to certain types of accounts; § 40.23(d) would require that DCMs display information about percentage and ratio of self-trading. The title for this collection of information is

Regulation Automated Trading. 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 control number. The OMB has not yet assigned this collection a control number. As used below, “burden” means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency.

Additional Regulation AT requirements will amend existing collections of information. Proposed § 1.3(x)(3) (requiring certain persons with DEA to prepare and submit forms to register with the Commission) would amend existing collection of information “Registration Under the Commodity Exchange Act,” OMB Control Number 3038–0023. Proposed § 38.401(a) and (c) (requiring DCMs to publicly post information regarding certain aspects of their electronic matching platforms) and § 40.26 (permitting the Commission or the director of DMO to require certain information from DCMs regarding their market-maker or trading incentive programs) would amend existing collection of information “Core Principles and Other Requirements for DCMs,” OMB Control Number 3038–0052. Finally, proposed § 40.25 (requiring DCMs to provide the Commission with certain information regarding their market-maker and trading incentive programs when submitting such programs as rules pursuant to part 40) would amend existing collection of information “Part 40, Provisions Common to Registered Entities,” OMB Control Number 3038–0093.

The collections of information under these proposed regulations are necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Section 8a(5) of the CEA provides the Commission with authority to promulgate rules as reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act, and Section 4c(a)(6) of the CEA provides rulemaking authority to prohibit disruptive trading practices. As provided in Section 3(b) of the CEA, it is the purpose of the CEA to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair

competition among boards of trade, other markets and market participants.<sup>596</sup> Proposed regulations requiring registration with the Commission, submission of compliance reports to DCMs, implementation of self-trade prevention tools and increased disclosure of certain aspects of electronic matching platforms and market maker and trading incentive programs, will help prevent or mitigate technological malfunctions that will disrupt market integrity, protect market participants from fraudulent or disruptive practices, and promote fair competition among boards of trade, other markets and market participants.

If the proposed regulations are adopted, responses to the collections of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, “Commission Records and Information.” In addition, Section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

#### 1. Information Provided by Reporting Entities/Persons

The following is a brief description of the PRA responsibilities of various entities under Regulation AT. In summary, § 1.3(x)(3) would require certain floor traders with DEA to prepare and submit forms to register with the Commission; § 1.83(a) and (b) would require AT Persons and clearing member FCMs to submit reports to DCMs concerning compliance with § 1.80(a) and § 1.82(a)(1), respectively; § 1.83(c) and (d) would require AT Persons and clearing member FCMs, respectively, to keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs); § 38.401(a) and (c) would require DCMs to publicly post information regarding certain aspects of their electronic matching platforms; § 40.23(c) states that a DCM must require market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to certain types of accounts; § 40.23(d) would require that DCMs

<sup>595</sup> 44 U.S.C. 3501 *et seq.*

<sup>596</sup> 7 U.S.C. 5.



display information about percentage and ratio of self-trading; § 40.25 would require DCMs to provide the Commission with certain information regarding their market-maker and trading incentive programs when submitting such programs as rules pursuant to part 40; and § 40.26 would permit the Commission or the director of DMO to require certain information from DCMs regarding their market-maker or trading incentive programs.

a. § 1.3(x)(3)—Submissions by Newly Registered Floor Traders

The Commission estimates that the proposed rules requiring certain floor traders with Direct Electronic Access to register will result in 11 hours of burden per affected entity, and 1100 burden hours in total. The Commission estimates that each affected entity will require 1 hour to prepare and submit one Form 7-R (for the entity) and 10 hours to prepare and submit 10 Forms 8-R (one form for each principal of the entity).<sup>597</sup> The estimated burden was calculated as follows:

Burden: Complete Form 7-R and 8-R to register as a floor trader.

Respondents/Affected Entities: 100 new floor traders.

Estimated number of responses: 100.

Estimated total burden on each respondent: 11 hours.

Frequency of collection: One-time initial registration fee.

Burden statement-all respondents: 100 respondents × 1 hour = 100 Burden Hours.

The Commission estimates that a new registrant will incur a one-time cost of \$96 to complete one Form 7-R and a one-time cost of \$960 to complete 10 Forms 8-R. These costs represent the work of 1 Compliance Attorney per affected entity, working for 1 hour per form (a total of 11 hours × \$96 = \$1,056).<sup>598</sup> The 100 entities that will be subject to the registration requirement

<sup>597</sup> CFTC Form 7-R is used to apply for registration with the Commission as a non-natural person floor trader, and is also used for such entities to apply for membership in NFA. Form 8-R is used to identify principals of non-natural person floor trader entities. As noted previously, the Commission estimates that each non-natural person floor trader entity will have approximately 10 principals and therefore need to file approximately 10 Forms 8-R. In the event that a natural person meets the definition of Floor Trader in proposed § 1.3(x)(3) and is therefore required to register with the Commission and become a member of NFA, such person would only be required to complete Form 8-R and would face substantially lower costs than those estimated here. Because registration with the Commission and membership in NFA make use of the same forms and process, the Commission anticipates that the costs associated with proposed § 1.3(x)(3) and proposed § 170.18 will be one and the same.

<sup>598</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

under § 1.3(x)(3) would therefore incur a total one-time cost of \$105,600 (100 × \$1,056).<sup>599</sup>

b. § 1.83(a)—Compliance Reports Submitted by AT Persons to DCMs

The Commission estimates that the proposed rules requiring AT Persons to submit annual reports regarding their pre-trade risk controls required pursuant to proposed § 1.80(a) (as well as copies of the written policies and procedures developed to comply with § 1.81(a) and (c)) to each DCM on which they operate will result (on an annual basis) in 60 hours of burden per AT Person, and 25,200 burden hours in total. The estimated burden was calculated as follows:

Burden: Compliance reports submitted by AT Persons to DCMs.

Respondents/Affected Entities: 420 AT Persons.

Estimated number of responses: 420.

Estimated total burden on each respondent: 60 hours.

Frequency of collection: Annual.

Burden statement-all respondents: 420 respondents × 60 hours = 25,200 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$4,240 to submit the compliance reports required by proposed § 1.83(a). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 50 hours (50 × \$57 = \$2,850); and 1 Chief Compliance Officer, working for 10 hours (10 × \$139 = \$1,390).<sup>600</sup> The 420 AT Persons that will be subject to § 1.83(a) would therefore incur a total annual cost of \$1,780,800 (420 × \$4,240).<sup>601</sup>

c. § 1.83(b)—Compliance Reports Submitted by Clearing Member FCMs to DCMs

The Commission estimates that the proposed rules requiring clearing member FCMs to submit annual reports (describing the clearing member FCM's program for establishing and maintaining the pre-trade risk controls required by proposed § 1.82(a)(1) for its AT Person customers in the aggregate) to each DCM on which they operate will result (on an annual basis) in 110 hours of burden per clearing member, and 6,270 burden hours in total. The estimated burden was calculated as follows:

<sup>599</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

<sup>600</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>601</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

Burden: Compliance reports submitted by clearing member FCMs to DCMs.

Respondents/Affected Entities: 57 clearing member FCMs.

Estimated number of responses: 57.

Estimated total burden on each respondent: 110 hours.

Frequency of collection: Annual.

Burden statement-all respondents: 57 respondents × 110 hours = 6,270 Burden Hours per year.

The Commission estimates that, on an annual basis, a clearing member FCM will incur a cost of \$7,090 to submit the compliance reports required by § 1.83(b). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 100 hours (100 × \$57 = \$5,700); and 1 Chief Compliance Officer, working for 10 hours (10 × \$139 = \$1,390).<sup>602</sup> The 57 clearing member FCMs that will be subject to § 1.83(b) would therefore incur a total annual cost of \$404,130 (57 × \$7,090).<sup>603</sup>

d. § 1.83(c)—AT Person Retention and Production of Books and Records

Initial Costs. The Commission estimates that rules pursuant to proposed § 1.83(c) requiring AT Persons to keep and provide books and records relating to §§ 1.80 and 1.81 compliance will result in initial costs of 60 hours of burden per AT Person, and 25,200 burden hours in total. The estimated burden was calculated as follows:

Burden: Rule requiring AT Persons to keep and produce records relating to §§ 1.80 and 1.81 compliance.

Respondents/Affected Entities: 420 AT Persons.

Estimated total burden on each respondent: 60 hours.

Burden statement&all respondents: 420 respondents × 60 hours = 25,200 Burden Hours initial year.

The Commission estimates that, on an initial basis, an AT Person will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours (30 × \$96 = \$2,880); and 1 Developer, working for 30 hours (30 × \$75 = \$2,250). The 420 AT Persons would therefore incur a total initial cost of \$2,154,600 (420 × \$5,130).

Annual Costs. The Commission estimates that rules pursuant to proposed § 1.83(c) requiring AT Persons to keep and provide books and records

<sup>602</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>603</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

relating to §§ 1.80 and 1.81 compliance will result in annual costs of 30 hours of burden per AT Person, and 12,600 burden hours in total. The estimated burden was calculated as follows:

Burden: Rules requiring AT Persons to keep and produce records relating to §§ 1.80 and 1.81 compliance.

Respondents/Affected Entities: 420 AT Persons.

Estimated number of responses: 420.

Estimated total burden on each respondent: 30 hours.

Frequency of collection:

Intermittent. Burden statement-all respondents: 420 respondents  $\times$  30 hours = 12,600 Burden Hours per year.

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,670 to ensure continued compliance with the § 1.83(c) recordkeeping rules relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and to respond to DCM record requests. This cost is broken down as follows: 1 Compliance Attorney, working for 20 hours ( $20 \times \$96 = \$1,920$ ); and 1 Developer, working for 10 hours ( $10 \times \$75 = \$750$ ). The 420 AT Persons would therefore incur a total annual cost of \$1,121,400 ( $420 \times \$2,670$ ).

e. § 1.83(d)—Clearing Member FCM Retention and Production of Books and Records

Initial Costs. The Commission estimates that rules pursuant to proposed § 1.83(d) requiring clearing member FCMs to keep and provide books and records relating to § 1.82 compliance will result in initial costs of 60 hours of burden per clearing member FCM, and 3,420 burden hours in total. The estimated burden was calculated as follows:

Burden: Rules requiring clearing member FCMs to keep and produce records relating to § 1.82 compliance.

Respondents/Affected Entities: 57 clearing member FCMs.

Estimated total burden on each respondent: 60 hours.

Burden statement-all respondents: 57 respondents  $\times$  60 hours = 3,420 Burden Hours initial year.

The Commission estimates that, on an initial basis, a clearing member FCM will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours ( $30 \times \$96 = \$2,880$ ); and 1 Developer, working for 30 hours ( $30 \times \$75 = \$2,250$ ). The 57 clearing member FCMs would therefore

incur a total initial cost of \$292,410 ( $57 \times \$5,130$ ).

Annual Costs. The Commission estimates that that DCM rules pursuant to proposed § 1.83(d) requiring clearing member FCMs to keep and provide books and records relating to § 1.82 compliance will result in annual costs of 30 hours of burden per clearing member FCM, and 1,710 burden hours in total. The estimated burden was calculated as follows:

Burden: Rules requiring clearing member FCMs to keep and produce records relating to § 1.82 compliance.

Respondents/Affected Entities: 57 clearing member FCMs.

Estimated number of responses: 57.

Estimated total burden on each respondent: 30 hours.

Frequency of collection: Intermittent.

Burden statement-all respondents: 57 respondents  $\times$  30 hours = 1,710 Burden Hours per year.

The Commission estimates that, on an annual basis, a clearing member FCM will incur a cost of \$2,670 to ensure continued compliance with the § 1.83(d) recordkeeping rules relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and to respond to DCM record requests. This cost is broken down as follows: 1 Compliance Attorney, working for 20 hours ( $20 \times \$96 = \$1,920$ ); and 1 Developer, working for 10 hours ( $10 \times \$75 = \$750$ ). The 57 clearing member FCMs would therefore incur a total annual cost of \$152,190 ( $57 \times \$2,670$ ).

f. § 38.401(a) and (c)—Public Dissemination of Information by DCMs Pertaining to Electronic Matching Platforms

The proposed amendments to regulations 38.401(a) and 38.401(c) require DCMs to publicly post information regarding certain aspects of their electronic matching platforms. DCMs should already be performing tests on their electronic matching platforms that would identify such attributes; therefore the added burden under the proposed amendments would be limited to drafting the description of such attributes and making the description available on the DCM's Web site. The Commission estimates that the proposed rules will result (on an annual basis) in 200 hours of burden per DCM, and 3,200 burden hours in total. This estimate assumes that DCMs are already compliant with the requirements to post the specifications of their electronic matching platform under current regulation 38.401(a).

Burden: Public Dissemination of Information by DCMs—Electronic Matching Platforms.

Respondents/Affected Entities: 15 DCMs.

Estimated total burden on each respondent: 200 hours per year.

Frequency of collection: Intermittent.

Burden statement-all affected entities: 15 affected entities  $\times$  200 hours = 3,000 Burden Hours per year.

The Commission estimates that, on an annual basis, a DCM will incur a cost of \$19,200 to comply with amended § 38.401(a) and (c). This cost represents the work of 1 Compliance Attorney, working for 200 hours ( $200 \times \$96 = \$19,200$ ).<sup>604</sup> The 15 DCMs that will be subject to amended §§ 38.401(a) and (c) would therefore incur a total annual cost of \$288,000 ( $15 \times \$19,200$ ).<sup>605</sup> The Commission anticipates that this figure would decrease in subsequent years as the descriptions provided would only need to be amended to reflect changes to the electronic matching platform or the discovery of previously unknown attributes.

g. § 40.23—Information Publicly Disseminated by DCMs Regarding Self-Trade Prevention

Regulation AT proposes a new requirement (§ 40.23) that a DCM shall implement rules reasonably designed to prevent self-trading by market participants, except as specified in paragraph (b) of § 40.23. Section 40.23(b) states that a DCM may, in its discretion, implement rules that permit the matching of orders for accounts with common beneficial ownership where such orders are initiated by independent decision makers. A DCM may also permit under § 40.23(b) the matching of orders for accounts under common control where such orders comply with the DCM's cross-trade, minimum exposure requirements or similar rules, and are for accounts that are not under common beneficial ownership. Section 40.23(c) states that a DCM must require market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of paragraph (b).

Proposed § 40.23(d) would require that for each product and expiration month traded on a DCM in the previous quarter, the DCM must prominently display on its Web site the following

<sup>604</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>605</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

information: (1) The percentage of trades in such product including all expiration months that represent self-trading approved (pursuant to paragraph (c)(2) of § 40.23) by the DCM, expressed as a percentage of all trades in such product and expiration month; (2) the percentage of volume of trading in such product including all expiration months that represents self-trading approved (pursuant to paragraph (c)(2) of § 40.23) by the DCM, expressed as a percentage of all volume in such product and expiration month; and (3) the ratio of orders in such product and expiration month whose matching was prevented by the self-trade prevention tools described in paragraph (a) of § 40.23, expressed as a ratio of all trades in such product and expiration month.

**Market Participant Approval Requests.** Market participants will incur costs in the event that they prepare and submit the approval requests contemplated by proposed § 40.23(c). This provision requires market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control. The Commission estimates that § 40.23(c) will result (on an annual basis) in 60 hours of burden per market participant, and 185,340 burden hours in total. The estimated burden was calculated as follows:

**Burden: Market Participant Submission of Self-Trade Approval Requests.**

**Respondents/Affected Entities:** 420.<sup>606</sup>

Estimated number of responses: 1 per respondent per year. Market participants may choose to submit approval requests more frequently, but regardless of how frequently market participants submit approval requests, the Commission estimates a total burden of 60 hours per market participant per year.

Estimated total burden on each respondent: 60 hours per year.

**Burden statement—all respondents:** 420 respondents × 60 hours per year = 25,200 Burden Hours per year.

The Commission estimates that, on an annual basis, a market participant will incur a cost of \$3,810 to prepare and submit the approval requests contemplated by 40.23(c). This cost is broken down as follows: 1 Business Analyst, working for 30 hours (30 × \$52 per hour = \$1,560); and 1 Developer, working for 30 hours (30 × \$75 per hour

= \$2,250).<sup>607</sup> The estimated 420 market participants that will be subject to § 40.23(c) would therefore incur a total annual cost of \$1,600,200 (420 × \$3,810).<sup>608</sup>

**DCM Publication of Statistics Regarding Self-Trade Prevention.** The Commission estimates that the requirement under proposed § 40.23(d) that DCMs publish statistics regarding self-trade prevention will result (on an annual basis) in 100 hours of burden per DCM, and 1,500 burden hours in total for all 15 DCMs. The estimated burden was calculated as follows:

**Burden: DCM Publication of Statistics Regarding Self-Trade Prevention.**

**Respondents/Affected Entities:** 15 DCMs.

Estimated total burden on each affected entity: 100 hours per year for DCMs to generate and publish statistics.

Frequency of collection: 4 DCM Web site updates per year (one per quarter).

**Burden statement—all affected entities:** 15 respondents × 100 hours of DCM time per year = 1,500 Burden Hours per year.

The Commission estimates that, on an annual basis, a DCM will incur a cost of \$6,650 to publish the statistics required by proposed § 40.23(d). This cost is broken down as follows: 1 Senior Compliance Examiner, working for 50 hours (50 × \$58 per hour = \$2,900); and 1 Developer, working for 50 hours (50 × \$75 per hour = \$3,750).<sup>609</sup> The 15 DCMs that will be subject to § 40.23(d) would therefore incur a total annual cost of \$99,750 (15 × \$6,650).<sup>610</sup>

**h. § 40.25—Information in Public Rule Filings Provided by DCMs Regarding Market Maker and Trading Incentive Programs**

Proposed § 40.25 would require DCMs to provide the Commission with certain information regarding their market-maker and trading incentive programs when submitting such programs as rules pursuant to part 40. Among other information, DCMs would be required to provide a description of any categories of market participants or eligibility criteria limiting who may participate in the program. They would also be required to provide an explanation of the specific purpose for a market-maker or trading incentive program; a list of all products or services to which the program applies; a description of any

payments, incentives, discounts, considerations, inducements or other benefits that program participants may receive; and other requirements. To ensure public transparency in market-maker and trading incentive programs, proposed § 40.25 would require DCMs to ensure that the information described above is easily located on their public Web sites.

While proposed § 40.25 may appear on its face to require substantial new information from DCMs regarding their market-maker or trading incentive programs, the proposed rule is largely similar to existing rule filing requirements in part 40. For example, existing §§ 40.5 and 40.6 each require a DCM requesting approval or self-certifying rules to provide the Commission with the rule text; the proposed effective date or date of intended implementation; and an “explanation and analysis of the operation, purpose, and effect” of the proposed rule. Existing §§ 40.5 and 40.6 also require each DCM to provide the Commission with an assessment of the rule’s “compliance with applicable provisions of the Act, including core principles, and the Commission’s regulations thereunder;” and “a brief explanation of any substantive opposing views expressed to [the DCM] by governing board or committee members, members of the entity or market participants that were not incorporated into the rule . . . .” Further, these existing provisions each require a DCM to certify that the DCM posted on its public Web site a notice of pending rule or certification and to also post a copy of the DCM’s submission to the Commission on the DCM’s Web site.

The Commission believes proposed § 40.25 adds important clarity to existing rule filing requirements in part 40 when such filings pertain to market-maker or trading incentive programs. However, the Commission also believes that there is significant overlap between proposed § 40.25 and existing requirements for DCMs in §§ 40.5 and 40.6. Proposed § 40.25 does not create a new category of rule filings, nor does it or require more frequent filings. For these reasons, the Commission believes that any additional Paperwork Reduction Act obligations in proposed § 40.25 will be minor per DCM.

**Burden: Information regarding market maker and trading incentive program rule filings pursuant to part 40.**

**Respondents/Affected Entities:** 15 DCMs.

Estimated total burden on each affected entity: 156 hours of DCM time per year.

Frequency of collection: Intermittent.

<sup>606</sup> See section V(E)(8)(b) below for a discussion of how this estimate of affected entities was performed.

<sup>607</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>608</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

<sup>609</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>610</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

Burden statement—all affected entities: 15 respondents × 156 hours of DCM time per year = 2,340 Burden Hours per year.

i. § 40.26—Information Provided by DCMs to the Division of Market Oversight Upon Request Regarding Market Maker and Trading Incentive Programs

Proposed § 40.26 would permit the Commission or the director of DMO to require certain information from DCMs regarding their market-maker or trading incentive programs. The Commission believes that proposed § 40.26 will impose no additional Paperwork Reduction Act burdens on DCMs. The proposed regulation permits the Commission or the director of DMO to require information from a DCM regarding the DCM's market-maker or trading incentive programs. It is a more targeted iteration of existing § 38.5, which requires a DCM to file with the Commission such "information related to its business as a designated contract market" as the Commission may require. Section 38.5 also requires a DCM upon request by the Commission or the director of DMO to file "a written demonstration" that the DCM "is in compliance with one or more core principles as specified in the request" or "satisfies its obligations under the Act," including "supporting data, information and documents." Proposed § 40.26 does not alter a DCM's existing obligations under § 38.5, but rather makes clear that Commission and DMO information requests may pertain specifically to market-maker and trading incentive programs. It imposes no new obligation to provide information, and does not increase the frequency which information must be provided.

Burden: Information requests from the Commission or the Director of the Division of Market Oversight.

Respondents/Affected Entities: 15 DCMs.

Estimated total burden on each affected entity: 0 hours of DCM time per year.

Frequency of collection: Intermittent.

Burden statement—all affected entities: 15 respondents × 0 hours of DCM time per year = 0 Burden Hours per year.

## 2. Information Collection Comments

The Commission invites the public to comment on any aspect of the paperwork burdens discussed herein. Copies of the supporting statements for the collections of information from the Commission to OMB are available by visiting *RegInfo.gov*. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i)

Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information proposed to be collected; and (vi) minimize the burden of the proposed collections of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology.

Those desiring to submit comments on the proposed information collection requirements should submit them directly to the Office of Information and Regulatory Affairs, OMB, by fax at (202) 395-6566, or by email at *OIRASubmissions@omb.eop.gov*. Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission.

### E. Cost Benefit Considerations

#### 1. The Statutory Requirement for the Commission To Consider the Costs and Benefits of Its Actions

Section 15(a) of the CEA requires the Commission to "consider the costs and benefits" of its actions before promulgating a regulation under the CEA or issuing certain orders.<sup>611</sup> Section 15(a) further specifies that the costs and benefits must be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below. As a general matter, the Commission considers the incremental costs and benefits of these proposed rules, taking into account what it believes is industry practice given the Commission's existing regulations and industry best practices, as described below. Where reasonably

feasible, the Commission has endeavored to estimate quantifiable costs and benefits. The Commission also identifies and describes costs and benefits qualitatively.

#### 2. Concept Release Comments Regarding Costs and Benefits

In the Concept Release, the Commission sought comments on most of the measures now addressed by Regulation AT. Six commenters made general points on cost-benefit considerations. Specifically, FIA and CME noted that the cost of implementing risk controls varies widely.<sup>612</sup> FIA stated that many of the risk controls addressed in the Concept Release are already used in the futures industry and their benefit is clearly understood.<sup>613</sup> FIA further stated that the implementation cost to individual firms varies widely based on the systems they have and the market and products they trade.<sup>614</sup> Similarly, CME indicated that as to risk controls, specific costs as to development, implementation and ongoing operational figures will vary widely across the futures industry supply chain.<sup>615</sup> CME declined to provide detailed analysis as to its own expenditures.<sup>616</sup>

CFE commented that if the Commission proposes risk control requirements, it should perform a careful cost-benefit analysis and allow DCMs at least two years to implement the controls.<sup>617</sup> TCL stated that most entities have the technology to address the "spirit" of the controls described in the Concept Release.<sup>618</sup> AFR noted that cost-benefit analysis should be based on costs and benefits to the public as a whole, not on private benefits to individual actors.<sup>619</sup> Finally, IATP stated that the Concept Release asked more frequently about costs of risk controls as compared to benefits of increased market stability, which can be more difficult to quantify.<sup>620</sup>

#### 3. The Commission's Cost-Benefit Consideration of Regulation AT—Baseline Point

As a preliminary matter, the Commission notes that certain aspects of Regulation AT, as discussed below, codify existing norms and best practices of trading firms, clearing member FCMS

<sup>612</sup> FIA at 60; CME at 41.

<sup>613</sup> FIA at 60.

<sup>614</sup> See *id.*

<sup>615</sup> CME at 41.

<sup>616</sup> See *id.*

<sup>617</sup> CFE at 2.

<sup>618</sup> TCL at 18.

<sup>619</sup> AFR at 2.

<sup>620</sup> IATP at 3.

<sup>611</sup> 7 U.S.C. 19(a).

and DCMs. In that regard, in 2013, FIA surveyed FCMs and FIA PTG member firms regarding their use of risk controls and self-trade controls and found that all or most respondents currently use such controls.<sup>621</sup> Comment letters to the Concept Release indicated that implementation of pre-trade and other risk controls was already widespread. Moreover, existing statutory schemes (e.g., the SEC's Market Access Rule and the CFTC's requirements relating to financial risk) means that many entities will already have systems in place relevant to the controls proposed in Regulation AT. Accordingly, as discussed below, the existing norms or best practices serve as the Commission's guide for determining the status quo baseline against which to measure the incremental costs and benefits of the proposed regulations. The Commission recognizes, however, that some individual firms currently may not be operating at industry best practice levels; for such firms costs and benefits attributable to the proposed regulations will be incremental to a lower status quo baseline. In many cases, the Commission assumes that compliance with regulations will require an upgrade to existing systems, rather than building risk control systems from scratch.

To assist the Commission and the public in assessing and understanding the economic costs and benefits of the proposed rule, the Commission has analyzed the costs of the proposed regulations that impose additional requirements on trading firms, clearing member FCMs and DCMs above and beyond the baseline. In many instances, full quantification of the costs is not reasonably feasible because costs depend on the size, structure, and practices of trading firms, clearing member FCMs and DCMs. Within each category of entity, the size, structure and practices of such entities will vary markedly. In addition, the quantification may require information or data that the Commission does not have or was not provided in response to the Concept Release or other requests. The Commission notes that to the extent that the regulations proposed in this rulemaking results in additional costs, those costs will be realized by trading firms, clearing member FCMs and exchanges in order to protect market participants and the public. Finally, in general, full quantification of the benefits of the proposed rule is also not reasonably feasible, due to the difficulty in quantifying the benefits of a reduction in market disruptions and other significant market events due to

the risk controls and other measures proposed in Regulation AT.

#### 4. The Commission's Cost-Benefit Consideration of Regulation AT—Cross-Border Effects

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA Section 2(i).<sup>622</sup> In particular, the Commission notes that some AT Persons are located outside of the United States.

#### 5. General Request for Comment

111. Beyond specific questions interspersed throughout its discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits, including: (a) Identification, quantification, and assessment of any costs and benefits not discussed therein; (b) whether any of the proposed regulations may cause FCMs or DCMs to raise their fees for their customers, or otherwise result in increased costs for market participants and, if so, to what extent; (c) whether any category of Commission registrants will be disproportionately impacted by the proposed regulations, and if so whether the burden of any regulations should be appropriately shifted to other Commission registrants; (d) what, if any, costs would likely arise from market participants engaging in regulatory arbitrage by restructuring their trading activities to trade on platforms not subject to the proposed regulations, or taking other steps to avoid costs associated with the proposed regulations; (e) quantitative estimates of the impact on transaction costs and liquidity of the proposals contained herein; (f) the potential costs and

benefits of the alternatives that the Commission discussed in this release, and any other alternatives appropriate under the CEA that commenters believe would provide superior benefits relative to costs; (g) data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and (h) substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's consideration of costs and benefits.

#### 6. The Commission's Cost-Benefit Consideration of Regulation AT—Proposed Definitions

The Commission notes that Regulation AT proposes certain defined terms, including "AT Person," "Algorithmic Trading," and "Direct Electronic Access" (as an element of the revised definition of the term "Floor Trader"). While the defined terms themselves do not impose costs, the Commission recognizes that the scope of such definitions will impact the potential costs of other regulations. For example, proposed § 1.80 imposes risk control requirements on "AT Persons," and the defined term "Algorithmic Trading" is an element of the term AT Person. The broader the definition of AT Person and Algorithmic Trading, the greater the number of firms that would be required to meet the requirements of § 1.80.

The Commission believes its definition of AT Person is appropriate and its inclusion of "floor traders," consistent with the proposed changes to § 1.3(x), will mean that certain currently unregistered market participants who actively trade on Commission-regulated markets will be subject to risk control requirements that will prevent or mitigate the risks of malfunctioning algorithmic trading systems. Similarly, the proposed definition of Algorithmic Trading captures such trading activity that has the potential, when there is a technological malfunction, to harm market participants and disrupt markets at a speed that is difficult to mitigate. The Commission asks questions concerning the scope of the definition of Algorithmic Trading, for example whether order routing systems should be included within such definition. The Commission acknowledges that any change made to scope of AT Person and Algorithmic Trading made in accordance with any comments received will impact the cost of regulations that use those definitions.

<sup>621</sup> FIA at 3, 59–60.

<sup>622</sup> 7 U.S.C. 2(i).

7. Pre-Trade Risk Controls, Testing and Supervision of Automated Systems, Requirement To Submit Compliance Reports, and Other Related Algorithmic Trading Requirements

a. Summary of Proposed Rules

This section addresses the following proposed regulations: (i) The requirement that AT Persons implement pre-trade risk controls and other related measures (§ 1.80); (ii) standards for the development, testing, and monitoring of Algorithmic Trading systems by AT Persons (§ 1.81); (iii) registered futures association (“RFA”) standards for algorithmic trading systems (“ATSs”) operated by their members and clearing member FCMs with respect to customer orders originating with ATSs (§ 170.19); (iv) the requirement that AT Persons must become a member of a futures association (§ 170.18); (v) the requirement that clearing member FCMs implement pre-trade risk controls and other related measures (§ 1.82); (vi) the requirements of § 1.83, including that: AT Persons submit compliance reports to DCMs regarding their § 1.80(a)-required risk controls, as well as copies of the written policies and procedures developed to comply with § 1.81(a) and (c) (§ 1.83(a)); clearing member FCMs submit compliance reports to DCMs regarding their program for establishing and maintaining the pre-trade risk controls required by § 1.82(a)(1) for AT Person customers (§ 1.83(b)); AT Persons keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (§ 1.83(c)); and clearing member FCMs keep and provide upon request to DCMs books and records regarding their compliance with § 1.82 (§ 1.83(d)); (vii) the requirement that DCMs implement pre-trade risk controls and other related measures (§§ 38.255 and 40.20); (viii) the requirement that DCMs provide test environments where AT Persons may test their ATSs (§ 40.21); and (ix) the requirements of § 40.22, including that DCMs: implement rules requiring AT Persons and clearing member FCMs to submit compliance reports each year (§ 40.22(a) and (b)), establish a program for effective periodic review and evaluation of the reports (§ 40.22(c)), implement rules that require each AT Person to keep and provide to the DCM books and records regarding their compliance with all requirements pursuant to § 1.80 and § 1.81, and require each clearing member FCM to keep and provide to the DCM market books and records regarding their compliance with all requirements pursuant to § 1.82 (§ 40.22(d)), and require DCMs to review and evaluate, as

necessary, books and records required to be kept pursuant to § 40.22(d), and the measures described therein (§ 40.22(e)).

The pre-trade risk controls and other measures required by §§ 1.80, 1.82, 38.255, and 40.20 would require the following enumerated pre-trade risk controls: Maximum AT Order Message and execution frequencies, price parameters, and maximum order size limits. The regulations would also require certain order management controls, including kill switch and cancel-on-disconnect functionalities. Proposed § 170.19 would require an RFA to adopt certain membership rules—as deemed appropriate by the RFA—relevant to ATSs and algorithmic trading for each category of member in the RFA. Proposed § 170.18 would require all AT Persons to be registered as a member of an RFA.

Proposed § 1.81 would require AT Persons to establish policies and procedures that accomplish a number of objectives relating to the design, testing, and supervision of Algorithmic Trading. More specifically, proposed § 1.81 would require each AT Person to: Implement written policies and procedures for the development and testing of ATSs (§ 1.81(a)); implement written policies and procedures reasonably designed to ensure that each of its ATSs is subject to continuous real-time monitoring and supervision by knowledgeable and qualified staff while such ATS is engaged in trading (§ 1.81(b)); implement written policies and procedures reasonably designed to ensure that ATSs operate in a manner that complies with the CEA and the rules and regulations thereunder, and ensure that staff are familiar with the CEA and the rules and regulations thereunder, the rules of any DCM to which such AT Person submits orders through Algorithmic Trading, the rules of any RFA of which such AT Person is a member, the AT Person’s own internal requirements, and the requirements of the AT Person’s clearing member FCM, in each case as applicable (§ 1.81(c)); and implement written policies and procedures to designate and train staff responsible for Algorithmic Trading (§ 1.81(d)). As a complement to the proposed design and testing requirements, proposed § 40.21 would require DCMs to provide a test environment that will enable market participants to simulate production trading and conduct exchange-based conformance testing of their Algorithmic Trading systems.

Proposed § 1.83(a) would require AT Persons to submit annual reports to each DCM on which they operate regarding their pre-trade risk controls as required

by § 1.80(a). Together with such annual reports, each AT Person would also be required to submit copies of the written policies and procedures developed to comply with § 1.81(a) and (c). Proposed § 1.83(b) would require clearing member FCMs for AT Persons to submit reports to DCMs describing their program for establishing and maintaining the pre-trade risk controls required by § 1.82(a)(1). The Commission is also proposing a new § 40.22(c) to require that each DCM that receives a report described in § 1.83 establishes a program for effective periodic review and evaluation of the reports. In addition, proposed § 1.83(c) and (d) would require AT Persons and clearing member FCMs for AT Persons to keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). The Commission is also proposing a new § 40.22(d) and (e) to require that DCMs implement rules requiring AT Persons and clearing member FCMs to keep and provide such books and records, and to require DCMs to review and evaluate such books and records, and identify and remediate any insufficient mechanisms, policies and procedures therein.

b. Costs and Benefits

i. § 1.80 Costs—Pre-Trade and Other Risk Controls (AT Persons)

Based on Concept Release comments, best practices documents issued by industry or regulatory organizations, as well as existing regulations, the Commission believes that a significant number of AT Persons already implement the specifically-enumerated pre-trade and other risk controls required pursuant to proposed § 1.80. Specifically, in its survey of member firms, PTG found the following: (i) 25 out of 26 responding firms use message and execution throttles; (ii) all 26 responding firms use maximum order size limits, either using their own technology, the exchange’s technology, or some combination;<sup>623</sup> and (iii) 24 out of 26 responding firms use either price collars or trading pauses.<sup>624</sup> As to order management controls, two comments to the Concept Release from exchanges stated that they provide an optional cancel-on-disconnect functionality.<sup>625</sup>

<sup>623</sup> AIMA indicated that many market participants use maximum order size limits, and Gelber, a trading firm, stated that it uses this risk control. See AIMA at 13; Gelber at 10.

<sup>624</sup> FIA at 59–60.

<sup>625</sup> CME Appendix at A–4; CFE at 9–10. In addition, FIA characterized cancel-on-disconnect as a “widely adopted DCM-hosted pre-trade risk control.” See FIA at 14.

Those exchanges also indicated that they provide kill switch functionality to market participants.<sup>626</sup>

The Commission notes that these types of controls have been included in industry best practices for years. For example, FIA PTG recommended, among other things, that trading firms implement message limits, a repeated automated execution throttle, fat-finger limits and price collars, as well as “heartbeats” with the exchange, use of exchange-provided cancel-on-disconnect functionality, and a kill button that disables the system’s ability to trade and cancels all resting orders.<sup>627</sup> In addition, ESMA guidelines from 2012 recommended, among other things, that investment firms implement messaging traffic controls and price or size parameters.<sup>628</sup> The Commission also notes that the SEC’s Market Access Rule, adopted in November 2010, requires brokers and dealers to have risk controls that prevent entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.<sup>629</sup> Given that many firms are registered both with the SEC and the CFTC, it is likely that there is overlap between the set of firms covered under the SEC’s Market Access Rule and this Proposed Rule. Finally, in 2011, the CFTC TAC recommended, among other things, that trading firms implement message and execution throttles, maximum quantity limits, price collars, and a kill button.<sup>630</sup>

The Commission also notes that, as discussed in detail above in section II.E.1, NFA has provided guidance regarding ATs to industry participants since 2002. Such guidance includes NFA Interpretive Notice 9046, which addresses the “Supervision of the Use of Automated Order-Routing Systems” in the context of NFA’s overarching supervision requirements in Compliance Rule 2–9 (Supervision). This rule and interpretive notice are widely applicable to almost all registered futures market participants and therefore apply to many AT Persons. In particular, Compliance Rule 2–9 requires each NFA member to “diligently supervise its employees and agents in the conduct of their

commodity futures activities for or on behalf of the Member.” Interpretive Notice 9046, first issued in 2002 and revised in 2006, provided, among other things, that an AORS should allow the Member to set limits for each customer based on commodity, quantity, and type of order or based on margin requirements, and should allow the Member to impose limits pre-execution and to automatically block any orders that exceed those limits. In addition, the interpretive notice provided that when authorizing use of a direct access system, the Member should utilize pre-execution controls, if available, to set pre-execution limits for each customer, regardless of the nature of the customer.

Although proposed § 1.80 is consistent with accepted industry best practices of long standing and existing Commission and SEC regulations to which many AT Persons now comply, Regulation AT’s risk control requirements will impose technology and personnel costs on AT Persons. These costs include initial risk control creation costs and possibly ongoing maintenance costs. Many AT Persons already have the controls required by Regulation AT in place, and will only need to upgrade such controls to ensure compliance. To the extent some AT Persons may be outliers that do not currently implement risk controls consistent with industry best practice—a number the Commission lacks data to accurately identify and quantify—these firms would incur costs greater than “upgrade” costs. The costs to any such outlier firms would vary based on each firm’s unique size, business model, technology and existing risk controls. The Commission recognizes that some firms will already have entirely compliant systems requiring no upgrade and, at the other end of the spectrum, some firms may not be currently implementing the § 1.80 required risk controls at all. Accordingly, the Commission estimates the “upgrade” costs for AT Persons to comply with Regulation AT risk control requirements, and welcomes comment on the accuracy of such estimates.

Aside from costs to individual AT Persons in creating and maintaining the controls required by Regulation AT, in quantifying costs of § 1.80, the Commission considered that this regulation may impose general costs to the marketplace as a whole. For example, while the Commission expects that most AT Persons will only need to upgrade systems in order to comply with Regulation AT, it is possible that costs related to the implementation of new risk controls could lead to adverse effects. For example, compliance costs

may cause some AT Persons to reduce, or cease, their activities in certain markets. This may result in a decrease in market liquidity, which may cause the costs of trading to increase. In order to mitigate these potential concerns, the Commission has (as discussed further in the consideration of alternatives) limited the compliance requirements to what it preliminarily believes is the minimum level needed to protect market participants and the public. In addition, as discussed in section (ii) below, the Commission believes that the standardization of risk controls may result in the provision of additional liquidity.

Other potential costs related to risk controls are similarly hard to quantify. Kill switches aim to cease unintended message behavior, and the potential losses and disruption associated with such behavior. However, the mandatory triggering of a kill switch when not appropriate to a particular firm could also prevent the firm’s legitimate, risk-reducing activity, and instead result in increased costs for such firm. This distinction emphasizes the need to appropriately calibrate risk controls on an individual basis, and the Commission has proposed rules that accommodate that need. While the Commission attempts to quantify costs to individual firms, the Commission is also aware of the broader impact of the proposed rules on markets once firms apply the proposed risk controls, including potential effects on liquidity. The Commission welcomes comments on these and other potential market-wide effects of the proposed regulations.

In addition to the potential costs to the market as a whole discussed above, individual AT Persons may incur costs of risk control implementation, in particular the cost of upgrading systems in order to comply with the proposed regulations. Specifically, if a particular AT Person’s systems are not already compliant with § 1.80, it will need to comply with the pre-trade and other risk controls in one of several ways: By internally developing such controls from scratch, upgrading existing systems, or through purchasing a risk management solution from an outside vendor. Each approach potentially has initial costs and annual ongoing costs. Based on responses to the FIA survey, industry best practice standards, and existing regulations both in Commission-regulated markets as well as SEC-regulated markets, the Commission believes that many AT Persons will be able to substantially satisfy the risk control requirements of Regulation AT with their existing systems and controls. For others, the

<sup>626</sup> CME at 23–24; CFE at 11.

<sup>627</sup> FIA PTG, “Recommendations for Risk Controls for Trading Firms,” (Nov. 2010) at 4–5.

<sup>628</sup> ESMA Guidelines, *supra* note 61 at 14–15.

<sup>629</sup> See 17 CFR 240.15c3–5(e); SEC, Responses to Frequently Asked Questions Concerning Risk Management Controls for Brokers or Dealers with Market Access (Apr. 15, 2014), *supra* note 37.

<sup>630</sup> CFTC TAC Recommendations, *supra* note 34 at 2–3.

costs of upgrading and introducing the required systems would vary considerably based on current controls and procedures, as well as particular business models.<sup>631</sup>

Rather than develop or upgrade its own systems, AT Persons may choose to purchase a risk management solution from a third-party vendor, a DCM, or a clearing member FCM. These costs could similarly vary, depending on the AT Persons' current systems and controls in place, the types of trading strategies it uses, the volume and speed of its trading activity, and the pricing model utilized by the software vendor. As one example, the Commission notes that CME provides a number of risk management tools to its market participants and clearing firms. These tools include: Cancel-on-disconnect, CME Globex credit controls, a Risk Management Interface (RMI) (which allows clearing members to manage risk), drop copy, FirmSoft (the ability to view and cancel orders), a kill switch (a single step shutdown of trading activity) and self-trade prevention.<sup>632</sup> As another example, NASDAQ OMX Group, Inc. offers risk management tools that include fat finger price checks, maximum order quantity checks, daily accumulated quantity checks, maximum order rate per second checks, disconnect safeguards, email notifications when limits or warning levels are breached, and an administration interface that allows emergency actions.<sup>633</sup> Many of these mirror, or complement, risk controls included within this proposed rule.

The Commission estimated the costs for AT Persons to comply with proposed § 1.80. In making its estimates, the Commission made several assumptions. The Commission assumes that the effort to adjust any one control (by "control," in this context, the Commission means the pre-trade risk controls, order cancellation systems, and connectivity systems required by § 1.80) would require assessment and possible modifications to all controls.<sup>634</sup> The

required programming changes could be applied using flexible and generalizable methods and leveraged across all algorithms. The Commission recognizes that execution speed is considered to be a significant factor in algorithmic trading, and understands that controls have the potential to impact execution speed; however, the Commission believes that requiring a base set of risk controls will, rather than further increasing speed disadvantages across market participants, partially reduce them by ensuring that no firm avoids the use of a given control to gain an advantage. Because each AT Person is unique and technological systems across AT Persons will vary, the following estimates reflect staff's best efforts, and the Commission welcomes comments on their accuracy.

**Estimate—Upgrade of Controls.** The Commission considered the scenario where an AT Person already implements controls as required by proposed § 1.80, but the controls may not comply with every aspect of the regulation. In such instance, an AT Person will need to evaluate its current risk control systems to determine whether it is compliant with new regulatory requirements; modify existing code or creating new code to address any gaps between current risk control systems and new regulatory requirements; and test current systems and new code to verify correct operation and compliance. The Commission assumes that AT Persons will generally already have some code in place for the basic controls required by § 1.80, or for something similar that can be added to or modified, rather than need to build entire pre-trade systems from scratch. For example, an AT Person may have an existing library of "code blocks," with a block being useful for multiple related purposes.

Accordingly, the Commission estimates that an AT Person would incur a one-time cost of \$79,680 to upgrade its systems to comply with proposed § 1.80. This cost is broken down as follows: 1 Project Manager, working for 320 hours (320 × \$70 per hour = \$22,400); 1 Business Analyst, working for 320 hours (320 × \$52 per hour = \$16,640); 1 Tester, working for 320 hours (320 × \$52 per hour = \$16,640); and 1 Developer, working for 320 hours (320 × \$75 per hour = \$24,000). The Commission estimates that if an AT Person already has at least some of the controls required by § 1.80, there will be no additional annual costs to maintain the modifications required to bring the systems into compliance with § 1.80. Assuming (as discussed above) that there are 420 AT Persons,

the Commission estimates that the total one-time industry cost to implement § 1.80 would be approximately \$33,465,600.

The Commission notes that AT Persons could choose not to develop these controls internally, but rather may purchase a solution from an outside vendor (or DCM or clearing member FCM) in order to comply with § 1.80. The Commission welcomes comments providing estimates concerning the cost for an AT Person to use an outside vendor to comply with this proposed regulation.

**SEC Estimates.** The proposing release for the SEC's Market Access Rule, which requires brokers and dealers to have risk controls in place before providing their customers with access to the market, provided compliance costs estimates.<sup>635</sup> The Commission's upgrade estimates are generally consistent with the cost estimates provided by the SEC. For example, the SEC estimated that it would cost a broker-dealer approximately \$270,404 (\$167,904 in technology personnel costs and \$102,500 in hardware and software costs) to build a risk control management system from scratch and that it would cost a broker-dealer \$39,401 (\$27,984 for technology personnel and \$11,517 for hardware and software) to substantially upgrade an existing risk control system.<sup>636</sup> The SEC estimated that the total annual ongoing cost to maintain an in-house risk control management system would be \$47,300 per broker-dealer (\$26,800 for technology personnel and \$20,500 for hardware and software).<sup>637</sup> Finally, with respect to outsourcing such controls, the SEC estimated that a broker-dealer would pay approximately \$8,000 per month (\$96,000 annually) for a startup contract.<sup>638</sup> To be conservative, the SEC estimated the same amount for an annual ongoing cost.<sup>639</sup>

The Commission notes that in addition to the general requirements of proposed § 1.80 to implement pre-trade risk controls, order cancellation systems and connectivity systems, § 1.80 imposes additional requirements relating to such controls. Regulation § 1.80(a)(2) provides requirements as to the level at which pre-trade risk controls should be set and § 1.80(a)(3) requires that natural person monitors be promptly alerted when such parameters are breached. The Commission assumes

<sup>631</sup> For example, the needs of a particular AT Person will vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the types of trading strategies it uses, and the volume and speed of its trading activity.

<sup>632</sup> CME Group, "Risk Management Tools Introduction," available at: <http://www.cmegroup.com/globex/trading-cme-group-products/risk-management-tools.html>.

<sup>633</sup> NASDAQ OMX Group, Inc., "Pre-Trade Risk Management—Genium INET," available at: <http://www.nasdaqomx.com/nordicprn/geniuminet>.

<sup>634</sup> The Commission also assumes that the most difficult control to implement will be message and execution throttles because such throttles will need to be coordinated among many complex algorithms running simultaneously.

<sup>635</sup> See Securities Exchange Act Release No. 61379 (January 19, 2010), 75 FR 4007 (January 26, 2010) (File No. S7-03-10).

<sup>636</sup> See *id.* at 4022.

<sup>637</sup> See *id.*

<sup>638</sup> See *id.*

<sup>639</sup> See *id.*



that such requirements impose no additional costs or are part of the costs described above. Establishing particular parameters of controls is a necessary part of establishing and implementing any control. In addition, as discussed below, the Commission assumes that it is already industry practice to employ a natural person to test and monitor a firm's algorithmic trading systems. Accordingly, requiring that natural person monitors at the AT Person be alerted with pre-trade risk control parameters are breached should not impose additional costs on AT Persons.

Proposed § 1.80(d) requires each AT Person, prior to its initial use of Algorithmic Trading, to submit a message or order to a DCM's trading platform, must notify its clearing member FCM and the DCM on which it will be trading that it will engage in Algorithmic Trading. Subject to consideration of relevant comments, the Commission preliminarily believes that this requirement of this initial notification to clearing firms and DCMs will impose minimal or no costs on AT Persons. The Commission welcomes comment on the costs, if any, of this notification requirement.

Proposed § 1.80(e) requires AT Persons to implement a DCM's self-trade prevention tools. The Commission's self-trade prevention requirements are principally directed toward DCMs, in that § 40.23 would require DCMs to apply, or provide and require the use of, self-trade prevention tools. The Commission believes that DCMs would incur the costs of developing or upgrading such tools as necessary to comply with § 40.23. To the extent that AT Persons are not already complying with DCM-provided self-trade prevention tools already used in industry, the Commission believes that the cost to an AT Person in calibrating or otherwise applying such a tool would be a minimal, involving provision of the relevant account or other necessary information in the DCM in order to apply the tool. The Commission welcomes comment on the costs, if any, to an AT Person in complying with § 1.80(e).

Finally, proposed § 1.80(f) requires that each AT Person shall periodically review its compliance with § 1.80 to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event. AT Persons must take prompt action to document and remedy deficiencies in such policies and procedures. The Commission believes that this periodic review is necessary to comply with § 1.83(a), which, as discussed below,

requires AT Persons to annually submit reports regarding their pre-trade risk controls required pursuant to proposed § 1.80(a) and copies of the written policies and procedures developed to comply with § 1.81(a) and (c) to each DCM on which they operate.

Accordingly, the Commission believes that articulating such requirement explicitly in the final subsection of this rule will not engender costs separate from those previously discussed and considered.

The Commission emphasizes that costs for each AT Person will vary. Finally, the Commission notes that, as indicated above, these estimates may overstate the actual costs to the industry. Based on Concept Release comments, best practices issued by industry and regulatory organizations, as well as existing regulations, the Commission believes that all or most AT Persons are already using the pre-trade and other risk controls required by proposed § 1.80. The Commission welcomes public comment on the above analysis and estimates.

#### ii. § 1.80 Benefits—Pre-Trade and Other Risk Controls (AT Persons)

Proposed § 1.80 should benefit market participants by mitigating credit, market, and operational risks faced by trading firms. Standardization of pre-trade and other risk controls is particularly critical in the context of potential outlier trading firms that have chosen not to implement appropriate risk controls in the absence of regulation. As noted above (for example, with respect to the Knight Capital incident), a technological malfunction at such a single firm can have far-reaching impact across markets and market participants. Credit, market and operational risks are mitigated through ensuring that each order accurately reflects the intentions of the participant and does not otherwise violate the CEA or Commission regulations. The pre-trade and other risk controls required by proposed § 1.80 should improve both price efficiency and price transparency in Commission-regulated markets by reducing the chances of large, unintended orders moving prices away from appropriate market values. Absent protections, unintended and erroneous trades resulting from a malfunctioning trading system could potentially expose not just the original market participant, but any participant exposed to the given market, to unexpected financial burdens as a result of price moves. These burdens may include the financial impact on market participants with open positions impacted by price moves, or market participants with

market orders in the order book. In addition to these losses, and potentially uncertain trading positions, sudden, large unintentional market activity can disrupt the efficiency, competitiveness and financial integrity of the futures markets. Because much of the impact of such unintended trades is independent of connection method, it is in the individual trading firm's interest, and the interest of Commission-regulated markets as a whole, to have all types of algorithmic trading orders, regardless of access method, be subjected to sound risk controls.

As noted, the Commission believes that proposed regulation § 1.80 standardizes existing industry practices in this area, and does not impose additional requirements beyond existing best practices that most market participants satisfy. Accordingly, the Commission notes that many of the benefits of § 1.80 are already being realized. This proposed rule, however, may serve to limit a "race to the bottom" in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. The proposed rules, by standardizing the risk controls required to be used by firms, would help ensure that the benefits of these risk controls are more evenly distributed across a wide set of market participants, and reduce the likelihood that an outlier firm without sufficient risk controls causes significant market disruption.

Incidents like the one involving Knight Capital highlight the importance of using pre-trade and other risk control protections. Specifically, an SEC investigation found that Knight Capital did not have adequate safeguards in place to limit the risks posed by its access to the markets, and, as a result, failed to prevent the entry of millions of erroneous orders.<sup>640</sup> Knight Capital also failed to conduct adequate reviews of control effectiveness.<sup>641</sup> The SEC charged Knight Capital with multiple violations of the SEC's Market Access Rule, which included failure to have adequate controls at a point immediately prior to its submission of orders to the market, such as a control to compare orders leaving the router with those entered.<sup>642</sup> Knight also failed to adequately review its business activity in connection with its market access to ensure the overall effectiveness of its risk management controls and supervisory procedures.<sup>643</sup>

<sup>640</sup> See SEC Knight Capital Release, *supra* note 39.

<sup>641</sup> See *id.*

<sup>642</sup> See *id.*

<sup>643</sup> See *id.*

As a result of these failures, the SEC found that Knight put not only themselves, but the markets in general, at risk. The Commission views prevention of disruptive events like that involving Knight Capital as an important benefit of § 1.80 that impacts all market participants and the public.

By requiring, and standardizing, certain risk controls implemented by traders and trading firms, the Commission intends to foster a level playing field across market participants, and avoid a situation where firms with stronger risk control systems face speed disadvantages. The Commission also recognizes that in the absence of a rule requiring implementation of certain risk controls, some market participants may be compelled by competitive and economic pressures to submit orders, or allow the submission of orders, without appropriate controls to safeguard against the risks of a malfunctioning algorithm. The race for speed may reduce the incentive to add risk controls, and the absence of risk controls can magnify the effect, and cost, of errors in the high speed trading environment. In addition, the mitigation of significant system risks should help ensure market integrity and provide the investing public with greater confidence that all transactions, along with the resulting price movements, are intentional and bona fide. Regulation AT should promote investor confidence as well as enhance the fair and efficient operation of the markets.

The Commission believes that market participants, in particular those currently using risk controls, may face a number of disadvantages due to the fact that risk controls for algorithmic trading are not standardized, and that these disadvantages may discourage market participants from providing liquidity. Market participants may be concerned about their exposure to potential losses due to Algorithmic Trading events and various market abuses in the absence of standardized risk controls and other measures. Market participants may also be concerned whether market orders and trades in fact reflect the intent of the market participants submitting them. The Commission thus expects, subject to consideration of comments, that standardization of risk control requirements for all AT Persons via Regulation AT will reduce such costs and trading disincentives for market participants arising from Algorithmic Trading events and market abuses. The Commission also expects, subject to consideration of comments, that standardization will reduce unexpected costs that market participants currently

experience when unfavorable price movements occur due to the behavior of another market participant's faulty algorithm. As a result, the Commission, subject to consideration of comments, views the proposed standardized risk controls as a tool likely to encourage AT Persons and other market participants to provide additional liquidity, mitigating the potential negative impact on market liquidity from certain costs associated with Regulation AT, as previously discussed in section (i) above.

### iii. § 1.81 Costs—Development, Testing and Supervision of Algorithmic Systems (AT Persons)

The Commission believes that most market participants and DCMs have implemented controls regarding the design, testing, and supervision of Algorithmic Trading systems, in light of the numerous best practices and regulatory requirements promulgated in this area. For this fully compliant majority, the codification of such standards in proposed § 1.81 should not engender additional costs. For any market participants that are not fully compliant, some additional costs may be expected. These efforts include the FIA PTG's November 2010 "Recommendations for Risk Controls for Trading Firms," FIA's March 2012 "Software Development and Change Management Recommendations," ESMA and MiFID II guidelines and directives on the development and testing of algorithmic systems, SEC Regulation SCI requirements on the development, testing, and monitoring of SCI systems, FINRA's March 2015 Notice 15-09 on effective supervision and control practices for market participants that use algorithmic trading strategies in the equities market, IOSCO's April 2015 Consultation Report, summarizing best practices that should be considered by trading venues when developing and implementing risk mitigation mechanisms, and the Senior Supervisors Group (SSG) April 2015 Algorithmic Trading Briefing Note, which described how large financial institutions currently monitor and control for the risks associated with algorithmic trading during the trading day.

The Commission has calculated an estimated maximum cost to an AT Person that has not implemented any of the design, testing, and supervision standards required by proposed § 1.81 as further described below. To the extent an AT Person is already in partial compliance with § 1.81, as the Commission believes many are likely to be, their costs should be less than the maximum described.

*Development and Testing.* The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(a) (development and testing of Algorithmic Trading Systems) would incur a total cost of \$349,865 to implement these requirements. This cost is broken down as follows: 1 Project Manager, working for 1,707 hours ( $1,707 \times \$70 = \$119,490$ ); 2 Business Analysts, working for a combined 853 hours ( $853 \times \$52 = \$44,356$ ); 3 Testers, working for a combined 2,347 hours ( $2,347 \times \$52 = \$122,044$ ); and 2 Developers, working for a combined 853 hours ( $853 \times \$75 = \$63,975$ ).<sup>644</sup>

*Monitoring.* The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(b) (monitoring of Algorithmic Trading Systems) would incur a total cost of \$196,560 to implement these requirements. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 2,080 hours ( $2,080 \times \$57 = \$118,560$ ); and 1 Business Analyst, working for 1,500 hours ( $1,500 \times \$52 = \$78,000$ ).<sup>645</sup>

*Compliance.* The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(c) (compliance of Algorithmic Trading Systems) would incur a total cost of \$174,935 to implement these requirements. This cost is broken down as follows: 1 Project Manager, working for 853 hours ( $853 \times \$70 = \$59,710$ ); 2 Business Analysts, working for a combined 427 hours ( $427 \times \$52 = \$22,204$ ); 3 Testers, working for a combined 1,173 hours ( $1,173 \times \$52 = \$60,996$ ); and 2 Developers, working for a combined 427 hours ( $427 \times \$75 = \$32,025$ ).

*Designation and Training of Staff.* The Commission estimates that an AT Person that has not implemented any of the requirements of proposed § 1.81(d) (designation and training of Algorithmic Trading staff) would incur a total cost of \$101,600 to implement these requirements. This cost is broken down as follows: 1 Senior Compliance Specialist, working for 500 hours ( $500 \times \$57 = \$28,500$ ); 1 Project Manager, working for 500 hours ( $500 \times \$70 = \$35,000$ ); 1 Developer, working for 300 hours ( $300 \times \$75 = \$22,500$ ); and 1

<sup>644</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>645</sup> As discussed above, the Commission notes that staff persons who are responsible for monitoring the trading of other AT Person staff should not simultaneously be actively engaged in trading. The Commission believes that it would not be possible to adequately and consistently monitor trading of other AT Person staff while engaged in trading activities.

Business Analyst, working for 300 hours (300 × \$52 = \$15,600).

Notwithstanding these estimates, the Commission believes that proposed § 1.81 standardizes existing industry practices in this area, but does not impose additional requirements that are not already followed by the majority of market participants. As a result, subject to consideration of relevant comments, the Commission preliminarily believes that regulation § 1.81 would not impose additional costs on the majority of AT Persons and that the costs imposed on AT Persons that are in partial compliance with § 1.81 will be less than the amounts described above.

iv. § 1.81 Benefits—Development, Testing and Supervision of Algorithmic Systems (AT Persons)

The rules proposed with respect to the design, testing, and supervision of Algorithmic Trading systems are intended to further mitigate the risk of Algorithmic Trading. In their response to the Concept Release, IATP noted that, out of all the safeguards discussing in the Release, they believed ATS testing had the greatest potential to reduce market disruptions.<sup>646</sup> By standardizing principles in this area, Regulation AT is intended to reduce the risk of disorderly trading, including the risk that orders will be unintentionally sent into the marketplace by a poorly designed or insufficiently supervised algorithm.

For example, the regulations proposed under § 1.81 may reduce the risk of market disruptions such as the 2012 incident involving Knight Capital. The SEC later concluded that, among other failures, Knight Capital did not have adequate controls and procedures for code deployment and testing for its order router, did not have sufficient controls and written procedures to guide employees' responses to significant technological and compliance incidents, and did not have an adequate written description of its risk management controls.<sup>647</sup> Proposed § 1.81 requires written policies and procedures relating to the following: Testing of all Algorithmic Trading code and relates systems and any changes to such code and systems prior to their implementation; regular stress tests of ATs to verify their ability to operate in the manner intended under a variety of market conditions; a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design,

changes, testing, and controls; and procedures for documenting the strategy and design of proprietary Algorithmic Trading software used by an AT Person, among other controls. The standardization of such written policies and procedures may make disruptive events like the Knight Capital incident less likely in the future.

As noted, the Commission believes that proposed regulation § 1.81 standardizes existing industry practices in this area, and does not impose additional requirements that are not already followed by the majority of market participants. Accordingly, the Commission notes that many of the benefits of § 1.81 are already being realized. The proposed rule would help ensure that the benefits of the required testing and supervision will be fully realized and sustained into the future.

v. § 170.19 Costs—RFA Standards for Automated Trading and Algorithmic Trading Systems (RFAs)

Proposed § 170.19 requires an RFA to establish and maintain a program for the prevention of fraudulent and manipulative acts and practices, the protection of the public interest, and perfecting the mechanisms of trading on designated contract markets through membership rules, as deemed appropriate by the RFA, requiring: (1) Pre-trade risk controls and other measures for ATs; (2) standards for the development, testing, monitoring, and compliance of ATs; (3) designation and training of algorithmic trading staff; and (4) operational risk management standards for clearing member FCMs with respect to customer orders originating with algorithmic trading systems.

Proposed § 170.19 will impose costs on an RFA to establish and maintain a program as described in the rule. However, RFAs would only be required to adopt rules as they deem appropriate; any rulemaking pursuant to proposed § 170.19 would be entirely at the discretion of the RFA. The Commission believes that the costs to an RFA of proposed § 170.19 cannot reasonably be quantified given RFAs' complete discretion to adopt many, several, or no rules in the foreseeable future pursuant to § 170.19. In addition, relevant rulemaking by an RFA is likely to be episodic, as circumstances warranting rulemaking will typically not arise on an annual basis. With those caveats, however, for purposes of this analysis and as a basis for comment, the Commission is using its own experience to quantify the potential costs of proposed § 170.19 to an RFA on those occasions when it determines to adopt

rules. For purposes of this exercise, the Commission anticipates that an RFA could potentially seek to codify industry best practices in order to establish a baseline of regulatory standardization around such practices.

The Commission believes that the work of adopting these rules would fall primarily to legal, information technology, and compliance staff within an RFA. It estimates 450 hours of burden for an RFA to adopt rules. This includes analysis of existing industry best practices, consultation with market participants, drafting rules, further consultations, including potentially with Commission staff, and adoption of final rules. The Commission estimates a total cost of \$34,200 for these efforts. This cost is broken down as follows: 2 Compliance Attorneys, working for a combined 150 hours (150 hours × \$96 per hour = \$14,400); 2 Developers, working for a combined 150 hours (150 hours × \$75 per hour = \$11,250); and 2 Senior Compliance Specialists, working for a combined 150 hours (150 hours × \$57 per hour = \$8,550), for a total cost of \$34,200.<sup>648</sup>

The Commission notes that an RFA, after familiarizing itself with relevant best practices, may determine that additional membership rules pursuant to proposed § 170.19 are unnecessary. Under those circumstances, elements of the work described above would not be required, and the total estimated cost of \$34,200 would not be incurred. The Commission believes, for example, that Compliance Attorneys, Developers, and Senior Compliance Specialists could analyze best practices and determine that additional membership rules are not required after a combined 150 hours of work (50 hours of work for each professional role). The Commission estimates a total cost of \$11,400 for these efforts. This cost is broken down as follows: 2 Compliance Attorneys, working for a combined 50 hours (50 hours × \$96 per hour = \$4,800); 2 Developers, working for a combined 40 hours (50 hours × \$75 per hour = \$3,750); and 2 Senior Compliance Specialists, working for a combined 50 hours (50 hours × \$57 per hour = \$2,850), for a total cost of \$11,400.<sup>649</sup>

<sup>648</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>649</sup> In this regard, the Commission estimates that total costs for an RFA could range between \$11,400 and \$34,200 based on the amount of work invested before the RFA determined not to pursue additional membership rules pursuant to proposed § 170.19.

<sup>646</sup> IATP at 7.

<sup>647</sup> See SEC Knight Capital Release, *supra* note 39.

vi. § 170.19 Benefits—RFA Standards for Automated Trading and Algorithmic Trading Systems (RFAs)

The Commission believes that proposed § 170.19, by requiring RFAs to establish and maintain a program addressing the automated trading and algorithmic trading systems of its members, will help to advance the goals described in § 170.19: Prevention of fraudulent and manipulative acts and practices, the protection of the public interest, and perfecting the mechanisms of trading on designated contract markets.

RFAs serve a vital regulatory function as frontline regulators of their members, which would include all AT Persons pursuant to proposed § 170.18. RFAs promulgate binding membership rules and can supplement Commission rules as appropriate. RFAs can also operate examination programs to monitor members' compliance with association rules, and can sanction members for non-compliance. The Commission believes that because RFAs have these and other tools at their disposal, RFAs are well-positioned to address rules in areas experiencing rapid evolution in market practices and technologies, including particularly §§ 1.80, 1.81, and 1.82.

The Commission believes that the structure of proposed §§ 1.80, 1.81, and 1.82 makes it particularly appropriate to give RFAs a discretionary role in augmenting the requirements of Regulation AT for AT Persons. Proposed §§ 1.80, 1.81, and 1.82 address only a subset of potentially responsive risk controls and other measures. Each AT Person remains free to adopt additional safeguards reasonably designed to prevent an Algorithmic Trading Event given its trading strategies, technologies, or the markets in which it participates. The proposed rules also provide a degree of flexibility regarding the design, implementation, or calibration of those pre-trade risk control or other measures that are specifically required in §§ 1.80, 1.81, and 1.82, again allowing each AT Person to adapt the rules to its own trading and technology. Given the degree of flexibility embedded in these rules, RFAs will be well positioned to work with their member AT Persons to develop standards that are appropriate to each AT Person's specific trading approach and technology, and that best serve to promote the goals described in § 170.19.

vii. § 170.18 Costs—AT Person Membership in a Registered Futures Association (AT Persons)

Proposed § 170.18 requires each registrant that is an AT Person that is not otherwise required to be a member of an RFA pursuant to §§ 170.15, 170.16, or 170.17 to become and remain a member of at least one RFA that provides for the membership of such registrant, unless no such futures association is so registered. Proposed § 170.18 would only affect those entities that are not required to become members of an RFA pursuant to §§ 170.15, 170.16, or 170.17. Floor brokers and floor traders, who have historically been overseen by the DCMs on which they operate, are not required by §§ 170.15, 170.16, or 170.17 to become members of an RFA and would likely be the entities impacted by proposed regulation 170.18. The new membership requirements would require affected entities to pay initial and annual NFA membership dues.

NFA charges each FCM registrant \$5,625 in initial membership dues and \$5,625 per year for continuing NFA membership where NFA is the SRO. The Commission estimates that membership dues for AT Person floor traders or floor brokers may also be \$5,625, but that actual dues may be different than this. This is because while NFA will generally have more limited oversight responsibilities for AT Person floor traders and floor brokers, it may pass on the costs of proposed § 170.19 to AT Person members in the form of higher dues.<sup>650</sup> The Commission estimates that there will be approximately 100 entities that are AT Persons and will register as floor traders under the new registration requirements of § 1.3(x)(3). It is likely that these 100 entities will be the only entities that will be required to become members of an RFA pursuant to proposed regulation 170.18. Accordingly, the Commission estimates that entities affected by proposed regulation 170.18 will incur a total initial cost of about \$562,500 for NFA membership dues (about \$5,625 in annual membership dues per registrant, paid each year by 100 registrants) and a total annual cost of about \$562,500.

The Commission also preliminarily believes that the rule may impose certain compliance costs on affected entities. However, such costs should not be substantially different from or significantly exceed the costs associated with current Commission regulations and proposed Regulation AT generally.

<sup>650</sup> Currently, while floor traders and floor brokers register with the NFA, they do not become NFA members, and, thus, do not pay membership dues.

As discussed above, proposed § 170.18 will likely only affect those floor traders that were required to register with the Commission pursuant to § 1.3(x)(3). NFA, as the only currently registered RFA, has not to date promulgated any rules specific to floor traders or AT Persons. As a result, the only current NFA membership rules that these entities would be required to follow are those rules that are generally applicable to all NFA members. Many of these rules are general in nature and mirror current Commission regulations or those proposed in Regulation AT. Accordingly, these entities would not incur any additional general, ongoing compliance costs as a result of NFA membership.

viii. § 170.18 Benefits—AT Person Membership in a Registered Futures Association (AT Persons)

Because entities that are not members of an RFA are not bound by the rules of the RFA, the Commission is proposing § 170.18 to ensure that all AT Persons (including newly registered floor traders) would become members of an RFA and would therefore be subject to any membership rules promulgated by such RFA. Regulation AT proposes to establish a role for RFAs in setting the framework in which AT Persons operate. Proposed § 170.19, which is described in greater detail above, requires an RFA to adopt rules, as deemed appropriate by the RFA, requiring (i) pre-trade risk controls for ATs; (ii) standards for the development, testing, monitoring and compliance of ATs; (iii) designation and training of algorithmic trading staff; and (iv) operational risk management standards for clearing member FCMs with respect to customer orders originating with ATs. The benefits of these risk controls and other measures are described in more detail throughout this section.<sup>651</sup>

ix. § 1.82 Costs—Pre-Trade and Other Risk Controls (FCMs)

Based on Concept Release comments, best practices documents issued by industry or regulatory organizations, as well as existing regulations, the Commission believes that clearing member FCMs already implement the specifically-enumerated pre-trade and other risk controls required pursuant to proposed § 1.82. Specifically, in its survey of FCMs, FIA found that all responding firms used message and execution throttles, maximum order sizes, price collars, and order

<sup>651</sup> See, e.g., the discussion of benefits related to proposed §§ 1.80, 1.81, and 1.82.

cancellation capabilities, including a kill switch, either administered internally or at the exchange level.<sup>652</sup> FIA also indicated that most DCMs provide tools to allow the FCM to set pre-trade controls for their customers, which are a prerequisite for an FCM to provide direct access to a market participant without routing orders through the FCM's infrastructure.<sup>653</sup> Two exchanges commented that their kill switch functionality allows clearing firms to cancel orders.<sup>654</sup>

The Commission notes that these types of controls have been subject of industry best practices for years. For example, FIA's Market Access Risk Management Recommendations from 2010 recommended, among other things, that a clearing firm providing direct access to a market should implement maximum quantity limits, price banding or dynamic price limits and exchange-provided order cancellation capabilities.<sup>655</sup> The ESMA Guidelines from 2012 recommended that firms providing direct market access or sponsored access (as such terms are defined by ESMA)<sup>656</sup> must, among other things, implement controls that limit messaging traffic and establish price and size parameters.<sup>657</sup>

Nevertheless, the Commission recognizes that there could be costs associated with implementation of the risk controls in § 1.82. Specifically, for purposes of Direct Electronic Access (DEA), defined in proposed § 1.3(yyyy), if clearing members do not already use DCM-provided systems, they will need to implement additional DCM-provided systems. For non-DEA orders, clearing firms will need to internally develop such controls from scratch, upgrade existing systems, or purchase a risk management solution from an outside vendor. Each approach potentially has initial costs and annual ongoing costs, although the costs of upgrading and implementing the required systems would vary considerably based on current controls and procedures, as well as particular business models. For

<sup>652</sup> FIA at 60.

<sup>653</sup> FIA at 13. Two exchanges commented that they provide technology allowing clearing members to set maximum order size limits. See CME at 23–24; CFE at 11.

<sup>654</sup> CME at 23–24; CFE 11.

<sup>655</sup> FIA Market Access Working Group, "Market Access Risk Management Recommendations," (April 2010) at 8–10.

<sup>656</sup> ESMA defines direct market access as an investment firm's client transmitting orders to a trading platform using the investment firm's infrastructure, and sponsored access as a client transmitting orders directly to a trading platform without such orders passing through the investment firm's infrastructure. See ESMA Guidelines, *supra* note 61 at 4–5.

<sup>657</sup> See *id.* at 14–15, 21–23.

example, the needs of a clearing member will vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the types of trading strategies its customers use, and the volume and speed of its customers' trading activity.

*Estimate-DEA Orders, Update to Controls.* The Commission also estimated costs to a clearing member that already uses DCM-provided controls with respect to DEA orders and only needs to assess and update its implementation in order to ensure it fully complies with § 1.82. The Commission assumed that message handling already exists and little is needed to update the clearing member's systems in order to comply with § 1.82. As noted above with respect to AT Persons and compliance with § 1.80, the Commission believes that upgrading existing systems to comply with § 1.82 would involve evaluating current risk control systems to determine compliance with new regulatory requirements; modifying existing code or creating new code to address gaps between current risk control systems and new regulatory requirements; and testing current systems and new code to verify correct operation and compliance. The Commission estimates that the cost for a clearing member to assess and update its implementation of controls required by § 1.82 is \$49,800. This cost is broken down as follows: 1 Project Manager, working for 200 hours (200 × \$70 per hour = \$14,000); 1 Business Analyst, working for 200 hours (200 × \$52 per hour = \$10,400); 1 Tester, working for 200 hours (200 × \$52 per hour = \$10,400); and 1 Developer, working for 200 hours (200 × \$75 per hour = \$15,000). The 57 clearing members that will be subject to § 1.82 would therefore incur a total one-time cost of \$2,838,600 (57 × \$49,800) to update their controls.<sup>658</sup> The Commission estimates that if a clearing member already implements at least some of the DCM-provided controls required by § 1.82, there will be no additional annual costs to maintain the modifications required to bring the clearing member's systems into compliance with § 1.82.

*Estimate-Non-DEA Orders, Update to Controls.* The Commission also estimated costs to clearing members to comply with § 1.82's requirements with respect to non-DEA orders assuming that the clearing member already has the pre-trade and other risk controls in place, and must only update the

<sup>658</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

controls to ensure that they comply with the regulation. The Commission estimates that the cost for a clearing member to assess and update its implementation of such controls is \$159,360. This cost is broken down as follows: 1 Project Manager, working for 640 hours (640 × \$70 per hour = \$44,800); 1 Business Analyst, working for 640 hours (640 × \$52 per hour = \$33,280); 1 Tester, working for 640 hours (640 × \$52 per hour = \$33,280); and 1 Developer, working for 640 hours (640 × \$75 per hour = \$48,000). The 57 clearing members that will be subject to § 1.82 would therefore incur a total one-time cost of \$9,083,520 (57 × \$159,360) to update their controls.<sup>659</sup> The Commission estimates that if a clearing member already implements at least some of the DCM-provided controls required by § 1.82, there will be no additional annual costs to maintain the modifications required to bring the clearing member's systems into compliance with § 1.82.

The Commission emphasizes that costs listed above are estimates, and it welcomes comment on their accuracy. The Commission further emphasizes that the costs for each clearing member will vary. Finally, the Commission notes that, as indicated above, these estimates may overstate the actual costs to the industry. Based on Concept Release comments, best practices issued by industry and regulatory organizations, as well as existing regulations, the Commission believes that clearing members are largely already using the pre-trade and other risk controls required by § 1.82.

#### x. § 1.82 Benefits—Pre-Trade and Other Risk Controls (FCMs)

The Commission notes that many of the benefits discussed above with respect to pre-trade and other risk controls required of trading firms pursuant to § 1.80 also apply with respect to the benefits of controls that FCMs must implement pursuant to proposed § 1.82. Specifically, requiring such controls contributes to orderly markets by preventing orders that are outside of pre-determined parameters and ensuring a level-playing field among clearing members. The benefits also include allowing clearing members to have control over the trading flow of their customers, regardless of their customers' method of access—DEA or non-DEA.

In addition, given that different entities have differing information about the trading activities of their customers/

<sup>659</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

users, identification of unintended market behavior may be easier for certain entity types, such as trading firms. For example, with respect to trading firms that mostly trade through a single clearing member, but across a disparate set of products, these metrics may be more easily calculated at the FCM than at the DCM. To protect against the broadest set of errors, there are benefits to implementing risk controls at multiple points in the order chain, including the FCM.

As noted, the Commission believes that proposed § 1.82 standardizes existing industry practices in this area, and some of the requirements are already followed by the majority of clearing members. Accordingly, the Commission notes that many of the benefits of § 1.82 are already being realized. This proposed rule may serve to limit a “race to the bottom” in which some entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. Thus, the proposed rule would help ensure that the benefits of the required risk controls will be fully realized.

xi. § 1.83 Costs—AT Persons and FCM Clearing Members Must Submit Compliance Reports and Maintain Certain Books and Records

Proposed § 1.83 would require AT Persons and FCMs that are clearing members for AT Persons to annually submit reports regarding compliance with § 1.80(a) and § 1.82(a)(1), respectively, to each DCM on which they operate. The reports prepared by AT Persons would have descriptions of the AT Person’s pre-trade risk controls as required by proposed § 1.80(a). The reports prepared by FCMs that are clearing members for AT Persons would have a description of the FCM’s program for establishing and maintaining the pre-trade risk controls required by proposed § 1.82(a)(1) for its AT Persons at the DCM. The reports would also be required to include a certification by the chief executive officer or chief compliance officer of the AT Person or clearing member FCM, as applicable, that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

In addition, proposed § 1.83(c) and (d) would require AT Persons and clearing member FCMs for AT Persons to keep and provide upon request to DCMs books and records regarding their compliance with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). The Commission is also proposing pursuant to § 40.22(d) that DCMs must require each AT Person to

keep and provide to the DCM books and records regarding the AT Person’s compliance with all §§ 1.80 and 1.81 requirements, and each clearing member FCM to keep and provide to the DCM books and records regarding such clearing member FCM’s compliance with all § 1.82 requirements. The proposed recordkeeping requirements will cause AT Persons and clearing member FCMs to incur costs, as discussed below.

*AT Person Compliance Reports.* AT Persons and FCMs that are clearing members of AT Persons will incur the cost of annually preparing and submitting the reports to their DCMs, as well as the written policies and procedures developed to comply with § 1.81(a) and (c). The Commission estimates that an AT Person will incur a total annual cost of \$4,240 to draft the report and submit the policies and procedures as required by § 1.83(a). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 50 hours ( $50 \times \$57$  per hour = \$2,850) and 1 Chief Compliance Officer, working for 10 hours ( $10 \times \$139$  per hour = \$1,390) for a total cost of \$4,240 per year. The approximately 420 AT Persons to which § 1.83(a) would apply would therefore incur a total annual cost of \$1,780,800 ( $420 \times \$4,240$ ) to prepare and submit the report and written policies and procedures required by § 1.83(a).

*Clearing Member FCM Compliance Reports.* The Commission further estimates that an FCM will incur a total cost annually of \$7,090 to draft the report required by § 1.83(b). This cost is broken down as follows: 1 Senior Compliance Specialist, working for 100 hours ( $100 \times \$57$  per hour = \$5,700) and 1 Chief Compliance Officer, working for 10 hours ( $10 \times \$139$  per hour = \$1,390), for a total cost of \$7,090 per year. The 57 FCMs to which § 1.83(b) would apply would therefore incur a total annual cost of \$404,130 ( $57 \times \$7,090$ ) to prepare and submit the report required by § 1.83(b).

*AT Person and Clearing Member FCM Retention of Books and Records.* As discussed above, the Commission believes that AT Persons and clearing member FCMs already implement the risk controls, testing standards and other measures that would be required pursuant to §§ 1.80, 1.81, and 1.82. Retention of records relating to such measures is prudent business practice and the Commission anticipates that many AT Persons and clearing member FCMs already maintain some form of these records in the ordinary course of their business. Accordingly, the Commission believes that AT Persons and clearing member FCMs will adapt

their current infrastructure to accommodate new DCM rules relating to recordkeeping, and AT Persons and clearing member FCMs will not have substantial expenditures related to new recordkeeping technology or re-programming existing recordkeeping technology. The Commission expects that additional expenditure related to § 1.83(c) and (d) recordkeeping requirements would be limited to the drafting and maintenance of recordkeeping policies and procedures by in-house counsel and programmer burden hours associated with recordkeeping technology improvements, as well as annual costs in ensuring that recordkeeping policies and procedures and related technology comply with DCM rules. As noted below, with respect to § 40.22(e), the Commission estimates that a DCM would find it necessary to review the books and records of approximately 10% of AT Persons and clearing member FCMs on an annual basis. The production of such records would result in additional burden hours by AT Person and clearing member FCM in-house counsel, a consideration which the Commission included in its annual cost estimates below.

*AT Person Recordkeeping Costs.* The Commission estimates that, on an initial basis, an AT Person will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours ( $30 \times \$96$  = \$2,880); and 1 Developer, working for 30 hours ( $30 \times \$75$  = \$2,250). The 420 AT Persons would therefore incur a total initial cost of \$2,154,600 ( $420 \times \$5,130$ ).

The Commission estimates that, on an annual basis, an AT Person will incur a cost of \$2,670 to ensure continued compliance with DCM recordkeeping rules relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and in respond to DCM record requests. This cost is broken down as follows: 1 Compliance Attorney, working for 20 hours ( $20 \times \$96$  = \$1,920); and 1 Developer, working for 10 hours ( $10 \times \$75$  = \$750). The 420 AT Persons would therefore incur a total annual cost of \$1,121,400 ( $420 \times \$2,670$ ).

*Clearing Member FCM Recordkeeping Costs.* The Commission estimates that, on an initial basis, a clearing member FCM will incur a cost of \$5,130 to draft and update recordkeeping policies and procedures and make technology improvements to recordkeeping

infrastructure. This cost is broken down as follows: 1 Compliance Attorney, working for 30 hours ( $30 \times \$96 = \$2,880$ ); and 1 Developer, working for 30 hours ( $30 \times \$75 = \$2,250$ ). The 57 clearing member FCMs would therefore incur a total initial cost of \$292,410 ( $57 \times \$5,130$ ).

The Commission estimates that that DCM rules pursuant to proposed § 40.22(d) requiring clearing member FCMs to keep and provide books and records relating to § 1.82 compliance will result in annual costs of 30 hours of burden per clearing member FCM, and 1,710 burden hours in total. The estimated burden was calculated as follows:

The Commission estimates that, on an annual basis, a clearing member FCM will incur a cost of \$2,670 to ensure continued compliance with DCM recordkeeping rules relating to § 1.82 compliance, including the updating of policies and procedures and technology infrastructure, and in respond to DCM record requests. This cost is broken down as follows: 1 Compliance Attorney, working for 20 hours ( $20 \times \$96 = \$1,920$ ); and 1 Developer, working for 10 hours ( $10 \times \$75 = \$750$ ). The 57 clearing member FCMs would therefore incur a total annual cost of \$152,190 ( $57 \times \$2,670$ ).

As discussed further in the consideration of § 15(a) factors below, the Commission also acknowledges that the compliance requirements of Regulation AT could have adverse effects on small clearing firms. Any compliance costs that go beyond existing industry practice could potentially cause some FCMs to scale back operation. Thus the rule has some potential to contribute to increased concentration among clearing firms, *i.e.*, fewer competing clearing firms.

The Commission emphasizes that costs listed above are estimates, and it welcomes comment on their accuracy. The Commission further emphasizes that the costs for each AT Person and each FCM will vary.

xii. § 1.83 Benefits—AT Persons and FCM Clearing Members Must Submit Compliance Reports and Maintain Certain Books and Records

Proposed § 1.83 would require AT Persons and FCMs that are clearing members for AT Persons to annually submit reports regarding compliance with § 1.80(a) and § 1.82(a)(1), respectively, to each DCM on which they operate. Proposed § 1.83(c) and (d) would require AT Persons and clearing member FCMs, respectively, to keep and provide upon request to DCMs books and records regarding their compliance

with §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs). The reports and recordkeeping proposed by § 1.83, and the review program proposed by § 40.22, will enable DCMs to have a clearer understanding of the pre-trade risk controls of all AT Persons that are engaged in Algorithmic Trading on such DCM. The proposed reports will also enable DCMs to set up the review program required by § 40.22. The review program would improve the standardization of market participants' pre-trade risk controls. The standardization of such systems and procedures should further reduce the risk that a market participant will engage in disorderly trading due to inadequate pre-trade risk controls.

xiii. § 38.255(b) and (c) Costs—DCMs Must Provide Controls to FCMs

As noted above with respect to proposed § 1.82, based on Concept Release comments, best practices documents issued by industry or regulatory organizations, as well as existing regulations, the Commission believes that most DCMs already have established the specifically-enumerated pre-trade and other risk controls for use by clearing members that would be required pursuant to revised § 38.255. The Commission also notes that existing § 38.607 requires that DCMs that permit direct electronic access must have in place effective systems and controls reasonably designed to facilitate an FCM's management of financial risk, such as automated pre-trade controls that enable member FCMs to implement appropriate financial risk limits. Accordingly, even if DCMs do not currently and voluntarily implement the specific controls addressing the risks of Algorithmic Trading proposed under § 38.255(b), they should already have in place similar systems addressing FCMs' management of financial risk pursuant to existing § 38.607.

*Estimate-Upgrade of Controls.* With respect to a DCM that already has the controls required by § 38.255(b) in place, and only needs to update them to meet regulatory requirements (*i.e.*, evaluate current systems, modify or create new code, and test systems), the Commission estimates that the cost to the DCM would be \$155,520. This cost is broken down as follows: 1 Project Manager, working for 480 hours ( $480 \times \$70$  per hour = \$33,600); 1 Business Analyst, working for 480 hours ( $480 \times \$52$  per hour = \$24,960); 1 Tester, working for 480 hours ( $480 \times \$52$  per hour = \$24,960); and 2 Developers, working for a combined 960 hours ( $960 \times \$75$  per hour = \$72,000). Commission staff estimates that if a DCM already has

at least some of the controls required by § 38.255(b), there will be no additional annual costs to maintain the modifications required to bring the systems into compliance with this regulation.

Accordingly, the Commission estimates that the 15 DCMs that will be subject to § 38.255(b) would therefore incur a total one-time cost of \$2,332,800 ( $15 \times \$155,520$ ) to update their controls.

The Commission believes that the above estimates would change if a DCM must upgrade its systems in order to comply with § 40.20 (discussed below). Under such circumstances, where the DCM is already upgrading controls for its own implementation pursuant to § 40.20, total cost to upgrade controls for use by FCMs pursuant to § 38.255 should decrease. The controls required by § 40.20 should include interfaces to support external interactions and expanding them to support FCMs should not have additional costs.

The Commission emphasizes that costs listed above are estimates, and it welcomes comment on their accuracy. The Commission further emphasizes that the costs for each DCM will vary. Finally, the Commission notes that, as indicated above, these estimates may overstate the actual costs to DCMs. Based on Concept Release comments, best practices issued by industry and regulatory organizations, as well as existing regulations, the Commission believes that DCMs have largely already established and are providing to FCMs the pre-trade and other risk controls required by § 38.255(b).

xiv. § 38.255(b) and (c) Benefits—DCMs Must Provide Controls in DEA Context

An additional benefit to Regulation AT is the reduction of system risk in the context of Direct Electronic Access. As noted above, the Commission believes that Algorithmic Trading creates risks regardless of the method of access. Because of this, the Commission seeks to ensure that all types of trading, including through DEA, is subject to pre-trade and other risk controls. The requirements of proposed § 38.255(b) specifically address the structure of DEA, in which orders submitted by an AT Person do not flow through the clearing member FCM's infrastructure prior to submission to the DCM. Currently, credit risk in the DEA context is addressed through clearing member FCM-implemented controls provided by the DCM, as required pursuant to existing regulations §§ 38.607 and 1.73. Proposed § 38.255(b) and (c) follow a similar approach that would allow clearing members to have control over the trading flow of their DEA customers

for purposes of addressing the operational risks of Algorithmic Trading. Accordingly, § 38.255(b) would contribute to orderly markets by preventing orders that are outside of pre-determined parameters and ensuring a level-playing field among clearing members.

As noted, the Commission believes that proposed regulations § 38.255(b) and (c) standardize existing industry practices in this area, and that many of the requirements are already followed by the majority of DCMs. Accordingly, the Commission notes that many of the benefits of § 38.255(b) and (c) are already being realized. The proposed rule would help ensure that the benefits of the required risk controls will be fully realized across all DEA active participants and sustained in the future.

#### xv. § 40.20 Costs—Pre-Trade and Other Risk Controls (DCMs)

Based on Concept Release comments, best practices documents issued by industry or regulatory organizations, as well as existing regulations, the Commission believes that most DCMs already implement the specifically-enumerated pre-trade and other risk controls required pursuant to proposed § 40.20. In response to the Concept Release, CME and CFE indicated that they implement message rate limits,<sup>660</sup> order size limits, and price collar mechanisms.<sup>661</sup> In addition, they indicated that they provide an optional cancel-on-disconnect functionality<sup>662</sup> and kill switch tools.<sup>663</sup> The Commission notes that these types of controls have been subject of industry best practices for years. For example, ESMA guidelines from 2012 recommended that trading platforms implement, among other things, throttling limits and controls filtering order price and quantity.<sup>664</sup> In addition, the CFTC TAC recommended in 2011 that exchanges implement, among other things, message throttles, order quantity limits, price collars, and order cancellation policies that allow clearing firms and clients to opt for automatic cancellation of order upon disconnect and provide clearing firms with a tool that allows them to view and cancel orders.<sup>665</sup>

<sup>660</sup> In addition, four commenters stated generally that many exchanges have messaging rate limits in place. See TCL at 6; KCG at 4; MFA at 7; AIMA at 8.

<sup>661</sup> CME at 8–9, 13–17; CME Appendix A–1, 3–4, 6; CFE at 5–8.

<sup>662</sup> CME at 23–24, Appendix A–4; CFE at 9–10.

<sup>663</sup> CME at 23–24.

<sup>664</sup> ESMA Guidelines, *supra* note 61 at 12–13.

<sup>665</sup> CFTC TAC Recommendations, *supra* note 34 at 4–5.

While the Commission believes that most DCMs already implement the controls required by § 40.20, it acknowledges that there may be DCMs that do not currently implement such controls, and those DCMs would incur some costs to comply with this regulation. An initial investment would be required to develop and implement processes necessary for compliance, and ongoing costs would be incurred to maintain such controls. The costs for each DCM will vary depending on the degree to which its current practices are or are not in compliance, as well as the procedures it selects and implements in order to comply. In addition, as noted above with respect to § 38.255(b) and (c), the Commission acknowledges that Regulation AT could have adverse effects on smaller DCMs. Any compliance costs that go beyond existing industry practice could potentially cause some DCMs to cease or scale back operation, and could potentially impact the entry of new DCMs.

*Estimate—Upgrade of Controls.* With respect to a DCM that already has the controls required by proposed § 40.20 in place, and only needs to update them to meet regulatory requirements (*i.e.*, evaluate current systems, modify or create new code, and test systems), the Commission estimates that the cost to the DCM would be \$155,520. This cost is broken down as follows: 1 Project Manager, working for 480 hours (480 × \$70 per hour = \$33,600); 1 Business Analyst, working for 480 hours (480 × \$52 per hour = \$24,960); 1 Tester, working for 480 hours (480 × \$52 per hour = \$24,960); and 2 Developers, working for a combined 960 hours (960 × \$75 per hour = \$72,000). The Commission estimates that if a DCM already has at least some of the controls required by § 40.20, there will be no additional annual costs to maintain the modifications required to bring the systems into compliance with this regulation.

Accordingly, the Commission estimates that the 15 DCMs that will be subject to § 40.20 would therefore incur a total one-time cost of \$2,332,800 (15 × \$155,520) to update their controls.

The Commission notes that a DCM can choose not to develop these controls internally, but rather may purchase a solution from an outside vendor (or another DCM) in order to comply with § 40.20. The Commission welcomes comments providing estimates concerning the cost for a DCM to use technology solution from an outside party to comply with this proposed regulation. In addition, as discussed above, the Commission believes that the

above estimates for § 40.20 would change if a DCM is simultaneously upgrading its systems in order to comply with § 38.255. Where the DCM is already upgrading controls for FCM implementation pursuant to § 38.255, the cost of upgrading controls for its own implementation pursuant to § 40.20 should decrease.

The Commission emphasizes that costs listed above are estimates, and it welcomes comment on their accuracy. The Commission further emphasizes that the costs for each DCM will vary. Finally, the Commission notes that, as indicated above, these estimates may overstate the actual costs to DCMs. Based on Concept Release comments, best practices issued by industry and regulatory organizations, as well as existing regulations, the Commission believes that DCMs are largely already using the pre-trade and other risk controls required by § 40.20.

#### xvi. § 40.20 Benefits—Pre-Trade and Other Risk Controls (DCMs)

The Commission believes that the pre-trade risk and order management control requirements that DCMs must implement pursuant to proposed § 40.20, inasmuch as they are not currently implemented, will contribute to a system-wide reduction in operational risk, and will help standardize risk management practices across exchanges. These enhanced risk management practices should help reduce unintended market volatility and mitigate and prevent significant disruptive activity caused by algorithmic trading malfunctions.

In addition, given that FCMs may have differing information about the trading activities of their customers/users, a DCM may be better able to identify unintended market behavior. For example, with respect to a trading firm active in a single product and using multiple clearing firms, identifying total order frequencies or inventory levels may be more easily done at the market venue. To protect against the broadest set of errors, there are benefits to implementing risk controls at multiple points in the order chain, including the DCM.

As noted, the Commission believes that proposed § 40.20 standardizes existing industry practices in this area, and that many of the requirements are already followed by the majority of DCMs. Accordingly, the Commission notes that many of the benefits of § 40.20 are already being realized. The proposed rule would help ensure that the benefits of the required risk controls will be fully realized and sustained in the future.



xvii. § 40.21 Costs—DCM Test Environments for AT Persons (DCMs)

The Commission believes that the majority of DCMs have implemented test environments in which market participants may test their algorithmic systems. The Commission received comments in response to the Concept Release that “many, if not all, exchanges provide market participants a test facility to test trading software and algorithms, as well as offer test symbols to trade.”<sup>666</sup> The Commission believes that most if not all DCM’s already provide test environments that would comply with proposed § 40.21. As a result, subject to consideration of relevant comments, the Commission preliminarily believes that DCMs will not incur any material additional costs to comply with the proposed regulation. The Commission is therefore not estimating any costs for DCMs in connection with the proposed regulation in this discussion.

xviii. § 40.21 Benefits—DCM Test Environments for AT Persons (DCMs)

As noted, the Commission believes that proposed § 40.21 standardizes existing industry practices in this area, and that the requirements are already followed by the majority of DCMs. Accordingly, the Commission notes that many of the benefits of § 40.21 are already being realized. The proposed rule will help ensure that the benefits are being realized at all DCMs and sustained in the future. Proposed § 40.21 requires DCMs to provide test environments in which market participants may test their algorithmic systems. This regulation is designed to promote testing of algorithmic systems using data and market conditions that approximate as closely as possible those of a live trading environment. Such testing should enable market participants to discover potential issues in the design of their algorithmic systems that were not discovered in their own test environment, thereby mitigating the risk that algorithmic systems cause market disruptions by failing to operate as intended in the production environment. Comments received in response to the Concept Release indicate that DCMs recognize the benefit of providing such test environments to their market participants. For example, CME indicated that market participants routinely test in their own testing environments using historical data to test trading strategies against a range of market conditions, and that exchanges

commonly make their own historical data available for testing purposes. CME stated that it requires all systems interfacing with CME Globex to be certified on the order entry and/or market data interfaces prior to deployment.<sup>667</sup> FIA also recommended the use of DCM test environments, noting in its comment letter, “We encourage DCMs to develop more robust test environments that more closely simulate trading in the production environment, and market participants to thoroughly test new and modified software in these DCM provided simulators when necessary.”<sup>668</sup>

xix. § 40.22 Costs—DCM Review of Compliance Reports (DCMs)

Proposed § 40.22 complements the requirement under § 1.83 for AT Persons and clearing member FCMs to submit compliance reports to DCMs. Proposed 40.22(a) requires a DCM to implement rules that require each AT Person that trades on the DCM, and each FCM that is a clearing member of a DCO for such AT Person, to submit the reports described in § 1.83(a) and (b), respectively. Under proposed § 40.22(b), a DCM must require the submission of such reports by June 30th of each year. Proposed § 40.22(c) requires a DCM to establish a program for effective periodic review and evaluation of reports described in paragraph (a) of § 40.22, and of the measures described therein. An effective program must include measures by the DCM reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures described in such reports, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons pursuant to § 1.80(a).

In addition, as a complement to the compliance report review program described above, proposed § 40.22(d) requires each AT Person to keep and provide to the DCM books and records regarding their compliance with all requirements pursuant to § 1.80 and § 1.81, and requires each clearing member FCM to keep and provide to the DCM market books and records regarding their compliance with all requirements pursuant to § 1.82. Finally, proposed § 40.22(e) requires DCMs to review and evaluate, as necessary, books and records required to be kept pursuant to § 40.22(d), and the measures described therein. An appropriate review pursuant to § 40.22(e) should include measures by the DCM

reasonably designed to identify and remediate any insufficient mechanisms, policies, and procedures described in such books and records.

*DCM Establishment of Review Program.* The Commission estimates that a DCM will incur a total one-time cost of \$37,000 to establish the review program required by proposed § 40.22. This cost is broken down as follows: 1 Tester, working for 200 hours (200 × \$52 per hour = \$10,400); 1 Developer, working for 200 hours (200 × \$75 per hour = \$15,000); and 1 Senior Compliance Examiner, working for 200 hours (200 × \$58 per hour = \$11,600).<sup>669</sup> The 15 DCMs to which § 40.22 would apply would therefore incur a total one-time cost of \$555,000 (15 × \$37,000) to establish the review program required by § 40.22.<sup>670</sup>

*DCM Review of Compliance Reports (§ 40.22(c)).* Proposed § 40.22(a) and (b) would require DCMs to implement rules that require AT Persons, and FCMs that are clearing members for AT Persons, to submit the reports required of AT Persons and clearing member FCMs by proposed § 1.83. Proposed § 40.22(c) requires a DCM to establish a program for effective periodic review and evaluation of reports described in paragraph (a) of § 40.22, and of the measures described therein. As discussed in section V(D)(e) above, Commission staff estimates that each DCM will review 120 reports per year pursuant to § 40.22(c). The Commission estimates that a DCM will incur a total cost of \$925 to review each report required by § 40.22. This cost is broken down as follows: 1 Tester, working for 5 hours (5 × \$52 per hour = \$260); 1 Developer, working for 5 hours (5 × \$75 per hour = \$375); and 1 Senior Compliance Examiner, working for 5 hours (5 × \$58 per hour = \$290), for a total review cost of \$925 per report. If a DCM reviews an average of 120 reports per year, a DCM would require 1,800 hours per year to review the 120 reports (15 hours × 120 reports), and would incur a cost of \$111,000 per year. The 15 DCMs to which § 40.22 would apply would incur a total annual cost of \$1,665,000 (15 × \$111,000) to conduct such a review.

*DCM Communication of Remediation Instructions (§ 40.22(c)).* Proposed § 40.22(c) states that an effective review program must include measures by the DCM reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures

<sup>669</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>670</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

<sup>666</sup> MFA at 13.

<sup>667</sup> CME at 25–26.

<sup>668</sup> FIA at 35.

described in such reports, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons pursuant to proposed § 1.80(a). The Commission estimates that a DCM will communicate remediation instructions in connection with approximately 20% of the reports reviewed on an annual basis (or 24 reports, which is 20% of 120 reports). The Commission estimates that a DCM will incur a total cost of \$925 to communicate remediation instructions for a report required by § 40.22. This cost is broken down as follows: 1 Tester, working for 5 hours ( $5 \times \$52$  per hour = \$260); 1 Developer, working for 5 hours ( $5 \times \$75$  per hour = \$375); and 1 Senior Compliance Examiner, working for 5 hours ( $5 \times \$58$  per hour = \$290), for a total review cost of \$925 per report giving rise to remediation instructions. If a DCM provides remediation instructions in connection with 24 reports per year, a DCM would require 360 hours per year to review the 24 reports ( $15 \text{ hours} \times 24 \text{ reports}$ ), and would incur a cost of \$22,200 per year. The 15 DCMs to which § 40.22(c) would apply would incur a total annual cost of \$333,000 ( $15 \times \$22,200$ ) to conduct such a review.

*DCM Review of Books and Records* (§ 40.22(e)). Proposed § 40.22(d) requires each AT Person to keep and provide to the DCM books and records regarding their compliance with all requirements pursuant to §§ 1.80 and 1.81, and requires each clearing member FCM to keep and provide to the DCM market books and records regarding their compliance with all requirements pursuant to § 1.82. The cost of these obligations to AT Persons and clearing member FCMs under § 40.22(d) is discussed above in this section.

Proposed § 40.22(e) requires DCMs to review and evaluate, as necessary, books and records required to be kept pursuant to § 40.22(d), and the measures described therein. The Commission notes that § 40.22(e) does not prescribe how frequently DCMs should perform this review, or how many AT Persons and clearing member FCMs should be evaluated on an annual basis. For purposes of generating a cost estimate, the Commission anticipates that a DCM will find it necessary to review the books and records of approximately 10% of AT Persons and clearing member FCMs on an annual basis. For example, a DCM may find it necessary to conduct such a review if: it becomes aware if an AT Person's kill switch is frequently activated, or otherwise performs in an unusual manner; if a DCM becomes aware that an AT

Person's algorithm frequently performs in a manner inconsistent with its design, which may raise questions about the design or monitoring of the AT Person's algorithms; if a DCM identifies frequent trade practice violations at an AT Person, which are related to an algorithm of the AT Person; or if an AT Person represents significant volume in a particular product, thereby requiring heightened scrutiny, among other reasons. DCMs may find it appropriate to review the books and records of AT Persons and clearing member FCMs on a more or less frequent basis, depending on other relevant considerations.

The Commission estimates that AT Persons will generally be active on half of the 15 DCMs. If a DCM reviews the books and records of 10% of AT Persons and clearing member FCMs on an annual basis, a DCM will review 24 entities on an annual basis ( $420 \text{ AT Persons} + 57 \text{ clearing member FCMs} = 477$ .  $477/2 = 239$  entities.  $239 \times .1 = 24$ ). The Commission estimates that a DCM will incur a total cost of \$4,620 to review the books and records of an entity pursuant to § 40.22(e). This cost is broken down as follows: 1 Senior Compliance Examiner, working for 30 hours ( $30 \times \$58$  per hour = \$1,740); and 1 Compliance Attorney, working for 30 hours ( $5 \times \$96$  per hour = \$2,880), for a total review cost of \$4,620 per entity reviewed by a DCM. If a DCM reviews the books and records of 24 entities per year, a DCM would require 1,440 hours per year to review the 24 entities ( $60 \text{ hours} \times 24 \text{ entities}$ ), and would incur a cost of \$110,880 per year. The 15 DCMs to which § 40.22(e) would apply would incur a total annual cost of \$1,663,200 ( $15 \times \$110,880$ ) to review such books and records.

*Total Cost to DCMs for Proposed § 40.22 Requirements.* A DCM will therefore incur \$133,200 ( $\$111,000 + \$22,200$ ) on an annual basis to review all reports received at least once every two years, communicate instructions to persons whose controls the DCM has determined are insufficient, and will incur \$110,880 on an annual basis to review the books and records of 24 AT Persons and clearing member FCMs. The 15 DCMs to which § 40.22 would apply would therefore incur a total annual cost of \$3,661,200 ( $\$1,665,000 + \$333,000 + \$1,663,200$ ) to maintain the review program required by § 40.22.

The Commission also acknowledges that the compliance requirements on DCMs in Regulation AT could have adverse effects on smaller DCMs. Any compliance costs that go beyond existing industry practice could potentially cause some DCMs to cease or

scale back operation, and impact the entry of new DCMs.

#### xx. § 40.22 Benefits—DCM Review of Compliance Reports (DCMs)

Proposed § 40.22 is a complement to proposed § 1.83, which would require AT Persons, and FCMs that are clearing members for AT Persons, to submit reports regarding compliance with § 1.80(a) and pursuant to § 1.82(a)(1), respectively, to each DCM on which they operate, and to keep and provide upon request to DCMs books and records regarding their compliance with all §§ 1.80 and 1.81 (for AT Persons) and § 1.82 (for clearing member FCMs) requirements. New § 40.22 would require each DCM that receives a report described in § 1.83 to establish a program for effective review and evaluation of the reports. By requiring DCMs to review the reports, identify outliers, and communicate instructions to outliers in order to remediate their pre-trade risk controls, proposed § 40.22 will standardize market participants' pre-trade risk controls required pursuant to proposed § 1.80(a). Further, DCM review of compliance reports is an important safeguard to prevent trading firms, the "outliers" described above, from operating without sufficient controls. Proposed § 40.22(e) will complement the review of compliance reports, by requiring DCMs to review and evaluate, as necessary, the books and records kept by AT Persons to demonstrate their compliance with §§ 1.80 and 1.81, and the books and records kept by clearing member FCMs to demonstrate their compliance with § 1.82. A single Algorithmic Trading malfunction at a single market participant can significantly impact markets and market participants. Accordingly, all DCMs and market participants benefit from a review program that ensures that market participants conducting Algorithmic Trading have adequate pre-trade risk controls in place.

#### c. Section 15(a) Factors

This section discusses the CEA section 15(a) factors for the following proposed regulations: (i) The requirement that AT Persons implement pre-trade risk controls and other related measures (§ 1.80); (ii) standards for the development, testing, and monitoring of Algorithmic Trading systems by AT Persons (§ 1.81); (iii) RFA standards for automated trading and algorithmic trading systems of their members (§ 170.19); (iv) the requirement that AT Persons must become a member of a futures association (§ 170.18); (v) the requirement that clearing member FCMs

implement pre-trade risk controls and other related measures (§ 1.82); (vi) the requirement that AT Persons submit compliance reports to DCMs regarding their risk controls and Algorithmic Trading procedures and clearing member FCMs submit compliance reports to DCMs regarding their risk control program for AT Person customers, and that AT Persons and clearing member FCMs keep and provide upon request to DCMs certain related books and records (§ 1.83); (vii) the requirement that DCMs implement pre-trade risk controls and other related measures (§§ 38.255 and 40.20); (viii) the requirement that DCMs provide test environments where AT Persons may test their Algorithmic Trading systems (§ 40.21); and (ix) the requirements of § 40.22, including that DCMs: implement rules requiring AT Persons and clearing member FCMs to submit compliance reports each year (§ 40.22(a) and (b)); establish a program for effective periodic review and evaluation of the reports (§ 40.22(c)); require each AT Person to keep and provide to the DCM books and records regarding their compliance with all requirements pursuant to §§ 1.80 and 1.81, and require each clearing member FCM to keep and provide to the DCM market books and records regarding their compliance with all requirements pursuant to § 1.82 (§ 40.22(d)); and require DCMs to review and evaluate, as necessary, books and records required to be kept pursuant to § 40.22(d), and the measures described therein (§ 40.22(e)).

i. Protection of Market Participants and the Public

The Commission preliminarily believes that Regulation AT would protect market participants and the public by limiting a “race to the bottom,” in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. The proposed rules, by standardizing the risk controls required to be used by firms, would help ensure that the benefits of these risk controls are more evenly distributed across a wide set of market participants, and reduce the likelihood that an outlier firm without sufficient risk controls causes significant market disruption. The requirements under proposed §§ 170.18 and 170.19 that all AT Persons be registered as a member of a futures association, and subject to an RFA program promulgating standards for automated trading and algorithmic trading systems, further promotes the standardization of risk controls. Moreover, the proposed rules, to the extent that they increase the usage of

effective risk and order management controls, may reduce the likelihood that market participants execute trades at terms they do not intend. This is particularly important as to price, as market participants and members of the public rely on the prices of trades executed on DCMs, often for products not directly traded on the DCM. The requirements of proposed § 40.22, which requires DCMs to review the compliance reports and the books and records of AT Persons and clearing member FCMs, may promote protection of market participants and the public by helping to ensure that the risk control rules are followed in a consistent manner and may further reduce the likelihood of Algorithmic Trading Events and Algorithmic Trading Disruptions. Applying Regulation AT to all market levels—the trading firm, the clearing member, and the exchange—may further protect market participants and the public by providing multiple layers of protection against market disruptions. In addition, including automated order routers in the Algorithmic Trading definition may protect market participants and the public by providing these protections to a wider set of automated systems that may have the potential to disrupt the markets.

Finally, the absence of pre-trade risk and order management controls at automated firms increases the chances for unintended trading behavior, including algorithms acting beyond their parameters or risk levels, resulting in unexpected market volatility or market disruptions (potentially across multiple market venues), distorted prices, and risks that could harm the economy and the public.

ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that by addressing pre-trade risk controls, testing, and order management controls at all market levels—the trading firm, the clearing member, and the exchange—Regulation AT provides standards that can be interpreted and enforced in a uniform manner. Implementation of Regulation AT would help mitigate instabilities in the markets and ensure market efficiency and integrity. Regulation AT may serve to limit a “race to the bottom,” in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. The proposed rules, by standardizing the risk controls required to be used by firms, would help ensure that the benefits of these risk controls are more evenly distributed across a

wide set of market participants, and reduce the likelihood that an outlier firm without sufficient risk controls causes significant market disruption.

In particular, the implementation of such controls and systems would help prevent the occurrence of unintended and erroneous trades, and therefore contribute to market efficiency and integrity. For example, Regulation AT requires that trading firms, clearing members and exchanges implement maximum order size limits. That control is intended to prevent unintentionally large orders from entering the market and causing unintended executions. The Commission believes that a positive trading intention behind an execution is integral to the operations of an efficient market and to market integrity. By limiting the potential for erroneous executions, Regulation AT should enhance market efficiency and integrity by minimizing the number of trades that are subsequently broken and ensuring that publicly reported transaction prices are valid. Similarly, Regulation AT requires message and execution throttles, which mitigate the risks of executing large numbers of unintended orders, potentially harming market efficiency and integrity. Ensuring that only bona fide and intentional orders are entered into the market may also help promote market competitiveness by helping to ensure that a single entity does not inadvertently dominate the market due to unintended excessive orders.

The Commission acknowledges that certain aspects of Regulation AT, such as the compliance reports, could have adverse effects on some trading firms due to the cost of creating and submitting the compliance reports, and to the extent that firms do not already do so, implementing and maintaining the proposed regulation’s required pre-trade risk and order management controls. In order to mitigate costs to trading firms, the Commission is restricting the need for trading firm level risk controls and the associated compliance reports to those entities that are registered with the Commission in some capacity. For those who are not required to register, pre-trade risk controls will be executed by the entity’s clearing firm and the contract market the entity trades on and compliance reports will be submitted by the clearing FCM.

According to a study by the Commission’s Division of Swap Dealer and Intermediary Oversight that was presented to the Commission’s Agricultural Advisory Committee on

September 22, 2015,<sup>671</sup> the number of active FCMs has declined in recent years from 180 in 2005 to 76 in December 2014. The decline over this period in the number of FCMs holding customer assets was not as large as the overall decline in the number of FCMs: from 85 to 60. The decline in the number of FCMs can be attributed to a number of factors, including low interest rates (which can reduce FCM profitability by lowering the rate of return on the investment of customer funds) and the changing regulatory environment. The compliance and other costs on clearing FCMs that go beyond existing industry practice could, in conjunction with existing factors that are pressuring FCMs, potentially cause some additional FCMs to scale back operations, or make it less likely that new FCMs will enter the market. The Commission also notes the possibility that if clearing FCMs are required to establish and maintain pre-trade risk controls and order cancellation systems pursuant to § 1.82(c) with respect to AT Order Messages originating with AT Persons that do not use DEA and to submit compliance reports regarding their risk controls, they may refuse to serve such firms in light of the additional costs or may raise trading fees to cover these costs. Such potential increased costs may make it more difficult for new trading firms to enter the market and for certain existing trading firms to remain in the market. This could happen if FCMs determines to cease serving firms that, in light of the increased costs, are no longer profitable for the FCM. However, it is possible that the rule will create a market opportunity for certain FCMs to specialize in monitoring the operation of Algorithmic Trading systems used by trading firms that do not use DEA. This may mitigate the impact of other FCMs exiting the market or new FCMs choosing not to enter the market and may mitigate the impact on trading firms.

The potential reduction in the number of clearing FCMs and market participants due to increased costs could reduce liquidity and increase transaction costs in futures markets. The proposed rules also impose costs on DCMs that, to the extent they go beyond existing industry practice (including the costs of reviewing submissions from AT Persons and FCMs pursuant to proposed § 40.22), may significantly affect small or start-up DCMs. However, the Commission emphasizes the general

benefits that Regulation AT provides to the market, such as the protection of market integrity and efficiency, which were impacted by previous disruptive market events. As noted in section III above, for example, the events at Knight Capital significantly impacted the equities market. Due to coding errors in Knight's systems, the firm's automated trading system inadvertently built up unintended positions in the equity market, eventually resulting in losses of more than \$460 million for the firm.<sup>672</sup> In addition, the Flash Crash in 2010 impacted market efficiency in several respects; for example, due to the extreme price movement, the exchanges and FINRA made a determination to cancel a significant number of trades that were executed during the crash.<sup>673</sup>

The Commission has preliminarily determined that burdens placed on market participants, FCMs, and DCMs imposed by Regulation AT is justified by the benefits in ensuring that all orders submitted through Algorithmic Trading pass through effective controls and systems that mitigate the risks of malfunctioning automated trading systems. The Commission has endeavored to minimize the compliance burden in Regulation AT to the minimum level necessary to protect market participants and the public.

The proposed rules may promote the financial integrity of futures markets by reducing the likelihood of flash crashes and other automated trading disruptions. Such disruptions can place financial strain on market participants, intermediaries, and DCOs.

#### iii. Price Discovery

Requiring trading firms, clearing members and exchanges to implement pre-trade risk controls, testing, and order management control requirements in order to mitigate the risk of a malfunctioning trading algorithm or automated trading disruption promotes the price discovery process by reducing the likelihood of transactions at prices that do not accurately reflect market forces.

#### iv. Sound Risk Management Practices

The Commission believes that the pre-trade risk and order management

control requirements contained in Regulation AT will contribute to a system-wide reduction in operational risk, and will help standardize risk management practices across similar entities within the marketplace. The reduction in operational risk may simplify the tasks associated with sound risk management practices. These enhanced risk management practices should help reduce unintended market volatility, which will aid in efficient market making, and reduce overall transaction costs as they relate to price movements, which should encourage market participants to trade in Commission-regulated markets. Market participants and those who rely on prices as determined within regulated markets should benefit from markets that behave in an orderly and expected fashion.

#### v. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest considerations other than those addressed above.

#### d. Consideration of Alternatives

##### i. Pre-Trade and Other Risk Controls

In proposing these regulations, the Commission considered alternatives suggested by comments to the Concept Release. The Commission notes that the Concept Release raised numerous potential measures and controls, not all of which are proposed in Regulation AT. Accordingly, comments supporting or opposing regulation in the area of automated trading were made without the benefit of knowing specifically what regulations would be proposed. Some commenters indicated that there was already sufficient regulation in the area of risk controls. For example, FIA suggested that "the best approach to achieve standardization is to reflect industry best practices through working groups of DCMs, FCMs and market participants."<sup>674</sup> CFE stated that there is already sufficient regulation of DCMs in relation to risk controls and that exchange risk control practices should evolve as technology and markets evolve.<sup>675</sup> MFA indicated that current CFTC regulations and existing best practices require entities to have sufficient and effective pre-trade risk controls.<sup>676</sup> ICE commented that exchanges are better able to implement and update risk controls on a market-by-market basis than through a

<sup>671</sup> The presentation is available at [http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/aac092215presentations\\_dsio.pdf](http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/aac092215presentations_dsio.pdf).

<sup>672</sup> See SEC Knight Capital Release, *supra* note 39.

<sup>673</sup> As noted in the Flash Crash Report, "during the 20 minute period between 2:40 p.m. and 3:00 p.m., over 20,000 trades (many based on retail-customer orders) across more than 300 separate securities, including many ETFs, were executed at prices 60% or more away from their 2:40 p.m. prices. After the market closed, the exchanges and FINRA met and jointly agreed to cancel (or break) all such trades under their respective 'clearly erroneous' trade rules." See the Flash Crash Report, *supra* note 121 at 6.

<sup>674</sup> FIA at 63.

<sup>675</sup> CFE at 1–2.

<sup>676</sup> MFA at 5.

Commission rulemaking.<sup>677</sup> OneChicago indicated that “additional mandates” as to exchange risk controls will increase costs and complexity.<sup>678</sup>

As noted above, the Concept Release addresses a number of potential measures that are not proposed as part of Regulation AT. With respect to the pre-trade risk and other controls proposed in this NPRM, the Commission acknowledges that many best practices as to risk controls have been developed without a regulatory mandate, and that trading firms, clearing member FCMs, and DCMs are in the best position to determine the most effective design of their own particular risk controls and innovate new forms of controls. However, the Commission believes that regulation in this area will better foster standardization of controls across all entities, including smaller firms or exchanges that may, without regulation, implement some but not all of the controls required by Regulation AT. This rulemaking may serve to limit a “race to the bottom” in which some entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. In the context of automated trading, a technological malfunction at a single firm can have a significant impact across markets and market participants.<sup>679</sup> Given that reality, it is insufficient that some, but not all, industry participants have the appropriate risk controls. Requiring the implementation of certain risk controls through regulation will help ensure that all industry participants have the appropriate risk controls, thus fostering trade certainty and market integrity for all market participants. In determining which risk controls discussed in the Concept Release should be proposed in this NPRM, the Commission has attempted to propose those core risk controls that it believes are currently implemented by the majority of market participants, foregoing certain risk controls that are implemented by relatively few market participants and may be of less value in mitigating risk.

In addition, some commenters to the Concept Release explained the appropriate implementation or design of particular pre-trade risk controls, which are discussed above as relevant to each control. Also as discussed above, the Commission determined that, while it believes that these comments are reasonable and merit further consideration by market participants as

they implement risk controls, the specific design and operation of risk controls should not be mandated by regulation. Rather, given the wide variety of trading firms, technology, trading strategies, markets, and products, the relevant entities—trading firms, clearing firms, and DCMs—should have the discretion to determine the appropriate design of the specific controls required by Regulation AT.

The remainder of this discussion focuses on various alternative measures that the Commission considered in proposing these regulations, some of which were discussed in the Concept Release, and some of which are contained in other regulatory systems. The Commission evaluated various regulatory definitions of algorithmic trading when considering how to draft a definition for purposes of this NPRM. The Commission has proposed that the definition of Algorithmic Trading will include systems that make determinations regarding any aspect of the routing of an order, *i.e.*, systems that only make decisions as to the routing of orders to one or more trading venues. The Commission notes analogous definitions adopted by the European Commission under MiFID II and by FINRA do not include automated systems that only route orders as algorithmic trading. Excluding automated order routers would reduce the number of automated systems captured by Regulation AT relative to the Commission’s proposal and may reduce the number of AT Persons subject to the costs of the regulation. Nevertheless, the Commission believes that automated order routers have the potential to disrupt the market to a similar extent as other types of automated systems, and that there are significant benefits to including automated order routers in the proposed regulations.

The Commission is also considering expanding the definition of Algorithmic Trading to encompass orders that are generated using algorithmic methods (*e.g.*, an algorithm generates a buy or sell signal at a particular time), but are then manually entered into a front-end system by a natural person, who determines all aspects of the routing of the orders. Such an alternative would increase the number of automated systems captured by Regulation AT relative to the Commission’s proposal and may increase the number of AT Persons subject to the costs of the regulation. The Commission preliminarily believes that such manually entered orders present less risk than fully automated orders and that the benefits of including them in

the definition of Algorithmic Trading would therefore be limited.

In the event that a non-clearing FCM or other entity acts only as a conduit for orders, and does not make any determinations with respect to such orders, the conduit entity would not be engaged in Algorithmic Trading, as that definition is currently proposed. The Commission preliminarily believes that expanding the definition to include conduit entities would not sufficiently enhance the benefits associated with Regulation AT relative to the additional costs.

The Commission determined not to extend Regulation AT to SEFs, a proposal that was supported by one Concept Release commenter. CFE stated that any risk control requirements should apply to SEFs, in addition to DCMs. CFE explained that there must be a level playing field between both DCMs and SEFs and that there be no regulatory disparities that would make it more advantageous to list a swap on a SEF as opposed to a DCM.<sup>680</sup> The Commission believes in fostering a level playing field in its markets, and as a result any requirements on DCMs arising out of Regulation AT may ultimately be imposed on SEFs at a later date. However, as noted in section (C)(1) above, an important consideration for the Commission is that SEFs and SEF markets are much newer and less liquid than the more established and liquid DCMs and DCM markets. While SEFs and SEF markets are still in this nascent stage, the Commission does not want to impose additional requirements that may have the effect of decreasing the number of SEFs or decreasing liquidity. Moreover, the Commission, based on its present knowledge, believes that automated trading is not as prevalent in SEF markets as compared to DCM markets. Therefore, the policy considerations underlying Regulation AT are not as critical, at least at this time, in the SEF context.

Proposed § 1.82 requires clearing FCMs to implement controls with respect to AT Order Messages originating with an AT Person. The Commission is considering modifying proposed § 1.82 to require clearing FCMs to implement controls with respect to all orders, including orders that are manually submitted. Such a requirement would correspond to the requirement under proposed § 40.20(d) that DCMs implement risk controls for orders that do not originate from Algorithmic Trading. The Commission is considering this modification because it recognizes that manually entered

<sup>677</sup> ICE at 1.

<sup>678</sup> OneChicago at 4–5.

<sup>679</sup> See, *e.g.*, the discussion of Knight Capital in section III above.

<sup>680</sup> CFE at 2.

orders also have the potential to cause significant market disruption. The Commission requests comment on this proposed alternative formulation of § 1.82, which the Commission may implement in the final rulemaking for Regulation AT. The Commission acknowledges that this proposed alternative formulation would impose additional costs on clearing FCMs relative to the currently proposed § 1.82. The Commission requests comment on the potential benefits of this proposal relative to the increased costs to clearing FCMs, in addition to any other comments regarding the effectiveness of this proposal in terms of risk reduction.

#### ii. Compliance Reports

Proposed § 1.83 would require AT Persons and clearing FCMs to submit compliance reports to DCMs on an annual basis. Such reports would need to be submitted and certified annually by the chief executive officer or the chief compliance officer of the AT Person or FCM. Proposed § 40.22 would require DCMs to establish a program for effective periodic review and evaluation of the reports. The Commission has proposed these regulations, using the deadlines described above, because it believes they represent an appropriate balancing of the transparency and risk reduction provided by the reports against the burden placed on AT Persons, clearing FCMs, and DCMs of providing and reviewing the reports.

The Commission is considering the alternatives of requiring AT Persons and clearing FCMs to submit such reports more or less frequently than annually. The Commission is also considering the alternatives of placing the responsibility for certifying the reports required by proposed § 1.83 only on the chief executive officer, only on the chief compliance officer, or permitting certification from other officers of the AT Person or FCM. While proposed § 40.22 would require DCMs to establish a program for effective periodic review and evaluation of the reports, the Commission is considering the alternative of requiring DCMs to review the reports at more specific intervals.

The Commission considered the alternative of requiring additional information in the reports by AT Persons to DCMs under proposed § 1.83, including (1) descriptions of order cancellation systems; (2) policies and procedures for the development, testing, and monitoring of Algorithmic Trading systems; and (3) policies and procedures for the training of Algorithmic Trading staff. The Commission determined not to propose these additional requirements in order to limit costs both

to AT Persons and to the DCMs that will be required to review the reports under proposed § 40.22, while retaining the benefits of protecting market participants and the public from disruptions and other adverse events associated with automated trading.

*Requirements related to RFAs.* The Commission is considering making adjustments to the scope of RFA responsibility under proposed § 170.19. For example, RFAs could be responsible for fewer or additional areas regarding AT Persons, ATSSs, and algorithmic trading than specified in proposed § 170.19 and could have more or less latitude to issue rules than under the proposal.

#### e. Request for Comments

##### Pre-Trade and Other Risk Controls

112. How would an alternative definition of Algorithmic Trading that excludes automated order routers affect the costs and benefits of the pre-trade and other risk controls in comparison to the costs and benefits of the proposed definition that includes automated order routers? Would such an alternative definition reduce the number of AT Persons captured by Regulation AT?

113. Would the benefits of Regulation AT be enhanced significantly if the definition of Algorithmic Trading were modified to capture a conduit entity such as a non-clearing FCM, thereby making the entity an AT Person subject to Regulation AT? How would such a modification affect costs?

114. Would the benefits of Regulation AT be enhanced significantly if the definition of Algorithmic Trading were expanded to encompass orders that are generated using algorithmic methods (e.g., an algorithm generates a buy or sell signal at a particular time), but are then manually entered into a front-end system by a natural person? How would such a modification affect costs? Please comment on the costs and benefits of an alternative whereby the Commission would implement specific rules regarding the appropriate design of the specific controls required by Regulation AT and compare them to the costs and benefits of the Commission's proposal whereby the relevant entities—trading firms, clearing firms, and DCMs—would have the discretion to determine the appropriate design of those controls.

115. Does one particular segment of trading firms, clearing member FCMs or DCMs (e.g., smaller entities) currently implement fewer of the pre-trade and other risk controls required by Regulation AT than some other segment of trading firms, clearing member FCMs or DCMs? If so, please describe any

unique or additional costs that will be imposed on such persons to develop the technology and systems necessary to implement the pre-trade and other risk controls required by Regulation AT.

116. In question 14, the Commission asks whether there are any AT Persons who are natural persons. Would AT Persons who are natural persons (or sole proprietorships with no employees other than the sole proprietor) be required to hire staff to comply with the risk control, testing and monitoring, or compliance requirements of Regulation AT?

117. Do you agree with the accuracy of cost estimates provided by the Commission as to how much it will cost a trading firm, clearing member FCM or DCM to internally develop the technology and systems necessary to implement the pre-trade and other risk controls required by Regulation AT? If you disagree with the Commission's analysis, please provide your own quantitative estimates, as well as data or other information in support. Please specify in your answer the type of entity and which specific pre-trade risk or order management controls for which you are providing estimates.

In addition, please differentiate between the situations where an entity (i) already has partially compliant controls in place, and only needs to upgrade such technology and systems to bring it into compliance with the regulations; and (ii) needs to build such technology and systems from scratch. Please include, as applicable, hardware and software costs as well as the hourly wage information of the employee(s) necessary to develop such risk controls (i.e., technology personnel such as programmer analysts, senior programmers and senior systems analysts).

118. The Commission has assumed that the effort to adjust any one risk control (by "control," in this context, the Commission means the pre-trade risk controls, order cancellation systems, and connectivity systems required by § 1.80) will require assessment and possible modifications to all controls. Is this assumption correct, and if not, why not?

119. As indicated above, the Commission lacks sufficient information to provide full estimates of costs that a trading firm, clearing member FCM or DCM will incur if it chooses not to internally develop such controls, and instead purchases the solutions of an outside vendor in order to comply with Regulation AT's pre-trade and other risk controls requirements. Please provide quantitative estimates of such costs, including supporting data or other

information. In addition, please specify in your answer the type of entity and which specific pre-trade risk or order management control for which you are providing estimates.

In addition, please differentiate between the situations where an entity (i) already uses an outside vendor to at least some extent to implement the controls; and (ii) does not currently implement the controls and must obtain all applicable technology and systems from an outside vendor necessary to comply with Regulation AT. Please include, if applicable, hardware and software costs as well as the hourly wage information of the employee(s) necessary to effectuate the implementation of such controls from an outside vendor.

120. Do you agree with the Commission's estimates of how much it will cost a trading firm, clearing member FCM or DCM to annually maintain the technology and systems for the pre-trade and other risk controls required by Regulation AT, if it uses internally developed technology and systems? If not please provide quantitative estimates and supporting data or other information with respect to how much it will cost a trading firm, clearing member FCM or DCM to annually maintain the technology and systems for pre-trade and other risk controls required by Regulation AT, if it uses an outside vendor's technology and systems.

121. Is it correct to assume that many of the trading firms subject to § 1.80 are also subject to the SEC's Market Access Rule, and, accordingly, already implement many of the systems required by Regulation AT for purposes of their securities trading?

Please specify in your answer the type of entity and which specific pre-trade risk or order management control is already required pursuant to the Market Access Rule, and the extent of the overlap.

122. Please comment on the costs and benefits (including quantitative estimates with supporting data or other information) to clearing FCMs of an alternative to proposed § 1.82 that would require clearing FCMs to implement controls with respect to all orders, including orders that are manually submitted or are entered through algorithmic methods that nonetheless do not meet the definition of Algorithmic Trading and compare those costs and benefits to those costs and benefits of proposed § 1.82.

123. Please comment on the additional costs (including quantitative estimates with supporting data or other information) to AT Persons of

complying with each of the following specific requirements of § 1.80:

a. § 1.80(a)(2) (pre-trade risk control threshold requirements);

b. § 1.80(a)(3) (natural person monitors must be alerted when thresholds are breached)

c. § 1.80(d) (notification to DCM and clearing member FCM that AT Person will use Algorithmic Trading);

d. § 1.80(e) (self-trade prevention tools); and

e. § 1.80(f) (periodic review of pre-trade risk controls and other measures for sufficiency and effectiveness).

124. The Commission welcomes comment on the estimated costs of the pre-trade risk controls proposed in § 1.80 as compared to the annual industry expenditure on technology, risk mitigation and/or technology compliance systems.

125. Please comment on the costs to AT Persons and clearing member FCMs of complying with DCM rules requiring retention and production of records relating to §§ 1.80, 1.81, and 1.82 compliance, pursuant to § 40.22(d), including without limitation on the extent to which AT Persons and clearing member FCMs already have policies, procedures, staffing and technological infrastructure in place to retain such records and produce them upon DCM request.

126. The Commission anticipates that Regulation AT may promote confidence among market participants and reduce market risk, consequently reducing transaction costs, but has not estimated this reduction in transaction costs. The Commission welcomes comment on the extent to which Regulation AT may impact transaction costs and effects on liquidity provision more generally.

AT Person Membership in RFA; RFA Standards for Automated Trading and Algorithmic Trading Systems

127. The Commission estimates that the costs of membership in an RFA associated with proposed § 170.18 will encompass certain costs, such as those associated with NFA membership dues. Has the Commission correctly identified the costs associated with membership in an RFA?

128. The Commission expects that entities that will be required to become members of an RFA would not incur any additional compliance costs as a result of their membership in an RFA. The Commission requests comment on the accuracy of this expectation. What additional compliance costs, if any, would a registrant face as a result of being required to become a member of an RFA pursuant to proposed § 170.18?

129. Has the Commission accurately estimated that approximately 100 entities will be affected by the membership requirements of § 170.18?

130. The Commission invites estimates on the cost to an RFA to establish and maintain the program required by § 170.19, and the amount of that cost that will be passed along to individual categories of AT Person members in the RFA.

Development, Testing, and Supervision of Algorithmic Systems

131. Proposed § 1.81(a) establishes principles-based standards for the development and testing of Algorithmic Trading systems and procedures, including requirements for AT Persons to test all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation. AT Persons would also be required to maintain a source code repository to manage source code access, persistence, copies of all code used in the production environment, and changes to such code, among other requirements. Are any of the requirements of § 1.81(a) not already followed by the majority of market participants that would be subject to § 1.81(a) (or some particular segment of market participants), and if so, how much will it cost for a market participant to comply with such requirement(s)?

132. Proposed § 1.81(b) requires that an AT Person's Algorithmic Trading is subject to continuous real-time monitoring and supervision by knowledgeable and qualified staff at all times while Algorithmic Trading is occurring. Proposed § 1.81(b) also requires automated alerts when an Algorithmic Trading system's AT Order Message behavior breaches design parameters, upon loss of network connectivity or data feeds, or when market conditions approach the boundaries within which the ATS is intended to operate, to the extent applicable, among other monitoring requirements. Are any of the requirements of § 1.81(b) not already followed by the majority of market participants that would be subject to § 1.81(b), and if so, how much will it cost for a market participant to comply with such requirement(s)?

133. Proposed § 1.81(c) requires that AT Persons implement policies designed to ensure that Algorithmic Trading operates in a manner that complies with the CEA and the rules and regulations thereunder. Among other controls, the policies should include a plan of internal coordination and communication between

compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design, changes, testing, and controls. Are any of the requirements of § 1.81(c) not already followed by the majority of market participants that would be subject to § 1.81(c), and if so, how much will it cost for a market participant to comply with such requirement(s)?

134. Proposed § 1.81(d) requires that AT Persons implement policies to designate and train their staff responsible for Algorithmic Trading, which policies should include procedures for designating and training all staff involved in designing, testing and monitoring Algorithmic Trading. Are any of the requirements of § 1.81(d) not already followed by the majority of market participants that would be subject to § 1.81(d), and if so, how much will it cost for a market participant to comply with such requirement(s)?

#### AT Person and FCM Compliance Reports

135. Please comment on whether any of the alternatives discussed above regarding compliance reports would provide a superior cost-benefit profile relative to the Commission's proposal.

#### DCM Test Environments

136. Do any DCMs not currently offer a test environment that simulates production trading to their market participants, as would be required by proposed § 40.21? If so, how much would it cost a DCM to implement a test environment that would comply with the requirements of § 40.21?

#### DCM Review of Compliance Reports

137. Please comment on the cost estimates provided above with respect to DCMs' review of compliance reports provided under § 40.22 and related review requirements, including the estimated cost for DCMs to: Establish the review program required by § 40.22; review the reports provided by AT Persons and clearing member FCMs; communicate remediation instructions to a subset of AT Persons and clearing member FCMs; and review and evaluate, as necessary, books and records of AT Persons and clearing member FCMs as contemplated by proposed § 40.22(e).

#### Section 15(a) Considerations

138. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in § 15(a) of the CEA.

139. Are the compliance costs associated with the proposed rules of

sufficient magnitude to potentially cause smaller market participants, FCMs, or DCMs to cease or scale back operations? Do these costs create significant barriers to entry?

#### 8. Requirements for Certain Entities To Register as Floor Traders

##### a. Background

The Commission proposes to require registration for certain market participants with Direct Electronic Access. To achieve registration, the Commission proposes amending the definition of "Floor trader" in Commission regulation 1.3(x). The amended definition would include any person who purchases or sells futures or swaps solely for such person's own account in any other place provided by a contract market for the meeting of persons similarly engaged where such place is accessed for Algorithmic Trading by such person in whole or in part through Direct Electronic Access (as defined in proposed § 1.3(yyyy)).

##### b. Costs

**Registration and Membership Fees.** The new registration requirements imposed on certain entities with Direct Electronic Access would require these entities to pay certain one-time registration charges. NFA currently charges non-natural persons applying for registration as floor traders \$200 per application (on Form 7-R), and charges individuals \$85 per application (on Form 8-R). The Commission estimates that there will be approximately 100 entities with Direct Electronic Access that will register as Floor Traders under the new registration requirements. The Commission further estimates that each entity will be required to file 10 Forms 8-R in relation to its principals. Accordingly, the Commission estimates that new registrants will incur one-time registration costs of \$105,500 for Form 7-R and 8-R fees combined (Form 7-Rs submitted by 100 new registrants, at \$200 per Form 7-R plus 10 Forms 8-R submitted by each of 100 new registrants, at \$85 per Form 8-R).<sup>681</sup>

<sup>681</sup> As noted previously, the Commission has delegated its registration functions to NFA. Non-natural person floor trader entities register with the Commission and apply for membership in NFA via CFTC Form 7-R. Principals of non-natural person floor trader entities register via Form 8-R. The Commission estimates that each non-natural person floor trader entity will have approximately 10 principals and therefore need to file approximately 10 Forms 8-R. In the event that a natural person meets the definition of Floor Trader in proposed § 1.3(x)(3), and is therefore required to register with the Commission and become a member of NFA, such person would only be required to complete Form 8-R and would face substantially lower costs than those estimated here. The Form 7-R and 8-

Costs for Submitting Applications. In addition, the Commission estimates that new registrants will incur a total one-time cost of \$105,600 to prepare and submit Forms 7-R and 8-R. This cost represents the work of 1 Compliance Attorney per registrant, working for 11 hours (11 × \$96 = \$1,056 per registrant).<sup>682</sup> The 100 new registrants will therefore incur a total one-time cost of \$105,600.

**Other Indirect Costs.** The Commission preliminarily believes that there are additional indirect costs, beyond the cost of registration, to new registrants resulting from the new registration requirement. New floor traders required to register under proposed § 1.3(x)(3) will be included in the definition of "AT Person." These proposed rules establish various requirements for AT Persons, including the implementation of risk controls for algorithmic systems (proposed § 1.80), the implementation of standards for development, testing, and supervision of algorithmic systems (proposed § 1.81), and the submission to DCMs of compliance reports regarding risk controls and, upon request, certain related books and records (proposed § 1.83). Because these provisions apply to AT Persons, new floor traders under Proposed § 1.3(x)(3) will only be required to follow these provisions as a result of their status as a floor trader. Thus, any costs associated with these rules are also indirect costs of registration itself.<sup>683</sup>

##### c. Benefits

The Commission preliminarily believes that registration of certain entities with Direct Electronic Access would enhance the pre-trade controls and risk management tools discussed elsewhere in this NPRM. For example, the pre-trade risk controls listed in proposed § 1.80(a)—maximum AT Order Message frequencies per unit time, maximum execution frequencies per unit time, order price parameters and maximum order size limits—must be established and used by all AT Persons. If the Commission were to only require those trading firms or clearing member FCMs that are already registered with the Commission to implement such controls, it would be ignoring a significant number of market participants that actively trade on Commission-regulated markets, each of which has algorithmic trading systems

R fees estimated here are based on NFA's current fees.

<sup>682</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>683</sup> See Section V(E)(7)(b) above for a discussion of costs associated with Proposed §§ 1.80, 1.81, and 1.83.



that could malfunction and create systemic risk to all market participants. The Commission estimates that there are approximately one hundred proprietary trading firms engaged in Algorithmic Trading in Commission-regulated markets. However, a technological malfunction in a single trading firm's systems can significantly impact other markets and market participants. Accordingly, the proposed registration requirement accomplished through revised § 1.3(x) is critical to ensuring that all such firms are registered and subject to appropriate risk control, testing, and other requirements of Regulation AT.

A number of commenters to the Concept Release pointed out benefits of additional registration.<sup>684</sup> AFR stated that “[t]he enhancement of investigative authority is extraordinarily important given that the Commission would often need to involve itself in the workings of the ATs to anticipate problems and to detect and investigate problems that have occurred. HFT firms should have the highest priority.”<sup>685</sup>

AIMA and VFL specifically emphasized benefits of registration for participants with direct market access.<sup>686</sup> VFL commented that if an exchange provides a participant the ability to connect directly, then that participant enjoys all of the rights of a member and should be regulated at the federal and exchange level.<sup>687</sup>

#### d. Section 15(a) Factors

This section discusses the section 15(a) factors for the proposed amendment of the definition of “Floor trader” in Commission Regulation 1.3(x), for purposes of registering participants with Direct Electronic Access.

##### i. Protection of Market Participants and the Public

The Commission preliminarily believes that requiring market participants with Direct Electronic Access to register with the Commission will further the protection of market participants and the public by enhancing the Commission's ability to seek information from such firms and allow for wider implementation of many of the pre-trade risk controls and other tools discussed in this release. Broader use of these tools will reduce the likelihood of market disruptions that adversely impact market participants and the public. Regulation AT may

serve to limit a “race to the bottom,” in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. The proposed rules, by standardizing the risk controls required to be used by firms, would help ensure that the benefits of these risk controls are more evenly distributed across a wide set of market participants, and reduce the likelihood that an outlier firm without sufficient risk controls causes significant market disruption. Thus, the proposed registration requirement may help ensure the protections of market participants and the public that these tools provide as discussed above.

##### ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that requiring market participants with Direct Electronic Access to register with the Commission will further the efficiency, competitiveness, and financial integrity of futures markets by enhancing the Commission's ability to seek information from such firms and allow for wider implementation of many of the pre-trade risk controls and other tools discussed in this release. Broader use of these tools will reduce the likelihood of market disruptions that may adversely impact the efficiency and integrity of the futures markets. Consistent use of these tools may also even the playing field within groups of automated firms, such as market-makers, or across firms with differing strategies. This consistency can improve firm competitiveness and reduce disadvantages experienced by those firms who would employ more comprehensive risk control and order management programs even absent a rule requiring use of such tools. Thus, the proposed registration requirement may help ensure the furtherance of efficiency, competitiveness, and financial integrity that these tools provide as discussed above.

##### iii. Price Discovery

The Commission preliminarily believes that requiring market participants with direct market access to register with the Commission will also further price discovery by enhancing the Commission's ability to seek information from such firms and allow for wider implementation of many of the pre-trade controls and risk management tools discussed in this release. Broader use of these tools will reduce the likelihood of market disruptions that may interfere with the price discovery process. Thus, the proposed registration requirement may

help ensure the furtherance of price discovery protections that these tools provide as discussed above.

##### iv. Sound Risk Management Practices

The Commission preliminarily believes that requiring market participants with direct market access to register with the Commission will also further sound risk management practices by enhancing the Commission's ability to seek information from such firms and allow for wider implementation of many of the pre-trade controls and risk management tools discussed in this release. Broader use of these tools will reduce the likelihood of market disruptions that may interfere with sound risk management practices. Thus, the proposed registration requirement may help ensure the furtherance of sound risk management practices that these tools provide as discussed above.

##### v. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest considerations other than those addressed above.

##### e. Consideration of Alternatives

The Commission considered a number of alternatives to the proposed approach of requiring registration for entities with Direct Electronic Access. In the Concept Release, the Commission sought comments regarding broader registration of proprietary traders generally. Based upon the comments received, many of which did not support registration, the Commission is not proposing broad registration of proprietary traders at this time.

As an alternative to requiring the registration of entities engaged in proprietary Algorithmic Trading through DEA, the Commission considered reaching such entities indirectly through the DCMs on which they trade. This approach would have necessitated that DCMs implement rules requiring relevant entities to meet the substantive standards of Regulation AT. These DCM rules would have needed to require, for example, that relevant entities implement pre-trade risk controls, establish policies and procedures for testing and monitoring of ATs, and provide compliance reports regarding their algorithmic trading to DCMs (which are currently proposed as direct obligations upon AT Persons under §§ 1.80, 1.81, and 1.83, respectively). This alternative would have reduced the costs for such entities, since they would not be required to register with the Commission. However,

<sup>684</sup> Better Markets 13; AFR 8–9; TCL 17.

<sup>685</sup> AFR 8–9.

<sup>686</sup> AIMA 24; VFL 3.

<sup>687</sup> VFL 3.

such costs would instead have been borne by DCMs, and potentially passed back on to relevant entities. The Commission did not pursue this approach for a number of other reasons as well. In particular, the Commission wanted to ensure that such entities are directly subject to Commission regulations, rather than impose obligations indirectly through DCMs. In addition, the Commission wanted to ensure a uniform baseline of regulatory expectations which might not arise where numerous DCMs are independently producing their own self-regulatory standards in lieu of the Commission's standards. Furthermore, the Commission also wanted to combine the requirement to register with the Commission with the requirement under § 170.18 that all AT Persons must become a member of a registered futures association, so that the RFA can consider adopting standards for automated trading and ATs applicable to AT Persons. These standards are described under § 170.19. As discussed above, the Commission believes that §§ 170.18 and 170.19 would allow RFAs to supplement elements of Regulation AT as markets and trading technologies evolve over time, and do so in a uniform manner that would not be available through separate initiatives by individual DCMs.

The Commission also considered not requiring currently unregistered entities to register with the Commission as floor traders. A number of commenters supported such an approach, including FIA, which suggested “[r]ather than creating a new registration framework, expanding the information required in [the DCM’s] audit trail may be a more direct and efficient way to address the Commission’s concerns.”<sup>688</sup> Other commenters also focused on whether the Commission already had access to the information that registration would ostensibly enable it to acquire. Commenters pointed out that: DCMs already use Operator IDs; the DCM audit trail already satisfies the goals of registration; implementing the Commission’s final rule on ownership and control reporting (OCR) will provide additional information on trading identities; and the Commission already has access to trade data (*i.e.*, Regulation 1.40 and part 38’s mandate that DCMs require market participants to submit to jurisdiction).<sup>689</sup> The Commission notes that obtaining information from proprietary traders is

not the primary purpose of the proposed registration requirement, and therefore believes that the goals of Regulation AT can only be realized by requiring currently unregistered entities to register with the Commission as floor traders.

As discussed more fully in section IV(E)(3) above, the “floor trader” definition is not being expanded to capture all proprietary traders engaged in Algorithmic Trading; rather, the revised floor trader definition is limited to firms using DEA to engage in Algorithmic Trading. Registration of entities with DEA as floor traders would enhance the pre-trade controls and risk management tools discussed elsewhere in this NPRM by making such entities subject to the various regulations governing AT Persons under the NPRM. For example, the pre-trade risk controls listed in proposed § 1.80—maximum AT Order Message frequencies per unit time, maximum execution frequencies per unit time, order price parameters and maximum order size limits—must be established and used by all AT Persons. The Commission is also considering whether it is appropriate to further limit the registration requirement by adding a *de minimis* exception, whereby only those persons with DEA who also meet certain trading volume or message volume thresholds would be required to register.

#### f. Request for Comments

140. The Commission estimates that the costs of registration will encompass direct costs (those associated with NFA membership, and reporting and recordkeeping with the Commission), and indirect costs (*e.g.* those associated to risk control requirements placed on all registered entities). Has the Commission correctly identified the costs associated with the new registration category? What firm characteristics would change the level of direct and indirect costs associated with the registration?

141. Has the Commission accurately estimated that approximately 100 currently unregistered entities will be captured by the new registration requirement in proposed § 1.3(x)(3).

142. Has the Commission accurately estimated that each currently unregistered entity captured by the new registration requirement in proposed § 1.3(x)(3) will have approximately 10 persons required to file Form 8-R?

143. As defined, the new floor trader category restricts the registration requirement to those who make use of Direct Electronic Access. Is this requirement overly restrictive or unduly broad from a cost-benefit perspective?

Are there alternate, or additional, characteristics of trading activity to determine registration status that would be preferable from a cost-benefit standpoint? For example, should persons with trading volume or message volume below a specified threshold be exempted from registration?

144. Will any currently unregistered entities change their business model or exit the market in order to avoid the proposed registration requirement?

145. The Commission believes that the risk control protocols required of registered entities, specifically those under the new registration category, will provide a general benefit to the safety and soundness of market activity and price formation. Has the Commission correctly identified the type and level of benefits which arise from placing these requirements on a new set of significant market participants?

146. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

## 9. Transparency in Exchange Trade Matching Systems

### a. Background

The proposed regulations concerning additional disclosure by DCMs regarding their trade matching systems (amendments to §§ 38.401(a) and 40.1(i)) provide that DCMs publicly disclose certain information prominently and clearly. These proposed regulations would require DCMs to provide a description of attributes of trade matching systems that materially affect the entry and execution of orders and requests for quotes, including any changes to trade matching systems that would cause such effects.

### b. Costs

The Commission notes that DCMs are currently obligated under DCM core principles and existing regulations to make available certain types of information concerning the operation of their electronic matching platforms through publication of rulebooks and through the required posting of specifications of platforms on their Web site. DCMs are also obligated under DCM core principles and existing regulations to establish and maintain a program of risk analysis and oversight to identify and minimize sources of operation risk, which should identify and remediate aspects of an electronic matching platform that could negatively affect market participants’ orders. Therefore, to a large extent, the Commission believes that the disclosure

<sup>688</sup> FIA at 44.

<sup>689</sup> FIA 43–46; CME at 32–34; Gelber at 22–24; KCG at 18; MFA at 3; AIMA at 2, 24; Chicago Fed at 3.

requirements under proposed § 38.401(a) would not materially impact a DCM's operations costs.

The Commission anticipates that additional costs under proposed § 38.401(a) would be staff hours associated with drafting descriptions of such attributes that the DCMs should already be determining as part of their systems testing and disclosure of platform specifications. Such drafting may also require additional determinations as to the materiality of attributes and, where applicable, additional testing of systems to ensure an accurate description of those attributes in public documents. This may also involve attorneys' fees associated with reviewing any disclosures.

The proposed amendments to § 38.401(a) and (c) require DCMs to publicly post information regarding certain aspects of their electronic matching platforms. The Commission anticipates that DCMs are likely to be aware of these aspects of their platforms based on their daily work in operating their matching engines, monitoring performance, and receiving customer feedback, among other internal monitoring activities. As a result, the added burden under the proposed amendments would be limited to drafting the description of such attributes and making the description available on the DCM's Web site.

The Commission estimates that a DCM would incur an annual cost of \$19,200 to comply with amended § 38.401(a)–(c), assuming the DCM is already compliant with the requirements to post the specifications of its electronic matching platform under current § 38.401(a). This cost represents the work of 1 Compliance Attorney, working for 200 hours ( $200 \times \$96$  per hour = \$19,200).<sup>690</sup> The 15 DCMs that would be subject to amended § 38.401(a)–(c) would therefore incur a total annual cost of \$288,000 ( $15 \times \$19,200$ ).<sup>691</sup> The Commission anticipates that this figure would decrease in subsequent years as the descriptions provided would only need to be amended to reflect changes to the electronic matching platform or the discovery of previously unknown attributes.

The proposed amendment to Regulation 40.1(i) that adds the language “(including but not limited to any operation of an electronic matching platform that materially affects the time,

priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or the dissemination of real-time market data to market participants)” would not result in any additional costs for DCMs. The Commission notes that the proposed change to Regulation 40.1(i) clarifies and codifies the Commission's existing interpretation of the term “rule.” Moreover, the proposal is consistent with industry practice, whereby DCMs have submitted as rule changes information regarding proposed changes to electronic trade matching platform that affect the entry and execution of market participant orders and quotes. Therefore, the Commission does not anticipate that DCMs will be required to file submissions relating to any changes to the platform that should not already be filed under current Commission interpretation and industry practice.

#### c. Benefits

The Commission believes that the additional disclosure by DCMs regarding their trade matching systems, pursuant to the proposed amendments to §§ 38.401(a) and 40.1(i), would have substantial benefits for market participants. With a better understanding of how their order messages interact with an electronic matching platform, market participants can more efficiently use the electronic markets to hedge risks. Moreover, the disclosure required by the proposed rule would foster greater transparency in the operation of electronic markets. This enhanced transparency would foster confidence in the markets and ensure the availability of efficient markets to hedge risks. Finally, this increased transparency would encourage competition among DCMs to provide the best platforms for market participants, as market participants would be able to evaluate better the relative benefits of trading on individual exchanges. The Commission believes that, to the extent that DCMs are currently in compliance with the proposed amendments to §§ 38.401(a) and 40.1(i), many of the benefits of the proposed amendments are already being realized. The proposed rule will ensure that the benefits are being realized by market participants at all DCMs.

#### d. Section 15(a) Factors

This section discusses the Section 15(a) factors for the proposed regulations requiring additional disclosure by DCMs regarding their trade matching systems (amendments to §§ 38.401(a) and 40.1(i)).

#### i. Protection of Market Participants and the Public

The Commission preliminarily believes that the proposed disclosure requirement and the enhanced transparency that it would foster will protect market participants by providing them with a better understanding of how their order messages interact with an electronic matching platform, thus facilitating their ability to tailor their orders to their understanding of the matching engine and reducing the likelihood of unpleasant surprises regarding order fills.

#### ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Requiring submissions for changes to available order types and platform functionalities also ensures transparency on the operation of such platforms, further encouraging competition among DCMs and enhancing market integrity. The increased transparency may increase investor confidence and expand participation in the futures markets.

#### iii. Price Discovery

The proposed rule may protect and enhance the price discovery process by providing market participants and the public with a better understanding of how buy and sell orders interact on the trading platform, thus making the price discovery process more transparent.

#### iv. Sound Risk Management Practices

The proposal may promote sound risk management practices by providing market participants with more detailed information regarding how their order messages will be processed once they reach the trading platform, and how their messages will interact with messages from other market participants, including the priority with which they will be executed. This information will enable market participants to calibrate their risk controls more effectively.

#### v. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest considerations other than those addressed above.

#### vi. Consideration of Alternatives

The Commission is considering the alternative of applying the transparency requirement only with respect to latencies within a platform and how a self-trade prevention tool determines whether to cancel an order. The Commission preliminarily believes that the broader language that it is proposing

<sup>690</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>691</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

would better ensure that DCMs disclose any additional attributes of an electronic matching platform that may materially impact market participant orders and any material attributes that may arise in the future as the structures of matching engines continue to evolve. This additional information may enable market participants to make better and more informed decisions about their trading decisions.

#### e. Request for Comments

147. The Commission anticipates that costs associated with the transparency requirement would come from some additional testing of platform systems and from drafting and publishing descriptions of any relevant attributes of the platform. What new costs would be associated with providing descriptions of attributes of electronic matching platforms that affect market participant orders and quotes?

148. Please compare the costs and benefits of the alternative of applying the transparency requirement only with respect to latencies within a platform and how a self-trade prevention tool determines whether to cancel an order with the costs and benefits of the proposed rule.

149. What benefits might market participants receive through increased transparency into the operation of electronic matching platforms, particularly for those market participants without direct electronic access who may not be able to accurately measure latencies or other metrics of market efficiency?

150. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

### 10. Self-Trade Prevention

#### a. Background

Regulation AT proposes a new requirement (§ 40.23) that a DCM shall implement rules reasonably designed to prevent self-trading by market participants, except as specified in paragraph (b) of § 40.23. “Self-trading” is defined for purposes of § 40.23 as the matching of orders between accounts that have common beneficial ownership or are under common control. A DCM must either apply, or provide and require the use of, self-trade prevention tools that are reasonably designed to prevent self-trading and are applicable to all orders on its electronic trade matching platform. This requirement is subject to the proviso in proposed § 40.23(b) that a DCM may, in its discretion, implement rules that permit

the matching of orders for accounts with common beneficial ownership where such orders are initiated by independent decision makers. Under § 40.23(b), a DCM could also permit the matching of orders for accounts under common control where such orders comply with the DCM’s cross-trade, minimum exposure requirements or similar rules, and are for accounts that are not under common beneficial ownership.

Proposed § 40.23(c) states that a DCM may only permit the self-trading described in § 40.23(b) if the DCM complies with certain requirements, including the requirement under § 40.23(c) that the DCM requires market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of § 40.23(b). Finally, proposed § 40.23(d) would require DCMs to publish statistics on their Web site with respect to self-trading activity on their platform. For example, each DCM would be required to describe the amount of trading on its platform that represents permitted self-trading approved pursuant to § 40.23(b).

#### b. Costs

The Commission assumes that most, if not all, DCMs currently offer self-trade prevention controls or plan to implement them and provide them for use by market participants in the near future. FIA recommends that DCMs offer such controls,<sup>692</sup> and several DCMs provide the controls, a capability which was introduced, and refined, in recent years.<sup>693</sup> As a result, subject to consideration of relevant comments, the Commission preliminarily believes that DCMs would not incur additional costs to develop and offer self-trade prevention controls as required by § 40.23(a). The Commission has, nonetheless, estimated the cost to a DCM that does not currently offer self-trade prevention tools to develop and implement such tools for purposes of complying with § 40.23(a).

Cost to DCMs to Implement Self-Trade Prevention Tools. The Commission estimates that a DCM would incur a total one-time cost of \$155,520 to implement these § 40.23(a) requirements, in the absence of any existing controls. This cost is broken down as follows: 1 Project Manager, working for 480 hours ( $480 \times \$70 = \$33,600$ ); 1 Business Analyst, working for 480 hours ( $480 \times \$52 = \$24,960$ ); 1

Tester, working for 480 hours ( $480 \times \$52 = \$24,960$ ); and 2 Developers, working for a combined 960 hours ( $960 \times \$75 = \$72,000$ ).<sup>694</sup> Notwithstanding these estimates, the Commission believes that the requirement under proposed § 40.23(a) that DCMs either apply self-trade prevention tools, or provide such tools to market participants, standardizes existing industry practice. As a result, subject to consideration of relevant comments, the Commission preliminarily believes that this requirement under § 40.23(a) will not impose additional costs on DCMs.

DCM Review of Approval Requests. DCMs will, however, incur additional costs in connection with proposed § 40.23(c). This provision requires market participants to request approval from the DCM that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of § 40.23(b). DCMs will incur costs to review these § 40.23(c) approval requests. These costs may vary significantly depending on the number of approval requests a DCM receives. The Commission has therefore estimated the average annual costs that a DCM will incur, while acknowledging that DCMs may incur lower or higher costs depending on the number of requests received. On average, the Commission estimates that, on an annual basis, a DCM will incur a cost of \$22,000 to review these approval requests. This cost is broken down as follows: 1 Senior Compliance Examiner, working for 200 hours ( $200 \times \$58 \text{ per hour} = \$11,600$ ); and 1 Business Analyst, working for 200 hours ( $200 \times \$52 \text{ per hour} = \$10,400$ ).<sup>695</sup> The 15 DCMs that will be subject to § 40.23(c) would therefore incur a total annual cost of \$330,000 ( $15 \times 22,000$ ).<sup>696</sup>

DCM Publication of Statistics Regarding Self-Trade Prevention. In addition, DCMs will incur costs to generate and publish the self-trade statistics on their Web site required by § 40.23(d). The Commission estimates that, on an annual basis, a DCM will incur a cost of \$6,650 to generate and publish these statistics. This cost is broken down as follows: 1 Developer, working for 50 hours ( $50 \times \$75 \text{ per hour} = \$3,750$ ); and 1 Senior Compliance Examiner, working for 50 hours ( $50 \times$

<sup>694</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>695</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>696</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

<sup>692</sup> FIA at 25–27.

<sup>693</sup> FIA at 25–27; MFA at 8; Gelber 7–9; AIMA at 10; IATP at 5.

\$58 per hour = \$2,900).<sup>697</sup> The 15 DCMs that will be subject to § 40.23(c) and (d) would therefore incur a total annual cost of \$99,750 (15 × 6,650).<sup>698</sup> These costs may vary significantly depending on the size of a DCM and the number of products it lists for trading.

As noted above, proposed § 40.23 requires DCMs to apply, or provide and require the use of, self-trade prevention tools that are reasonably designed to prevent self-trading and are applicable to all orders on its electronic trade matching platform. To the extent that a DCM offers self-trade prevention tools to market participants, in lieu of the DCM internalizing and directly applying these tools, then market participants will be required to use these tools. Commenters indicated that exchange-provided self-trading controls are widely used by market participants.<sup>699</sup> The FIA PTG Survey indicated that 25 of 26 responding firms use such controls.<sup>700</sup> In the event that a market participant is required to use self-trade prevention tools in the scenario described above, and was not previously using such tools, the Commission estimates that the market participant will not incur any additional costs beyond those costs already incurred to implement the pre-trade risk controls required by Regulation AT.

Market Participant Approval Requests. Market participants will, however, incur additional costs in the event that they prepare and submit the approval requests contemplated by § 40.23(c). This provision requires market participants to request approval from DCMs on which they are active that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control. The Commission estimates that, on an annual basis, a market participant will incur a total cost of \$3,810 to prepare and submit these approval requests to the DCMs on which the market participant is active. This cost is broken down as follows: 1 Business Analyst, working for 30 hours (30 × \$52 per hour = \$1,560); and 1 Developer, working for 30 hours (30 × \$75 per hour = \$2,250).<sup>701</sup>

The Commission cannot predict how many market participants would likely submit the approval requests contemplated by § 40.23(c) on an annual basis. The Commission believes that not

all market participants trading on a DCM would submit such requests. In the view of the Commission, for example, a limited subset of market participants will own two or more accounts, but operate them through “independent decision makers” that initiate orders for “separate business purposes,” as contemplated by § 40.23(b). Similarly, a limited subset of market participants will find it advantageous to incur the costs associated with the self-trading described by § 40.23(b), such as trading costs and clearing fees. In addition, the Commission believes that market participants submitting orders through Algorithmic Trading are more likely than traders submitting orders manually to inadvertently self-trade through independent decision-makers. The Commission estimates that, notwithstanding the fact that the DCM rules described in § 40.23(c) are directed to all market participants, the number of market participants that will submit the approval requests described therein are equivalent to the number of AT Persons calculated above (420).<sup>702</sup> On this basis, the Commission estimates that market participants will incur a total annual cost of \$1,600,200 to submit the approval requests contemplated by § 40.23(c) (\$3,810 per market participant × 420 market participants).

#### c. Benefits

The Commission notes that, to the extent that DCMs are offering self-trade prevention tools and market participants are using them, many of the benefits of the proposed rules are already being realized. Nonetheless, the Commission has determined to propose rules in the area of self-trading that address both intentional and unintentional matching of orders for accounts that have common beneficial ownership or are under common control, with the goal of benefiting markets and market participants. In particular, the proposed rules would codify a regulatory baseline for self-trade prevention across DCMs, and provide all market participants with enhanced transparency regarding the products in which they trade.

Regulation AT addresses certain self-trading as provided in § 40.23(a) and (b) (trades between accounts that have common beneficial ownership or are under common control, with certain exceptions). At their extreme, intentional self-trades, or wash sales, may indicate an intent to manipulate a market by creating a false impression of

supply or demand or distortions in prices. While Section 4c of the CEA prohibits wash sales, unintentional self-trades are not specifically prohibited under the statute. While existing Commission rules address market manipulation, including wash sales, the use of self-trade tools (as compared to an electronic market without such controls) can improve market functioning, aid firm and market efficiency, and minimize unintentional, and often unnecessary, trading by firms that may be difficult for firms to track on their own. Absent self-trade controls, it has become even more difficult for firms to avoid unintentional self-matches due to their use of automated strategies, which make trading decisions in isolation from the rest of the firm at very high speeds. The Commission preliminarily believes that the proposed rule, by standardizing the use of self-trade controls, will ensure that these benefits of self-trade controls will be available to all market participants. The Commission believes that DCMs are best situated to promulgate rules designed to limit the frequency of self-trading on their platforms, and to provide disclosure to the marketplace regarding the frequency of self-trade activity on their platform.

Proposed § 40.23(c) requires market participants to request approval from DCMs on which they are active that self-trade prevention tools not be applied with respect to specific accounts under common beneficial ownership or control. The Commission preliminarily believes that this rule will benefit the market by providing, to the DCMs, additional transparency on the relationships between accounts and trading strategies within a firm. In addition, the rule will better ensure that firms will apply self-trade prevention tools in a consistent manner.

The Commission preliminarily believes that publication of self-trade statistics by DCMs (proposed § 40.23(d)) will benefit market participants by providing transparency about the frequency of certain categories of self-trades on each DCM, which can aid in a better understanding of the sources, and characteristics, of liquidity demand and supply across futures products.

#### d. Section 15(a) Factors

This section discusses the Section 15(a) factors for the new proposed requirement (§ 40.23) that a DCM shall implement rules reasonably designed to prevent self-trading by market participants, except as specified in paragraph (b) of § 40.23.

<sup>697</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>698</sup> See section V(A) above for the calculation of the number of persons subject to Regulation AT.

<sup>699</sup> FIA at 26; Gelber at 7–9.

<sup>700</sup> FIA at 26, 59–60.

<sup>701</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>702</sup> See section V(A) above for the calculation of the number of person subject to Regulation AT.

i. Protection of Market Participants and the Public

The Commission preliminarily believes that the proposed rule would protect market participants and the public by codifying the use of self-trade controls and increasing transparency around self-trading as required by proposed § 40.23(d). It may also incentivize practices that help to reduce the likelihood of wash trades and self-trades.

ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that the proposed rule standardizing the use of self-trade controls and increasing transparency around self-trading would promote the efficiency of the markets. The use of self-trade controls may promote financial integrity by helping to limit self-trades (including intentional and potentially manipulative self-trades). Moreover, requiring that DCMs provide self-trade controls and that market participants use them may enhance competitiveness by preventing a race to the bottom; that is, eliminating the possibility that a DCM or market participant could elect not to require or implement self-trade prevention in order to gain competitive advantage.

iii. Price Discovery

The proposed rule may protect and enhance the price discovery process by standardizing the use of self-trade controls and increasing transparency around self-trading.

iv. Sound Risk Management Practices

The proposed rule may promote sound risk management practices since self-trade controls (which the rule codifies) give market participants greater ability to avoid unintentional self-trading that could expose them to various financial risks.

v. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest considerations other than those addressed above.

e. Consideration of Alternatives

Proposed § 40.23 provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission's principal goal is to address

unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the accounts that should not trade with each other, so long as this goal is met. The Commission has requested comment on whether other identification methods should be permitted in § 40.23. For example, the Commission has requested comment on whether the opposite approach is preferable: market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other). The Commission has also asked for comment on whether other identification methods would reduce costs for market participants or be easier for both market participants and DCMs to administer. Upon consideration of comments, the Commission may choose to adopt these other methods in lieu of what is now proposed.

f. Request for Comments

151. Please comment on the cost estimates described above for DCMs and market participants to comply with the requirements of § 40.23. The Commission is interested in commenter opinion on all aspects of its analysis, including its estimate of the number of entities impacted by the proposed regulation and the amount of costs such entities may incur to comply with the regulation.

152. Please comment on the benefits described above. Do you agree with the Commission's position that self-trade prevention requirements will result in more accurate indications of the level of market interest on both sides of the market and help ensure arms-length transactions that promote effective price discovery? Are there additional benefits to regulatory self-trade prevention requirements not articulated above?

153. Are there any DCMs that neither internalize and apply self-trade prevention tools, nor provide self-trade prevention tools to their market participants? If so, please provide an estimate of the cost to such a DCM to comply with the requirement under § 40.23(a) to apply, or provide and require the use of, self-trade prevention tools.

154. Would any DCMs that currently offer self-trade prevention tools need to update their tools to meet the requirements of § 40.23? If so, please provide an estimate of the cost to such a DCM to comply with the requirements of § 40.23.

155. What percentage of market participants do not currently make use

of exchange-provided self-trade prevention tools, when active on a DCM that provides, but does not require such tools? Please provide an estimate of the cost to such a market participant to initially calibrate and use exchange-provided self-trade prevention tools, in accordance with § 40.23. Please also comment on any other direct or indirect costs to a market participant that does not currently use self-trade prevention tools arising from the proposed requirement to implement such tools.

156. The Commission estimates above that the number of market participants that will submit the approval requests described by § 40.23(c) is approximately equivalent to the number of AT Persons. Please comment on whether the estimate of the number of market participants submitting such approval requests should be higher or lower. For example, should the estimate be raised to account for proprietary algorithmic traders that will not be AT Persons, because they do not use Direct Electronic Access and therefore will not be required to register as floor traders?

157. Proposed § 40.23 provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission's principal goal is to prevent unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the account that should be prohibited from trading from each other, so long as this goal is met. Should any other identification methods be permitted in § 40.23? For example, please comment on whether the opposite approach is preferable: market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other). In particular, please comment on whether this approach or other identification methods would reduce costs for market participants or be easier for both market participants and DCMs to administer.

158. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

## 11. Market-Maker and Trading Incentive Programs

### a. Summary of Proposed Rules

The Commission is proposing new regulations in part 40 to increase transparency around DCM market-maker and trading incentive programs, underline existing regulatory expectations, and introduce basic safeguards in the conduct of such programs. The proposed regulations would amend existing § 40.1(i), which applies to all registered entities, to make clear that market-maker and trading incentive programs are “rules” for purposes of part 40, and therefore subject to part 40’s rule filing requirements. They would also establish information requirements when DCMs file rules for Commission approval pursuant to existing § 40.5 or self-certify rules pursuant to existing § 40.6. Information requirements would be codified in proposed § 40.25, including § 40.25(a) for information to be provided to the Commission and § 40.25(b) specifying information that must be available on a DCM’s public Web site. Relatedly, proposed § 40.26 would permit the Commission or the director of DMO to require certain information from DCMs regarding their market-maker or trading incentive programs, including but not limited to copies of program agreements, names of program participants, and payments or other benefits conferred pursuant to a program.

The most substantive provisions of the Commission’s proposed rules for market-maker and trading incentive programs are in new § 40.27(a). Proposed § 40.27(a) would codify DMO’s long-standing guidance to DCMs that market-maker and trading incentive programs should not provide payments or incentives for trades between accounts under common ownership. Finally, the proposed regulations would also make clear in § 40.28 that DCMs’ existing trade practice and market surveillance responsibilities in subparts C and E of part 38 apply equally to market-maker and trading incentive programs.

### b. Costs

i. Rule 40.1(i)—Definition of “Rule”; and Rule 40.26—Information Requests From the Commission or the Director of the Division of Market Oversight

Proposed amendments to § 40.1 and new § 40.26 serve in large part to emphasize existing regulatory requirements and Commission or staff authorities. As such, they are not expected to impose meaningful costs on DCMs. While they may in some cases

impose minor incremental costs, they should not require entirely new programs, systems, or categories of employees for DCMs that are already compliant with parts 38 and 40 of the Commission’s regulations.

The Commission proposes to amend § 40.1(i) to make clear that market-maker and trading incentive programs are “rules” for purposes of part 40. This codification of a previously articulated Commission standard with broad industry-wide acceptance should not give rise to new costs for market participants. The Commission has previously stated its view, in a Final Rule regarding Provisions Common to Registered Entities, that a market-maker or trading incentive program is an “agreement” corresponding to “trading protocol” as such terms are used within § 40.1(i)’s existing definition of “rule.”<sup>703</sup> In the same Final Rule, the Commission stated that “all market maker and trading incentive programs must be submitted to the Commission in accordance with the procedures established in part 40.”<sup>704</sup> DCMs, for example, certify numerous market-maker and trading incentive programs to the Commission annually, including 341 such self-certifications in 2013. For these and other rule filings, DCMs already employ corresponding staff and other resources to comply with their part 40 obligations. The proposed amendments to § 40.1(i) do not create a new category of rule filings, nor do they require more frequent filings. Furthermore, the proposed amendments would require no additional staff or other resources beyond those already in place to meet existing rule filing requirements in part 40. Accordingly, the Commission believes that the proposed amendments to § 40.1(i) will impose no additional costs on the registered entities to which it applies.

Proposed § 40.26 is a new regulatory provision that would permit the Commission or the director of DMO to require certain information from DCMs regarding their market-maker or trading incentive programs. As with § 40.1(i), the Commission believes that proposed § 40.26 will impose no additional costs on DCMs. The proposed regulation is a more targeted iteration of existing § 38.5, which requires a DCM to file with the Commission such “information related to its business as a designated

contract market” as the Commission may require. Section 38.5 also requires a DCM upon request by the Commission or the director of DMO to file “a written demonstration” that the DCM “is in compliance with one or more core principles as specified in the request” or “satisfies its obligations under the Act,” including “supporting data, information and documents.”

Proposed § 40.26 does not alter a DCM’s existing obligations under § 38.5, but rather makes clear that Commission and DMO information requests may pertain specifically to market-maker and trading incentive programs. It also provides a non-exhaustive list of the types of “supporting data, information and documents” that the Commission or the director of DMO may request that is particularly appropriate to market-maker and trading incentive programs. Proposed § 40.26 imposes no new obligation to provide information, and does not increase the frequency which information must be provided. The Commission is aware that DCMs already employ legal, business, technology, and other staff and resources necessary to respond to § 38.5 information requests. The Commission believes that the same staff will be appropriate for any § 40.26 information request that it may issue to focus specifically on market-maker or trading incentive programs. Accordingly, the Commission believes that proposed § 40.26 will impose no additional costs on DCMs.

ii. Rule 40.25—Additional Public Information Required for Market Maker and Trading Incentive Programs; and Rule 40.28—Surveillance of Market Maker and Trading Incentive Programs

Proposed § 40.25(a) would require DCMs to provide the Commission with certain information regarding their market-maker and trading incentive programs when submitting such programs as rules pursuant to part 40. Specifically, when requesting approval of a new program pursuant to § 40.5, or self-certifying a program pursuant to § 40.6, DCMs would be required to provide the name of the program, the date on which it begins, and the date on which it terminates (if applicable). DCMs would also be required to provide a description of any categories of market participants or eligibility criteria limiting who may participate in the program. For any market-maker or trading incentive program open to only some market participants, proposed § 40.25(a) would require DCMs to explain why the program was limited to the chosen participants or criteria. Proposed § 40.25(a) would also require DCMs to include in their rule filings an

<sup>703</sup> See Final Rule, Provisions Common to Registered Entities, 76 FR 44776, 44778 (July 27, 2011), where the Commission stated, specifically with respect to DCMs, that “[a] DCM’s rules implementing market maker and trading incentive programs fall within the Commission’s oversight authority.”

<sup>704</sup> See *id.*

explanation of how persons eligible for a market-maker or trading incentive program would apply to participate, and how eligibility would be evaluated by the DCM.

Separately, proposed § 40.25(a) would require DCMs to provide an explanation of the specific purpose for a market-maker or trading incentive program, and a list of all products or services to which the program applies. It would also require a description of any payments, incentives, discounts, considerations, inducements or other benefits that program participants may receive, including any non-financial incentives. Finally, proposed § 40.25(a) would require a description of the obligations, benchmarks, or other measures that participants in a market-maker or trading incentive program must meet to receive benefits.

To ensure public transparency in market-maker and trading incentive programs, proposed § 40.25(b) would enlarge upon DCMs' existing obligations in part 40 to provide public notice and other information regarding their rule filings. Specifically, proposed § 40.25(b) would require DCMs to ensure that the information described above in § 40.25(a) is easily located on their public Web sites. Lastly, proposed § 40.25(c) would require DCMs to notify the Commission upon the termination of a market maker or trading incentive program.

While proposed § 40.25 would require information from DCMs regarding their market-maker or trading incentive programs, the Commission believes it largely incorporates existing rule filing requirements in part 40. For example, existing §§ 40.5 and 40.6 each require a DCM requesting approval or self-certifying rules to provide the Commission with the rule text; the proposed effective date or date of intended implementation; and an "explanation and analysis of the operation, purpose, and effect" of the proposed rule. Existing §§ 40.5 and 40.6 also require each DCM to provide the Commission with an assessment of the rule's "compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder;" and "a brief explanation of any substantive opposing views expressed to [the DCM] by governing board or committee members, members of the entity or market participants that were not incorporated into the rule. . . ." Furthermore, these existing provisions each require a DCM to certify that the DCM posted on its public Web site a notice of pending rule or certification and to also post a copy

of the DCM's submission to the Commission on the DCM's Web site.

The Commission believes proposed § 40.25 adds important clarity to existing rule filing requirements in part 40 when such filings pertain to market-maker or trading incentive programs. However, it also recognizes important overlaps between proposed § 40.25 and existing regulations in §§ 40.5 and 40.6. Furthermore, proposed § 40.25 does not create a new category of rule filings, nor does it or require more frequent filings. For these reasons, the Commission believes that additional costs to DCMs attributable to § 40.25 will not be significant. As an example of such costs, DCMs will need to evaluate § 40.25 and assess whether and what filings must be made to comply with the regulation. In addition, the more explicit requirements of proposed § 40.25, as compared to existing regulations, may prompt DCMs to make filings that they otherwise may not have made. The Commission estimates the costs of proposed § 40.25 per DCM as described below.

The Commission believes that the work of proposed § 40.25 will fall primarily upon DCM Compliance Attorneys already employed in completing part 40 rule filings. The Commission estimates that a DCM (through its Compliance Attorneys) will incur a total annual cost of \$14,976 to comply with proposed § 40.25. This cost is broken down as follows: 1 Compliance Attorney, working for 156 hours<sup>705</sup> (156 × \$96 per hour = \$14,976).<sup>706</sup> On average, the 15 DCMs to which proposed § 40.25 would apply would therefore incur a total annual cost of \$224,640 (15 × \$14,976) to comply with proposed § 40.25. The Commission notes, however, that actual costs per DCM may vary depending on the number of market-maker and trading incentive program rule filings submitted by an individual DCM on an annual basis.

Finally, proposed § 40.28 requires that a DCM, "consistent with its obligations pursuant to subparts C and E of part 38 . . . review all benefits accorded to participants in market maker and trading incentive programs . . . to

<sup>705</sup> The Commission estimates that a Compliance Attorney will be required to spend an additional three hours per week over the course of a 52 week year to comply with proposed § 40.25. Such hours are additional because DCMs are already required to provide substantial information regarding market-maker and trading incentive program rule filings pursuant to existing requirements in §§ 40.5 and 40.6 as discussed above. Three additional hours per week across a 52 week year yields approximately 156 additional hours per year per DCM to comply with proposed § 40.25.

<sup>706</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

ensure that such benefits are not earned through abusive practices." Notably, the proposed regulation points to preexisting requirements in the Commission's rules—and to costs that DCMs must already assume independently of proposed § 40.28. Subpart C of part 38, entitled "Compliance with Rules," requires DCMs to prohibit abusive trading practices on its markets by all members and market participants, including but not limited to a series of enumerated trade practice violations. It also requires DCMs to have the capacity to detect and investigate rule violations, including sufficient compliance staff and resources, automated trade surveillance systems, and real-time market monitoring. Subpart E, "Prevention of Market Disruptions," requires DCMs to "collect and evaluate data on individual traders' market activity on an ongoing basis in order to detect and prevent manipulation, [and] price distortions." In addition, subpart E requires a DCM to have the ability to "comprehensively and accurately" reconstruct trading on its markets, obtain information from its market participants, and implement additional requirements for cash-settled and physically-settled contracts.

Proposed § 40.28 does not add to the oversight responsibilities outlined above, but rather makes clear that a DCM's existing obligations in subparts C and E of part 38 apply equally in the context of market-maker and trading incentive programs. The Commission believes that proposed § 40.28 will impose no significant new costs on DCMs, but acknowledges that it may result in minor administrative costs. Specifically, a DCM not already doing so will be required to ensure appropriate communication between its compliance staff tasked with detecting abusive practices and its business staff that may administer the DCM's market-maker or trading incentive programs. For example, in the case of an incentive program based on a market participant's gross trading volume, compliance staff would be required to inform business staff of trades that should not be credited towards the incentive program because they were conducted in violation of an exchange rule. The Commission believes that the costs associated with proposed § 40.28 are not significant due in part to DCMs' existing surveillance capabilities, which are typically highly automated.

The Commission estimated the costs of complying with proposed § 40.28. In making its estimates, the Commission determined that the primary costs associated with the regulation will be communication between a DCM's



compliance and business staffs. The Commission estimates that a DCM will incur a total annual cost of \$12,710 to comply with proposed § 40.28. This cost is broken down as follows: 1

Compliance Attorney, working for 62 hours ( $62 \times \$96$  per hour = \$5,952); 1 Senior Compliance Specialist, working for 62 hours ( $62 \times \$57$  per hour = \$3,534); and 1 Business Analyst, working for 62 hours ( $62 \times \$52$  per hour = \$3,224).<sup>707</sup> In the event that no DCM is currently in compliance with proposed § 40.28, the 15 DCMs to which proposed § 40.28 would apply would therefore incur a total annual cost of \$190,650 ( $15 \times \$12,710$ ) to comply with proposed § 40.28.<sup>708</sup>

### iii. Rule § 40.27—Payment for Trades With No Change in Ownership Prohibited

The Commission is also proposing new § 40.27(a) to require that DCMs implement policies and procedures reasonably designed to prevent the payment of market-maker or trading incentive payments for trades between accounts identified to the DCM as under common beneficial common ownership or known to the DCM as under common ownership. Proposed § 40.27(a) is consistent with guidance provided to DCMs by the Commission that incentive payments should not be made for “self-trades.” In this regard, the proposed regulation ratifies staff’s previous guidance<sup>709</sup> and further develops the Commission’s expectations regarding appropriate uses of market-maker and trading incentive programs. However, because the subject matter of proposed § 40.27(a) is not explicitly addressed in existing regulations, the Commission is analyzing it as an entirely new cost to DCMs for this purpose.

The Commission believes that the costs associated with proposed § 40.27(a) will be administrative in nature. DCMs will be required to implement policies and procedures reasonably designed to ensure that self-trades permitted pursuant to § 40.23 nonetheless do not receive market-maker or trading incentives payments, discounts or other considerations. DCMs will also be required to implement

policies and procedures reasonably designed to ensure that any other self-trades known to the DCM do not receive market-maker or trading incentive payments, discounts or other considerations.

The Commission believes a DCM could efficiently implement proposed § 40.27(a) by requiring the DCM’s compliance staff (Senior Compliance Specialist) to periodically provide its business staff (Business Analyst) with summary statistics regarding self-trades by market participants. Business Analysts responsible for administering a market-maker or trading incentive program could then discount such trades from any payments, benefits, or other considerations made pursuant to a program. Reports regarding self-trades could be automated at the DCM’s discretion. When necessary, Senior Compliance Specialists could collaborate with the DCM’s legal staff (Compliance Attorney) to address instances in which the existence of a self-trade is unclear. Similarly, Business Analysts could collaborate with legal or compliance counterparts where a market participant challenges the DCM’s determinations or payments. The Commission believes that a similar process of information flow to Business Analysts administering payments, benefits, or other considerations pursuant to a market-maker or trading incentive program would also be appropriate to implement proposed § 40.27(a). The Commission estimates the costs of compliance as described below.

The Commission estimates that a DCM will incur a total annual cost of \$30,108 to comply with proposed § 40.27(a). This cost is broken down as follows: 1 Compliance Attorney, working for 52 hours ( $52 \times \$96$  per hour = \$4,992); 1 Senior Compliance Specialist, working for 156 hours ( $156 \times \$57$  per hour = \$8,892); and 1 Business Analyst, working for 312 hours ( $312 \times \$52$  per hour = \$16,224).<sup>710</sup> The 15 DCMs to which proposed § 40.27(a) would apply would therefore incur a total annual cost of \$451,620 ( $15 \times \$16,224$ ) to comply with proposed § 40.27(a).<sup>711</sup>

### c. Benefits

The Commission anticipates that the proposed amendments to § 40.1(i) and

new §§ 40.25–40.28 will facilitate Commission oversight; increase public transparency; and help ensure market-maker and trading incentive programs that are compliant with the Act and Commission regulations. The proposed rules are consistent with existing regulatory expectations. To the extent that they impose requirements beyond those of existing Commission regulations and to the extent that DCMs are currently not in compliance with the proposed rules, the Commission expects the rules to increase transparency around DCM market-maker and trading incentive programs, and introduce basic safeguards in the conduct of such programs. Building on the Dodd-Frank Act, the Commission adopted in June 2012 core principles and final rules modernizing the regulatory regime applicable to all DCMs (“DCM Final Rules”). Among other areas, the DCM Final Rules emphasized DCMs’ obligations as the front-line regulators of their markets. These include extensive trade practice responsibilities pursuant to subpart C of part 38, and market surveillance responsibilities pursuant to subpart E. In addition, the Commission codified new requirements that a DCM offer its “members [and] persons with trading privileges . . . with impartial access to its markets and services,” including: (1) “Access criteria that are impartial, transparent and applied in a non-discriminatory manner” and (2) “comparable fee structures . . . for equal access to, or services from” the DCM.

Substantively, the Commission believes that the proposed regulations for market-maker and trading incentive programs will help facilitate Commission oversight by eliminating any potential ambiguity that may exist regarding its authority over such programs. Proposed amendments to the definition of “rule” in § 40.1(i), in particular, will codify previous statements by the Commission regarding the treatment of market-maker and trading incentive programs as “rules” pursuant to part 40, which statements however were not explicitly reflected in existing § 40.1(i). Proposed § 40.25 will enhance the types of information that DCMs should expect to provide the Commission when requesting approval or self-certifying market-maker or trading incentive programs. Such information will include a description of any eligibility criteria for participation in a market-maker or trading incentive program, and an explanation for programs with limited eligibility. Proposed § 40.25 will also require that information regarding

<sup>707</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>708</sup> The Commission estimates that each such staff person will be required to dedicate approximately 1 hour per week over the course of a 52 week year, yielding approximately 52 hours per year. The Commission is increasing these estimates by an additional 20 percent to account for more complicated circumstances that may arise. This yields a total of approximately 62 hours per year for each relevant staff role.

<sup>709</sup> See Final Rule, Provisions Common to Registered Entities, 76 FR 44776, 44778.

<sup>710</sup> See section V(B) above for the calculation of hourly wage rates used in this analysis.

<sup>711</sup> The Commission estimates that a Compliance Attorney will require 1 hour per week, a Senior Compliance Specialist will require 3 hours per week, and a Business Analyst will require 6 hours per week, in each case over the course of a 52 week year.

market-maker and trading incentive programs be easily located on a DCM's Web site. Taken together, these measures will for example facilitate the Commission's oversight of DCMs' compliance with impartial access and comparable fee structure requirements in § 38.151(b) adopted by the Commission in 2012.

Proposed § 40.27(a) is designed to promote market integrity and to discourage abusive trading practices. The Commission believes it is imperative that market participants are not incentivized to trade solely for the purpose of collecting market-maker or trading incentive program benefits. Trading for the sake of collecting such benefits may, for example, inaccurately signal the level of liquidity in the market and may result in a non-bona fide price. Key public statistics published by DCMs regarding trades, orders, and other measures of liquidity on their markets must not be inflated through trading strategies that may be violative of DCM or Commission rules and that are designed solely to collect incentives or to meet market-maker program requirements. For example, the Commission seeks to eliminate incentives that may encourage market participants to engage in illegal behavior such as wash trading, which is prohibited under the CEA and Commission regulations.<sup>712</sup>

#### d. Section 15(a) Factors

This section discusses the Section 15(a) factors for the proposed new regulations in part 40 to increase transparency around DCM market-maker and trading incentive programs, underline existing regulatory expectations, and introduce basic safeguards in the conduct of such programs. The proposed regulations would amend existing § 40.1(i) and create new §§ 40.25- 40.28.

#### i. Protection of Market Participants and the Public

The Commission preliminarily believes that the proposed rule would protect market participants and the public by eliminating potential ambiguity that may exist regarding the Commission's expectations and requirements with respect to market-maker and trading incentive programs and by guarding against such programs incentivizing self-trading. By so doing, the proposed rules would help ensure that volume reports accurately reflect levels of bona fide risk shifting transactions activity rather than self-

trades. It may also reduce the frequency of self-trades, and eliminate incentives that may encourage market participants to engage in illegal behavior such as wash trading, by prohibiting market-maker or trading incentive program payments for transactions involving accounts under common ownership.

#### ii. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission preliminarily believes that the proposed rule would promote the efficiency, competitiveness and financial integrity of futures markets by clarifying Commission requirements and expectations regarding market-maker and trading incentive programs. The proposed rule regarding payments to accounts with common ownership may reduce incentives to self-trade and thus may also help further ensure (beyond the rules related to self-trades also being proposed in this release) that market volumes reflect only trades that shift risk between different counterparties and thus accurately reflect supply and demand in the market and true market liquidity. The proposed rule regarding payments to accounts with common ownership may promote financial integrity by helping to prevent intentional self-trades (wash trades) that could lead to price distortions.

#### iii. Price Discovery

The Commission expects that the proposed rule regarding payments to accounts with common ownership to protect and enhance the price discovery process by helping to prevent intentional self-trades (wash trades) that could lead to price distortions. The proposed rules also would make clear Commission requirements designed to prevent market-maker and trading incentive programs from interfering with or doing harm to the price discovery process.

#### iv. Sound Risk Management Practices

The proposed rule regarding payments to accounts with common ownership may promote sound risk management practices by helping to ensure that market-maker and trading incentive programs do not incentivize self-trades or wash trades. The proposed rules also would make clear Commission requirements designed to prevent market-maker and trading incentive programs from deterring sound risk management considerations.

#### v. Other Public Interest Considerations

The Commission has not identified any effects that these proposed rules would have on other public interest

considerations other than those addressed above.

#### e. Consideration of Alternatives

As discussed, the proposed rules regarding market-maker and trading incentive programs largely refer to and clarify the Commission's existing rules and guidance and make Commission expectations more clear to new and existing DCMs. The Commission considered not proposing these rules. Absent these rules, the Commission could still realize many of the benefits by enforcing the existing regulations, but it would be more difficult to ensure that DCMs provide information regarding market-maker and trading incentive programs prominently on their Web sites. Moreover, absent the proposed rule, there would only be guidance rather than a rule regarding payments for self-trades. The Commission has determined to propose these rules to provide increased regulatory certainty to DCMs and market participants regarding market-maker and trading incentive programs and to ensure that such programs do not permit self-trade payments.

#### f. Request for Comments

159. The Commission requests comment on the accuracy of its cost estimates.

160. To what extent are the costs imposed on the DCMs by the proposed rule already incurred pursuant to existing rules?

161. To what extent are the benefits of the proposed rule currently being realized?

162. Do DCM Web sites currently provide adequate information regarding market-maker and trading incentive programs, and is such information easily located?

163. To what extent do DCMs currently make payments for self-trades pursuant to market-maker and trading incentive programs?

164. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

## VI. Aggregate Estimated Cost of Regulation AT

Summarizing the cost estimates presented above, the Commission estimates that Regulation AT will impose the following costs on persons subject to its rules. These costs are broken into one-time costs for initial compliance, and annual costs following thereafter. As discussed in section V above, the Commission calculated costs for certain risk mitigation procedures,

<sup>712</sup> See Section 4c(a) of the CEA, 7 U.S.C. 6c(a)(2)(A), and Commission regulation 1.38(a).

but determined that they generally will not be imposed upon market participants because, among other reasons, they relate to procedures or controls that are already widely used in the industry.<sup>713</sup> The two charts below do not include such costs.

In addition, as noted above, the Commission believes that the risk controls and other measures required by §§ 1.80 and 1.82 are already widely used by market participants. Upgrading such systems to come into full compliance with the proposed regulations will impose initial one-time costs, which are

included in the one-time costs chart below. However, the Commission believes that because market participants already have these systems in place, the proposed regulations will generally not result in increased annual costs to maintain such systems. One-time costs:

Regulation	Description	Cost per entity	Cost for all entities
<b>New Floor Traders (100 Entities)</b>			
1.3(x)/170.18 <sup>714</sup> .....	Registration of new floor traders with CFTC and as members of RFA—Form 7–R Fee.	\$200	\$20,000
1.3(x)/170.18 .....	Registration of new floor traders with CFTC and as members of RFA—preparation of Form 7–R.	96	9,600
1.3(x)/170.18 .....	Registration of new floor traders with CFTC and as members of RFA—Form 8–R Fee for 10 principals.	850	85,000
1.3(x)/170.18 .....	Registration of new floor traders with CFTC and as members of RFA—preparation of Form 8–R for 10 principals.	960	96,000
Total New Floor Traders .....	.....	2,106	210,600
<b>AT Persons (420 Entities)</b>			
1.80 .....	Risk controls .....	79,680	33,465,600
1.83(c) .....	Recordkeeping .....	5,130	2,154,600
Total AT Persons .....	.....	84,810	35,620,200
<b>Clearing Member FCMs (57 Entities)</b>			
1.82 .....	Risk controls—DEA orders .....	49,800	2,838,600
1.82 .....	Risk controls—non-DEA orders .....	159,360	9,083,520
1.83(d) .....	Recordkeeping .....	5,130	292,410
Total Clearing Member FCMs ..	.....	214,290	12,214,530
<b>DCMs (15 Entities)</b>			
38.255(b) .....	Provide controls to FCMs .....	155,520	2,332,800
40.20 .....	Risk controls .....	155,520	2,332,800
40.22(c) .....	Establish compliance report review program .....	37,000	555,000
Total DCMs .....	.....	348,040	5,220,600
Total All Entities .....	.....	.....	53,265,930

Annual costs:

Regulation	Description	Cost per entity	Cost for all entities
<b>New Floor Traders (100 Entities)</b>			
170.18 .....	RFA annual membership dues (payable first year of membership and each year after).	\$5,625	\$562,500
Total New Floor Traders .....	.....	5,625	562,500
<b>AT Persons (420 Entities)</b>			
1.83(a) .....	Submit compliance reports/written policies .....	4,240	1,780,800
1.83(c) .....	Recordkeeping .....	2,670	1,121,400
40.23 .....	Submit approval requests to DCMs to forego self-trade controls .....	3,810	1,600,200
Total AT Persons .....	.....	10,720	4,502,400

<sup>713</sup> See, e.g., the calculation of costs for procedures related to the testing, monitoring and supervision of Algorithmic Trading systems, which

are discussed in section V(E)(7) above. These costs are not included in the charts in this section VI.

<sup>714</sup> See *supra* note 597.

Regulation	Description	Cost per entity	Cost for all entities
<b>Clearing Member FCMs (57 Entities)</b>			
1.83(b) .....	Submit compliance reports .....	7,090	404,130
1.83(d) .....	Recordkeeping .....	2,670	152,190
Total Clearing Member FCMs ..	.....	9,760	556,320
<b>DCMs (15 Entities)</b>			
38.401 .....	Disclosure of trade matching programs .....	19,200	288,000
40.22(c) .....	Review of compliance reports .....	111,000	1,665,000
40.22(c) .....	Remediation of compliance reports .....	22,200	333,000
40.22(e) .....	Review books and records .....	110,880	1,663,200
40.23(c) .....	Review approval requests from market participants re self-trading .....	22,000	330,000
40.23(d) .....	Publish statistics on self-trading .....	6,650	99,750
40.25 .....	Provide information on market maker programs in rule filings .....	14,976	224,640
40.27 .....	Restrictions on payments under market maker programs .....	30,108	451,620
40.28 .....	Surveillance of market maker programs for abusive practices .....	12,710	190,650
Total DCMs .....	.....	349,724	5,245,860
Total All Entities .....	.....	.....	10,867,080

The Commission is also presenting the following costs applicable to an RFA pursuant to proposed § 170.19. The

Commission anticipates that an RFA will incur these costs on an episodic basis in connection with § 170.19.

Episodic costs:

Regulation	Description	Cost per entity	Cost for all entities
<b>RFAs (1 Entity)</b>			
170.19 .....	RFA Standards .....	\$34,200	\$34,200
Total RFAs .....	.....	34,200	34,200

**VII. List of All Questions in the NPRM**

Listed below are all questions raised in the preceding sections of this NPRM, organized according to the section of the NPRM in which the question appears. The Commission welcomes any and all comments on any aspect of Regulation AT regardless of whether it is addressed by a particular question. If responding to a specific question enumerated in this NPRM, the Commission requests that commenters in their comment letters refer to that question being answered.

*IV(D) Codification of Defined Terms*  
 “Algorithmic Trading”—§ 1.3(zzzz)

1. Is the Commission’s definition of “Algorithmic Trading” generally consistent with what algorithmic trading is understood to mean in the industry? If not, please explain how it is inconsistent and how the definition should be modified. In your answer, please explain whether the definition inappropriately includes or excludes a particular type or aspect of trading.

2. Should the Commission adopt a definition of “Algorithmic Trading” that is more closely aligned with any

definition used by another regulatory organization?

3. For purposes of the Commission’s definition of Algorithmic Trading, is it necessary for the Commission to define “computer algorithms or systems”? If so, please explain what should be included in such a definition.

4. Should the Commission’s definition of “Algorithmic Trading” include systems that only make determinations as to the routing of orders to different venues (which is contemplated in the proposed definition)? With respect to the definition of “Algorithmic Trading,” should the Commission differentiate between different types of algorithms, such as alpha-generating algorithms and order routing algorithms?

5. Is the Commission’s understanding correct that most entities using automated order routers will be using similar or related automated technology to determine other parameters of an order?

6. The Commission posits a scenario in which an AT Person submits orders through Algorithmic Trading, and a non-clearing FCM or other entity acts

only as a conduit for these AT Person orders. If the non-clearing FCM or other entity does not make any determinations with respect to such orders, the conduit entity would not be engaged in Algorithmic Trading, as that definition is currently proposed. Should the definition of Algorithmic Trading be modified to capture a conduit entity such as a non-clearing FCM in this scenario, thereby making the entity an AT Person subject to Regulation AT? In other words, should non-clearing FCMs be required to manage the risks of AT Person customers? How would non-clearing FCMs do so if the non-clearing FCMs do not have risk controls comparable to the risk controls specified in proposed § 1.82?

7. The Commission, recognizing that natural person traders who manually enter orders also have the potential to cause market disruptions, is considering expanding the definition of Algorithmic Trading to encompass orders that are generated using algorithmic methods (e.g., an algorithm generates a buy or sell signal at a particular time), but are then manually entered into a front-end system by a natural person, who

determines all aspects of the routing of the orders. Such order entry would not represent Algorithmic Trading under the currently proposed definition. The Commission requests comment on this proposed expansion of the definition of Algorithmic Trading, which the Commission may implement in the final rulemaking for Regulation AT. The Commission requests comment on the costs and benefits of this proposal, in addition to any other comments regarding the effectiveness of this proposal in terms of risk reduction.

“Algorithmic Trading Compliance Issue”—§ 1.3(tttt)

8. Should the definition of Algorithmic Trading Compliance Issue be modified to include other potential compliance failures involving an AT Person that may have a significant detrimental impact on such AT Person, the relevant DCM, or other market participants?

“Algorithmic Trading Disruption”—§ 1.3(uuuu)

9. Should the definition of Algorithmic Trading Disruption be modified to include other types of disruptive events that may originate with an AT Person?

10. Should the definition be expanded to include other types of disruptive downstream consequences that may result from an Algorithmic Trading Disruption originating with an AT Person, and which may negatively impact the relevant designated contract market, other market participants, or other persons? Alternatively, should the scope of the definition be reduced, and if so, why?

11. In addition, should the reference to “materially degrades” in the definition of Algorithmic Trading Disruption be expanded or otherwise modified to encompass other types of disruptions that may impact the relevant designated contract market, other market participants, or other persons? Please provide examples of real-world events originating with AT Persons (as defined under Regulation AT) that resulted in disruptions that may not be captured by the reference to “materially degrades” in the definition.

“AT Order Message”—§ 1.3(wwww)

12. Please comment on the proposed scope of the Commission’s definition of AT Order Message. Is the proposed definition too expansive, in that it would limit the submission of messages that do not have the potential to disrupt the market? Alternatively, is the scope of the AT Order Message too limited, in that it could allow messages not related

to orders (*i.e.*, heartbeat messages or requests for mass quotes) to intentionally or unintentionally flood the DCM’s systems and slow down the matching engine? Please explain how this definition would be more appropriately limited or expanded.

“AT Person”—§ 1.3(xxxx)

13. The Commission notes that the FIA Guide recommends certain pre-trade risk controls and contemplates three levels at which these controls can be placed: Automated trader, broker, and exchange. FIA defines “automated trader” as any trading entity that uses an automated system, including hedge funds, buy-side firms, trading firms, and brokers who deploy automated algorithms, and defines “broker” as FCMs, other clearing firms, executing brokers and other financial intermediaries that provide access to an exchange.

a. Should the Commission’s definition of “AT Person” explicitly include or exclude any of the classes of parties included in FIA’s term “automated trader”? Please explain. Are there any types of entities not present in this list that should be included in the “AT Person” definition?

b. Should Regulation AT use the term “broker,” as understood by FIA? If so, please explain. Is there another term that would be more appropriate in defining the scope of AT Persons?

14. Algorithmic Trading carries technological and personnel costs, and the Commission expects that such trading will be performed by entities, not natural persons. Is this a reasonable assumption? For purposes of quantifying the number of AT Persons that will be subject to the regulations, do you believe that any AT Person (a definition that encompasses the following persons if engaged in Algorithmic Trading: FCMs, floor brokers, swap dealers, major swap participants, commodity pool operators, commodity trading advisors, introducing brokers, and newly registered floor traders using Direct Electronic Access) will be a natural person or a sole proprietorship with no employees other than the sole proprietor?

15. The Commission recognizes that a CPO could use Algorithmic Trading to enter orders on behalf of a commodity pool which it operates. In these circumstances, should the Commission consider the CPO that operates the commodity pool or the underlying commodity pool itself as “engaged in

Algorithmic Trading” pursuant to the definition of AT Person?<sup>715</sup>

16. The Commission notes that pursuant to § 1.57(b) of the Commission’s regulations IBs may not carry proprietary accounts. However, certain customer relationships may cause an IB to fall under the definition of AT Person. The Commission requests comment on the types of IB customer relationships that could cause IBs to fall under the definition of AT Persons. What activities are currently being conducted by IBs that could cause an IB to be considered engaging in Algorithmic Trading on or subject to the rules of a DCM and would therefore cause the IB to be considered an AT Person?

17. Should the definition of AT Person be limited to persons using DEA? In other words, should the definition capture persons registered or required to be registered as FCMs, floor brokers, SDs, MSPs, CPOs, CTAs, or IBs that engage in Algorithmic Trading on or subject to the rules of a DCM, or persons registered or required to be registered as floor traders as defined in § 1.3(x)(3), in each case if such persons are using DEA? The Commission requests comment on the costs and benefits of this approach, including comments on whether this more limited definition of AT Persons would adequately mitigate the risks associated with algorithmic trading.

“Direct Electronic Access”—§ 1.3(yyyy)

18. Please explain whether the Commission’s proposed definition of DEA will encompass all types of access commonly understood in Commission-regulated markets as “direct market access.” In light of the proposed regulations concerning pre-trade and other risk controls and standards for the development, testing and supervision of algorithmic trading systems, do you believe that the proposed definition of Direct Electronic Access is too limited (or, alternatively, too expansive)? If so, please explain why and how the definition should be revised.

19. Should the Commission define “routed” in its definition of DEA? If so, how? Are there specific examples of trading or routing arrangements where it would be unclear whether trading was performed through DEA?

20. Should the Commission use the term “direct market access” instead of DEA, and if so why?

<sup>715</sup> The Commission notes that CPOs are separate legal entities from the underlying commodity pools which they operate.

21. Should the Commission define sub-categories of DEA, such as sponsored market access?

22. The Commission's proposed definition of DEA in § 1.3(yyyy) differs from definitions of direct electronic access in § 38.607 and direct access for FBOs in § 48.2(c). The Commission believes that the more technical definition in proposed 1.3(yyyy) is appropriate for Regulation AT. The Commission solicits comment regarding proposed 1.3(yyyy), whether all definitions of "direct" access should be harmonized across the Commission's rules, and if so how. Do you believe that two definitions would create confusion with respect to Commission requirements as to direct electronic access? With respect to §§ 1.80, 1.82, and 38.255(b) and (c) provisions imposing risk control requirements on AT Persons, FCM and DCMs, should the Commission use the existing definition of direct electronic access provided in § 38.607?

*IV(E) Registration of Certain Persons Not Otherwise Registered With Commission—§ 1.3(x)*

23. Should firms operating Algorithmic Trading systems in CFTC-regulated markets, but not otherwise registered with the Commission, be required to register with the CFTC? If not, what alternatives are available to fully effectuate the purpose and design of Regulation AT?

24. Should all firms deploying Algorithmic Trading systems be required to register with the Commission? Are there additional characteristics of AT Persons that should be taken into consideration for registration purposes? For example, should the Commission limit registration to trading firms meeting certain trading volume, order or message levels? In other words, should there be a minimum volume, order or message test in order to meet the definition of "floor trader," or otherwise to meet the definition of AT Person? If so, what should be measured and what specific thresholds should be used?

25. In the alternative, should the Commission broaden the registration requirements in proposed § 1.3(x)(3)(ii) so that all persons trading on a contract market through DEA are required to register, instead of only those who are engaged in Algorithmic Trading?

26. Please supply any information or data that would help the Commission in deciding whether firms may or may not meet the definition of "floor trader" in Section 1a(23) of the Act.

27. Do you believe that the registration of such firms as "floor

traders" would help effectuate the purposes of the CEA to deter and detect price manipulation or any other disruptions to market integrity? If you believe that registration of such firms will not help effectuate the purposes of the CEA, or that the same purposes can be achieved by other means, please explain.

*IV(F) RFA Standards for Automated Trading and Algorithmic Trading Systems—§ 170.19*

28. The Commission requests comment on the scope of responsibilities assigned to RFAs under proposed § 170.19. Should RFAs be responsible for fewer or additional areas regarding AT Persons, ATs, and algorithmic trading than specified in proposed § 170.19, prongs (1), (2), (3), and (4) (§ 170.19(a)(1)–(a)(4))? Regulation 170.19 requires RFAs to consider the need for rules in the areas listed in prongs (1)–(4) (§ 170.19(a)(1)–(a)(4)). Should RFAs be responsible for considering whether to adopt rules in fewer or additional areas?

29. The Commission requests comment on the latitude afforded to RFAs in proposed § 170.19. Should RFAs have more or less latitude to issue rules than specified in proposed § 170.19?

30. The Commission requests comment on RFAs' obligation in proposed § 170.19 to establish and maintain a program for the prevention of fraud and manipulation, protection of the public interest, and perfecting the mechanisms of trading, including through rules it may determine to adopt pursuant to § 170.19. The proposed rules anticipate that an RFA's program will include examination and enforcement components. Is this the appropriate approach?

31. The Commission requests comment on whether proposed § 170.19 may result in duplicative obligations on AT Persons or any other market participant. In particular, please comment on potential duplication, if any, between algorithmic trading requirements that an RFA may impose upon its members pursuant to § 170.19, and similar requirements that may be imposed by a DCM in its role as a self-regulatory organization. What amendments would be appropriate in any final rules arising from this NPRM to clarify that unintended overlap between the role of an RFA and a DCM in this context?

*IV(G) AT Persons Must Become Members of an RFA—§ 170.18*

32. The Commission requests comment on whether the regulatory

framework established by Regulation AT would require all AT Persons to be members of an RFA in order to be effective. Alternatively, could the goals of Regulation AT be realized without requiring all AT Persons to be members of an RFA?

*IV(H) Pre-Trade and Other Risk Controls for AT Persons—§ 1.80*

33. Are any pre-trade and other risk controls required by § 1.80 ineffective, not already widely used by AT Persons, or likely to become obsolete?

34. Are there additional pre-trade or other risk controls that should be specifically enumerated in proposed § 1.80?

35. Do you believe that the pre-trade and other risk controls required in § 1.80 sufficiently address the possibility of technological advances in trading, and the development of new, more effective controls that should be implemented by AT Persons?

36. The Commission welcomes comment on whether the regulation's requirements relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

37. The Commission notes that § 1.80(d) requires that prior to initial use of Algorithmic Trading, an AT Person must notify its clearing member FCM and the DCM that it will engage in Algorithmic Trading. The Commission welcomes comment on whether the content of that notification requirement is sufficient, or whether clearing member FCMs and DCMs should also be notified of additional information. For example, should AT Persons be required to notify their clearing member FCMs of particular changes to their Algorithmic Trading systems that would affect the risk controls applied by the clearing member FCM?

38. Is § 1.80(f)'s requirement that each AT Person periodically review its compliance with § 1.80 appropriate? Should there be more prescriptive and granular requirements to ensure that each AT Person periodically reviews its pre-trade and other risk controls and takes appropriate steps to update or recalibrate them in order to prevent an Algorithmic Trading Event? Alternatively, is § 1.80(f) necessary? Does the Commission need to explicitly require AT Persons to conduct a periodic review of their compliance with § 1.80?

39. AT Persons that are registered FCMs are required by existing Commission regulation 1.11 to have formal "Risk Management Programs," including, pursuant to § 1.11(e)(3)(ii), "automated financial risk management

controls reasonably designed to prevent the placing of erroneous orders” and “policies and procedures governing the use, supervision, maintenance, testing, and inspection of automated trading programs.” As described in § 1.11, an FCM’s Risk Management Program must include a risk management unit independent of the business unit; quarterly risk exposure reports to senior management and the governing body of the FCM, with copies to the Commission; and other substantive requirements. The Commission requests public comment regarding whether one or more of the proposed requirements applicable to FCMs in §§ 1.80, 1.81, 1.83(a), and 1.83(c) should be incorporated within an FCM’s Risk Management Program and be subject to the requirements of such program as described in § 1.11. In this regard, any final rules arising from this NPRM could place all requirements applicable to FCMs in §§ 1.80, 1.81, 1.83(a), and 1.83(c) within the operational risk measures required in § 1.11(e)(3)(ii). Such incorporation could help improve the interaction between an FCM’s operational risk efforts and its pre-trade risk controls; development, monitoring, and compliance efforts; and reporting and recordkeeping requirements, pursuant to §§ 1.80, 1.81, 1.83(a), and 1.83(c). It could also help ensure that an FCM’s §§ 1.80, 1.81, 1.83(a), and 1.83(c) processes benefit from the same internal rigor and independence required by the Risk Management Program in § 1.11.

40. The Commission proposes to adopt a multi-layered approach to regulations intended to mitigate the risks of automated trading, including pre-trade risk controls and other procedures applicable to AT Persons, clearing member FCMs and DCMs. Please comment on whether an alternative approach, for example one which does not impose requirements at each of these three levels, would more effectively mitigate the risks of automated trading and promote the other regulatory goals of Regulation AT.

#### *IV(I) Standards for Development, Testing, Monitoring, and Compliance of Algorithmic Trading Systems—§ 1.81*

41. The Commission understands that the requirements for developing, testing, and supervising algorithmic systems proposed in § 1.81(a)–(d) are already widely used throughout the industry. Are any specific requirements proposed in this section not widely used by persons that would be designated as AT Persons under Regulation AT, and if not, why not? If any requirements described in § 1.81(a)–(d) are not widely used, please provide an estimate of the

cost that would be incurred by an AT Person to implement such requirements.

42. Are there any aspects of § 1.81(a)–(d) that are unnecessary for purposes of reducing the risks from Algorithmic Trading, and should not be mandated by regulation? If so, please explain.

43. Are the procedures described above for the development and testing of Algorithmic Trading sufficient to ensure that algorithmic systems are thoroughly tested before being used in production, and will operate in the manner intended in the production environment?

44. Are there any additional procedures for the development and testing of Algorithmic Trading that should be required under Regulation AT?

45. Are any of the required procedures for the development and testing of Algorithmic Trading likely to become obsolete in the near future as development and testing standards evolve?

46. Are the procedures for designating and training Algorithmic Trading staff of AT Persons sufficient to ensure that such staff will be knowledgeable in the strategy and operation of Algorithmic Trading, and capable of identifying Algorithmic Trading Events and promptly escalating them to appropriate staff members?

47. Is it typical that persons responsible for monitoring algorithmic trading do not simultaneously engage in trading activity?

48. Proposed §§ 1.80, 1.81, and 1.83 would impose certain requirements on all AT Persons regardless of the size, sophistication, or other attributes of their business. The Commission requests public comment regarding whether these requirements should vary in some manner depending on the AT Person. If commenters believe proposed §§ 1.80, 1.81, and 1.83 should vary, please describe how and according to what criteria.

#### *IV(J) Risk Management by Clearing Member FCMs—§ 1.82*

49. Are any pre-trade or other risk controls required by § 1.82 ineffective, not already widely used by clearing member FCMs, or likely to become obsolete?

50. Are there any aspects of proposed § 1.82 that pose an undue burden for clearing member FCMs and are unnecessary for purposes of reducing the risks associated with Algorithmic Trading? If so, please explain (1) the burden; (2) why it is not necessary to reduce the risks associated with Algorithmic Trading, particularly in the case of DEA. What alternatives are

available consistent with the purposes of Regulation AT?

51. Please describe the technological development that would be required by clearing member FCMs to comply with the requirement to implement and calibrate the pre-trade and other risk controls required by § 1.82(c) for non-DEA orders. To what extent have clearing member FCMs already developed the technology required by this provision, for example in connection with existing requirements under § 1.11, and §§ 1.73 and 38.607 for clearing FCMs to manage financial risks?

52. Are there additional pre-trade or other risk controls that should be specifically required pursuant to proposed § 1.82?

53. Do you believe that the pre-trade and other risk controls required in § 1.82 sufficiently address the possibility of technological advances in trading and development of new, more effective controls that should be implemented by FCMs?

54. The Commission welcomes comment on whether the requirements of § 1.82 relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

55. Proposed § 1.82 does not require FCMs to have connectivity monitoring such as “system heartbeats” or automatic cancel-on-disconnect functions. Do you believe that § 1.82 should require FCMs to have such functionality?

56. Proposed § 1.82 requires clearing FCMs to implement controls with respect to AT Order Messages originating with an AT Person. The Commission is considering modifying proposed § 1.82 to require clearing FCMs to implement controls with respect to all orders, including orders that are manually submitted or are entered through algorithmic methods that nonetheless do not meet the definition of Algorithmic Trading. Such a requirement would correspond to the requirement under proposed § 40.20(d) that DCMs implement risk controls for orders that do not originate from Algorithmic Trading. If the Commission were to incorporate such amendments in any final rules arising from this NPRM, its intent would be to further reduce risk by ensuring that all orders, regardless of source, are screened for risk at both the clearing member FCM and the DCM level. Risk controls at the point of order origination would continue to be limited to AT Persons. The Commission requests comment on this proposed amendment to § 1.82, which the Commission may implement

in the final rulemaking for Regulation AT. The Commission requests comment on the costs and benefits to clearing FCMs of this proposal, in addition to any other comments regarding the effectiveness of this proposal in terms of risk reduction.

*IV(K) Compliance Reports Submitted by AT Persons and Clearing FCMs to DCMs; Related Recordkeeping Requirements—§ 1.83*

57. The Commission welcomes comment on the type of information that should be included in the reports required by proposed § 1.83. Should different or additional descriptions be included in the reports, which will be evaluated by DCMs under proposed § 40.22?

58. How often should the reports required by proposed § 1.83 be submitted to the relevant DCMs? Should the report be submitted more or less frequently than annually?

59. When should the reports required by proposed § 1.83 be submitted to the relevant DCMs? Should the reports be submitted on a date other than June 30 of each year?

60. Should a representative of the AT Person or clearing member FCM other than the chief executive officer or the chief compliance officer be responsible for certifying the reports required by proposed § 1.83? Should only the chief executive officer be permitted to certify the report? Alternatively, should only the chief compliance officer be permitted to certify the report?

61. Are there any aspects of proposed § 1.83(b) that pose an undue burden for clearing member FCMs and are unnecessary for purposes of reducing the risks associated with Algorithmic Trading? If so, please explain (1) the burden; (2) why it is not necessary to reduce the risks associated with Algorithmic Trading, particularly in the case of DEA. What alternatives are available consistent with the purposes of Regulation AT, including in particular Regulation AT's intent that § 1.83 reports benefit from the third-party SRO review performed by DCMs with respect to such reports?

62. Should the reports required by proposed § 1.83 be sent to any entity other than each DCM on which the AT Person operates, such as the Commission or an RFA? For example, should the Commission require that AT Persons that are members of a RFA send compliance reports to RFA upon NFA's request?

63. Proposed § 1.83(c) includes recordkeeping requirements imposed on AT Persons, and proposed § 1.83(d) includes recordkeeping requirements

imposed on clearing member FCMs. Should the recordkeeping requirements of § 1.83(c) be distributed throughout the sections of the Commission's regulations that contain recordkeeping requirements for various categories of Commission registrants that will be classified as AT Persons? Should § 1.83(d) be transferred to § 1.35 of the Commission's regulations, which contains recordkeeping requirements for clearing member FCMs?

*IV(L) Direct Electronic Access Provided by DCMs—§ 38.255(b) and (c)*

64. Are there any pre-trade and other risk controls required by § 38.255(b) and (c) that will be ineffective, not already widely provided by DCMs for use by FCMs, or likely to become obsolete?

65. Are there additional pre-trade or other risk controls that DCMs should be specifically required to provide to FCMs pursuant to proposed § 38.255(b) and (c)?

66. Do you believe that the pre-trade and other risk controls required pursuant to § 38.255(b) sufficiently address the possibility of technological advances in trading? For example, do they appropriately address the potential for the future development of additional effective controls that should be provided by DCMs and implemented by FCMs?

67. The Commission welcomes comment on whether § 38.255(b)'s requirements relating to the design of controls and the levels at which the controls should be set are appropriate and sufficiently granular.

68. Proposed § 38.255(b) and (c) do not require DCMs to provide to FCMs connectivity monitoring systems such as "system heartbeats" or automatic cancel-on-disconnect functions. Should § 38.255 require such functionality?

*IV(M) Disclosure and Transparency in DCM Trade Matching Systems—§ 38.401(a)*

69. The Commission has proposed that certain components of an exchange's market architecture should be considered part of the "electronic matching platform" for purposes of the DCM transparency provision. Are there any additional systems that should fall within the meaning of "electronic matching platforms" for purposes of proposed § 38.401(a)?

70. The Commission has specifically identified, as "attributes" that must be disclosed, latencies within a platform and how a self-trade prevention tool determines whether to cancel an order. Are there any other attributes that would materially affect the execution of market participant orders and therefore

should be made known to all market participants? Should the Commission revise the final rule so that it only applies to latencies within a platform and how a self-trade prevention tool determines whether to cancel an order?

71. What information should be disclosed as part of the description of relevant attributes of the platform? For instance, with latencies within a platform, should statistics on latencies be required? If so, what statistics would help market participants assess any impact on their orders? Would a narrative description of attributes be preferable, including a description of how the attributes might affect market participant orders under different market conditions, such as during times of increased messaging activity?

72. The Commission notes that proposed § 38.401(a)(1)(iii) and (iv) are not intended to require the disclosure of a DCM's trade secrets. The Commission requests comments on whether the proposed rules might inadvertently require such disclosure, and if so, how they might be amended to address this concern. Furthermore, the Commission anticipates that the mechanisms and standards for requesting confidential treatment already codified in existing § 40.8 could be used by DCMs to identify and request confidential treatment for information otherwise required to be disclosed pursuant to proposed § 38.401(a)(1)(iii) and (iv), for example by incorporating § 40.8's mechanisms and standards into any final rules arising from this NPRM. If commenters believe that the mechanisms and standards in § 40.8 are inappropriate for this purpose, please describe any other mechanism that should be included in any final rules to facilitate DCM requests for confidential treatment of information otherwise required to be disclosed pursuant to proposed § 38.401(a)(1)(iii) and (iv).

73. The Commission notes that DCMs are required, as part of voluntary submissions of new rules or rule amendments under § 40.5(a) and self-certification of rules and rule amendment under § 40.6(a), to provide *inter alia* an explanation and analysis of the operation, purpose and effect of the proposed rule or rule amendment. Would the information required under §§ 40.5(a) or 40.6(a) provide market participants and the public with sufficient information regarding material attributes of an electronic matching platform?

74. The Commission recognizes that DCMs are required to have system safeguards to ensure information security, business continuity and disaster recovery under DCM Core



Principle 20. The Commission understands that some attributes of an electronic matching platform designed to implement those safeguards should be maintained as confidential to prevent cybersecurity or other threats. Does existing § 40.8, 17 CFR 40.8 (2014) provide sufficient basis for DCMs to publicly disclose the relevant attributes of their platforms while maintaining as confidential information concerning system safeguards?

75. With respect to material attributes affecting market participant orders caused by temporary or emergency situations, such as network outages or the temporary suspension of certain market functionality, what is the best way for DCMs to alert market participants? How are DCMs currently handling these situations?

76. The Commission proposes that DCMs provide a description of the relevant material attributes in a single document “disclosed prominently and clearly” on the exchange’s Web site. The Commission also proposes that this document be written in “plain English” to allow market participants, even those not technically proficient, to understand the attributes described. Would these requirements be practical and help market participants locate and understand the information provided?

77. The Commission proposes requiring DCMs to disclose information on the relevant attributes: (a) When filing a rule change submission with the Commission for changes to the electronic matching platform; or (b) within a “reasonable time, but no later than ten days” following the identification of such attribute. Do the proposed timeframes provide sufficient time for DCMs to disclose the relevant information? Do the proposed timeframes offer sufficient notice of changes or discovered attributes to market participants to allow them to adjust any systems or strategies, including any algorithmic trading systems?

78. The Commission proposes requiring disclosure of newly identified attributes within 10 days of discovery. Does this provide DCMs sufficient time to analyze the attribute and provide a description? Should DCMs be required to provide notice of the existence of the attribute and supplement as further analysis is performed?

#### *IV(N) Pre-Trade and Other Risk Controls at DCMs—§ 40.20*

79. The Commission proposes to require DCMs to set pre-trade risk controls at the level of the AT Person, and allows discretion to set controls at a more granular level. Should the

Commission eliminate this discretion, and require that the controls be set at a specific, more granular, level? If so, please explain the more appropriate level at which pre-trade risk controls should be set by a DCM.

80. The Commission requests public comment on the pre-trade and other risk controls required of DCMs in proposed § 40.20. Are any of the risk controls required in the proposed rules unhelpful to operational or other risk mitigation, or to market stability, when implemented at the DCM level?

81. Are there additional pre-trade or other risk controls that should be specifically enumerated in proposed § 40.20?

82. The Commission proposes, with respect to its kill switch requirements, to allow DCMs the discretion to design a kill switch that allows a market participant to submit risk-reducing orders. The Commission also does not mandate particular procedures for alerts or notifications concerning kill switch triggers. Does the proposed rule allow for sufficient flexibility in the design of kill switch mechanisms and the policies and procedures concerning their implementation? Should the Commission consider more prescriptive rules in this area?

83. Does existing § 38.1051 provide the Commission with adequate authority to require DCMs to adequately test planned changes to their matching engines and other automated systems?

#### *IV(O) DCM Test Environments for AT Persons—§ 40.21*

84. Should the test environment provided by DCMs under proposed § 40.21 offer any other functionality or data inputs that will promote the effective design and testing of Algorithmic Trading by AT Persons?

#### *IV(P) DCM Review of Compliance Reports by AT Persons and Clearing FCMs—§ 40.22*

85. In lieu of a DCM’s affirmative obligation in proposed § 40.22 to review AT Person and clearing member FCM compliance reports, should DCMs instead be permitted to rely on the CEO or CCO representations required by proposed § 1.83(a)(2)? If so, what events in the Algorithmic Trading of an AT Person should trigger review obligations by the DCM?

86. Should § 40.22(c) provide more specific requirements regarding a DCM’s establishment of a program for effective periodic review and evaluation of AT Person and clearing member FCM reports? For example, § 40.22(c) could require review at specific intervals (e.g., once every two years). Alternatively,

§ 40.22(c) could provide greater discretion to DCMs in establishing their programs for the review of reports. Please comment on the appropriateness of these alternative approaches.

87. Should § 40.22(e) provide more specific requirements regarding the triggers for a DCM to review and evaluate the books and records of AT Persons and clearing member FCMs required to be kept pursuant to § 40.22(d)? For example, § 40.22(e) could require review at specific intervals (e.g., once every two years), or it could require review in response to specific events related to the Algorithmic Trading of AT Persons. Please comment on the appropriateness of these alternative approaches.

88. Does § 40.22 leave enough discretion to the DCM in determining how to design and implement an effective compliance review program regarding Algorithmic Trading? Alternatively, is there any aspect of this regulation that should be more specific or prescriptive?

89. Should § 40.22 specifically authorize a DCM to establish further standards for the organization, method of submission, or other attributes of the reports described in § 40.22(a)?

#### *IV(Q) Self-Trade Prevention Tools—§ 40.23*

90. The Commission seeks to require self-trade prevention tools that screen out unintentional self-trading, while permitting bona-fide self-matched trades that are undertaken for legitimate business purposes. Under the regulations proposed above, DCMs shall implement rules reasonably designed to prevent self-trading (“the matching of orders for accounts that have common beneficial ownership or are under common control”), but DCMs may in their discretion implement rules that permit “the matching of orders for accounts with common beneficial ownership where such orders are initiated by independent decision makers.”

a. Do these standards accomplish the goal of preventing only unintentional self-trading, or would other standards be more effective in accomplishing this goal? For example, should the Commission consider adopting in any final rules arising from this NPRM an alternative requirement modeled on FINRA Rule 5210 and require market participants to implement policies and procedures to review their trading activity for, and a prevent a pattern of, self-trades?

b. While the regulations contain exceptions for bona fide self-match trades (described in § 40.23(b)), the

regulations are intended to prevent all unintentional self-trading, and do not include a *de minimis* exception for a certain percentage of unintentional self-trading. Should the regulations permit a certain *de minimis* amount of unintentional self-trading, and if so, what amount should be permitted (*e.g.*, as a percentage of monthly trading volume)?

c. The following terms are used in proposed § 40.23(a) and (b): (1) Self-trading, (2) common beneficial ownership, (3) independent decision makers, and (4) common control. Do any of these terms require further definition? If so, how should they be defined? Should any alternatives be used and, if so, how should such substitute terms be defined?

d. With respect to “common beneficial ownership,” the Commission requests comment on the minimum degree of ownership in an account that should trigger a determination that such account is under common beneficial ownership. For example, should an account be deemed to be under common beneficial ownership between two unrelated persons if each person directly or indirectly has a 10% or more ownership or equity interest in such account? The Commission refers commenters to the aggregation rules in part 150 of its regulations, including specifically § 150.4, and requests comment on a potential Commission definition of common beneficial ownership that is modeled on § 150.4.

e. The Commission also requests comment on whether “common beneficial ownership” should be defined in any final rules arising from this NPRM, or whether such definition should be left to each DCM with respect to its program for implementing proposed § 40.23.

91. Are there any other types of self-trading that should be permitted in addition to the exceptions permitted in § 40.23(b)(1) and (2)? If so, please describe such other types of acceptable self-trading and explain why they should be permitted.

92. Proposed § 40.23 provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission’s principal goal is to prevent unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the account that should be

prohibited from trading from each other, so long as this goal is met. Should any other identification methods be permitted in § 40.23? For example, please comment on whether the opposite approach is preferable: market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other).

93. The Commission believes that its requirements concerning self-trade prevention tools must strike the appropriate balance between flexibility (allowing market participants with diverse trading operations and strategies the discretion in implementation so as effectively prevent only unintentional self-trades) and simplicity (a variety of design and implementation options may render this control too complex to be effective).<sup>716</sup> Does the Commission allow sufficient discretion to exchanges and market participants in the design and implementation of self-trade prevention tools? Is there any area where the Commission should be more prescriptive? The Commission is particularly interested in whether there is a particular level at which it should require implementation of self-trade prevention tools, *i.e.*, if the tools must prevent matching of orders from the same trading firm, the same trader, the same trading algorithm, or some other level.

94. Proposed § 40.23(a) would require DCMs to either apply, or provide and require the use of, self-trade prevention tools. Please comment whether § 40.23(a) should, in addition, permit market participants to use their own self-trade prevention tools to meet the requirements of proposed § 40.23(a), and if so, what additional regulations would ensure that DCMs are able to: ensure that such tools are comparable to DCM-provided tools; monitor the performance of such tools; and otherwise review such tools and ensure that they are sufficiently rigorous to meet the requirements of § 40.23.

95. Is it appropriate to require implementation of self-trade prevention tools with respect to all orders? Should such controls be mandatory for only a particular subset of orders, *i.e.*, orders from AT Persons or orders submitted through DEA?

96. Please comment on the requirement that DCMs disclose self-trade statistics. Is the data required to be disclosed appropriate? Is there any other

category of self-trade data that DCMs should be required to disclose?

97. Should DCMs be required to disclose the amount of unintentional self-trading that occurs each month, alongside the self-trade statistics required to be published under proposed § 40.23(d)?

98. As noted above, the Commission understands that there is some potential for self-trade prevention tools to be used for wrongful activity that may include disruptive trading or other violations of the Act or Commission regulations on DCMs. Are there ways to design self-trade prevention tools so that they do not facilitate disruptive trading (such as spoofing) or other violations of the Act or Commission regulations on DCMs? Are additional regulations warranted to ensure that such tools are not used to facilitate such activities?

#### *IV(R) DCM Market Maker and Trading Incentive Programs—§§ 40.25–40.28*

99. To what extent do market participants currently trade in ways designed primarily to collect market maker or trading incentive program benefits, rather than for risk management purposes?

100. To what extent do that market maker and trading incentive programs currently provide benefits for self-trades? To what extent do market participants collect such benefits for self-trades?

101. The Commission requests comment regarding whether the information proposed to be collected in § 40.25 would be sufficient for it to determine whether a DCM’s market-maker or trading incentive program complies with the impartial access requirements of § 38.151(b). If additional or different information would be helpful, please identify such information.

102. The Commission requests comment regarding whether DCMs should be required to maintain on their public Web sites the information required by proposed § 40.25(a) and (b) for an additional period beyond the end of the market maker or trading incentive program. The Commission may determine to include in any final rules arising from this NPRM a requirement that such information remain publicly available pursuant to proposed § 40.25(b) for an additional period up to six months following the end of a market maker or trading incentive program.

103. The Commission requests comment regarding whether the text of proposed § 40.27(a) identifies with sufficient particularity the types of trades that are not eligible for payments

<sup>716</sup> See FIA Guide, *supra* note 95 at 13 (discussing balance between flexibility and complexity with respect to self-trade prevention tools).

or benefits pursuant to a DCM market-maker or trading incentive program. What amendments, if any, are necessary to clearly identify trades that are not eligible?

104. Section 40.27(a) provides that DCMs shall implement policies and procedures that are reasonably designed to prevent the payment of market-maker or trading incentive program benefits for trades between accounts under common ownership. Are there any other types of trades or circumstances under which the Commission should also prohibit or limit DCM market-maker or trading incentive program benefits?

105. The Commission is proposing in § 40.27(a) certain requirements regarding DCM payments associated with market maker and trading incentive programs. Please address whether the proposed rules will diminish DCMs' ability to compete or build liquidity by using market maker or trading incentive programs. Does any DCM consider it appropriate to provide market maker or trading incentive program benefits for trades between accounts known to be under common beneficial ownership?

106. In any final rules arising from this NPRM, should the Commission also prohibit DCMs from providing trading incentive program benefits where such benefits on a per-trade basis are greater than the fees charged per trade by such DCMs and its affiliated DCO (if applicable)? The Commission also specifically requests comment on the extent, if any, to which one or more DCMs engage in this practice.

107. Proposed § 40.25(b) imposes certain transparency requirements with respect to both market maker and trading incentive programs. The Commission requests public comment regarding:

a. The most appropriate place or manner for a DCM to disclose the information required by proposed § 40.25(b);

b. The benefits or any harm that may result from such transparency, including any anti-competitive effect or pro-competitive effect among DCMs or market participants;

c. Whether transparency as proposed in § 40.25(b) is equally appropriate for both market maker programs and trading incentive programs, or are the proposed requirements more or less appropriate for one type of program over the other?

d. Whether any of the enumerated items required to be posted on a DCM's public Web site pursuant to proposed § 40.25(b) could reasonably be considered confidential information that should not be available to the public,

and if so, what process should be available for a DCM to request from the Commission an exemption from the requirements of proposed § 40.25(b) for that specific enumerated item?

*Related Matters—A. Calculation of Number of Persons Subject to Regulations*

108. The Commission requests comment on its calculation of the number of AT Persons, newly registered floor traders, clearing member FCMs, and DCMs that will be subject to Regulation AT.

*Related Matters—C. Regulatory Flexibility Act Analysis*

109. The Commission requests comment on each element of its RFA analysis. In particular, the Commission specifically invites comment on the accuracy of its estimates of potential firms that could be considered "small entities" for RFA purposes.

110. The Commission also requests comment on whether any natural persons will be designated as AT Persons under the proposed definition of that term.

*Related Matters—E. Cost Benefit Considerations*

111. Beyond specific questions interspersed throughout its discussion, the Commission generally requests comment on all aspects of its consideration of costs and benefits, including: (a) Identification, quantification, and assessment of any costs and benefits not discussed therein; (b) whether any of the proposed regulations may cause FCMs or DCMs to raise their fees for their customers, or otherwise result in increased costs for market participants and, if so, to what extent; (c) whether any category of Commission registrants will be disproportionately impacted by the proposed regulations, and if so whether the burden of any regulations should be appropriately shifted to other Commission registrants; (d) what, if any, costs would likely arise from market participants engaging in regulatory arbitrage by restructuring their trading activities to trade on platforms not subject to the proposed regulations, or taking other steps to avoid costs associated with the proposed regulations; (e) quantitative estimates of the impact on transaction costs and liquidity of the proposals contained herein; (f) the potential costs and benefits of the alternatives that the Commission discussed in this release, and any other alternatives appropriate under the CEA that commenters believe would provide superior benefits relative

to costs; (g) data and any other information to assist or otherwise inform the Commission's ability to quantify or qualitatively describe the benefits and costs of the proposed rules; and (h) substantiating data, statistics, and any other information to support positions posited by commenters with respect to the Commission's consideration of costs and benefits.

*§ 1.80 Pre-Trade and Other Risk Controls*

112. How would an alternative definition of Algorithmic Trading that excludes automated order routers affect the costs and benefits of the pre-trade and other risk controls in comparison to the costs and benefits of the proposed definition that includes automated order routers? Would such an alternative definition reduce the number of AT Persons captured by Regulation AT?

113. Would the benefits of Regulation AT be enhanced significantly if the definition of Algorithmic Trading were modified to capture a conduit entity such as a non-clearing FCM, thereby making the entity an AT Person subject to Regulation AT? How would such a modification affect costs?

114. Would the benefits of Regulation AT be enhanced significantly if the definition of Algorithmic Trading were expanded to encompass orders that are generated using algorithmic methods (e.g., an algorithm generates a buy or sell signal at a particular time), but are then manually entered into a front-end system by a natural person? How would such a modification affect costs? Please comment on the costs and benefits of an alternative whereby the Commission would implement specific rules regarding the appropriate design of the specific controls required by Regulation AT and compare them to the costs and benefits of the Commission's proposal whereby the relevant entities—trading firms, clearing firms, and DCMs—would have the discretion to determine the appropriate design of those controls.

115. Does one particular segment of trading firms, clearing member FCMs or DCMs (e.g., smaller entities) currently implement fewer of the pre-trade and other risk controls required by Regulation AT than some other segment of trading firms, clearing member FCMs or DCMs? If so, please describe any unique or additional costs that will be imposed on such persons to develop the technology and systems necessary to implement the pre-trade and other risk controls required by Regulation AT.

116. In question 14, the Commission asks whether there are any AT Persons who are natural persons. Would AT Persons who are natural persons (or sole

proprietorships with no employees other than the sole proprietor) be required to hire staff to comply with the risk control, testing and monitoring, or compliance requirements of Regulation AT?

117. Do you agree with the accuracy of cost estimates provided by the Commission as to how much it will cost a trading firm, clearing member FCM or DCM to internally develop the technology and systems necessary to implement the pre-trade and other risk controls required by Regulation AT? If you disagree with the Commission's analysis, please provide your own quantitative estimates, as well as data or other information in support. Please specify in your answer the type of entity and which specific pre-trade risk or order management controls for which you are providing estimates.

In addition, please differentiate between the situations where an entity (i) already has partially compliant controls in place, and only needs to upgrade such technology and systems to bring it into compliance with the regulations; and (ii) needs to build such technology and systems from scratch. Please include, as applicable, hardware and software costs as well as the hourly wage information of the employee(s) necessary to develop such risk controls (*i.e.*, technology personnel such as programmer analysts, senior programmers and senior systems analysts).

118. The Commission has assumed that the effort to adjust any one risk control (by "control," in this context, the Commission means the pre-trade risk controls, order cancellation systems, and connectivity systems required by § 1.80) will require assessment and possible modifications to all controls. Is this assumption correct, and if not, why not?

119. As indicated above, the Commission lacks sufficient information to provide full estimates of costs that a trading firm, clearing member FCM or DCM will incur if it chooses not to internally develop such controls, and instead purchases the solutions of an outside vendor in order to comply with Regulation AT's pre-trade and other risk controls requirements. Please provide quantitative estimates of such costs, including supporting data or other information. In addition, please specify in your answer the type of entity and which specific pre-trade risk or order management control for which you are providing estimates. In addition, please differentiate between the situations where an entity (i) already uses an outside vendor to at least some extent to implement the controls; and (ii) does

not currently implement the controls and must obtain all applicable technology and systems from an outside vendor necessary to comply with Regulation AT. Please include, if applicable, hardware and software costs as well as the hourly wage information of the employee(s) necessary to effectuate the implementation of such controls from an outside vendor.

120. Do you agree with the Commission's estimates of how much it will cost a trading firm, clearing member FCM or DCM to annually maintain the technology and systems for the pre-trade and other risk controls required by Regulation AT, if it uses internally developed technology and systems? If not please provide quantitative estimates and supporting data or other information with respect to how much it will cost a trading firm, clearing member FCM or DCM to annually maintain the technology and systems for pre-trade and other risk controls required by Regulation AT, if it uses an outside vendor's technology and systems.

121. Is it correct to assume that many of the trading firms subject to § 1.80 are also subject to the SEC's Market Access Rule, and, accordingly, already implement many of the systems required by Regulation AT for purposes of their securities trading? Please specify in your answer the type of entity and which specific pre-trade risk or order management control is already required pursuant to the Market Access Rule, and the extent of the overlap.

122. Please comment on the costs and benefits (including quantitative estimates with supporting data or other information) to clearing FCMs of an alternative to proposed § 1.82 that would require clearing FCMs to implement controls with respect to all orders, including orders that are manually submitted or are entered through algorithmic methods that nonetheless do not meet the definition of Algorithmic Trading and compare those costs and benefits to those costs and benefits of proposed § 1.82.

123. Please comment on the additional costs (including quantitative estimates with supporting data or other information) to AT Persons of complying with each of the following specific requirements of § 1.80:

- a. § 1.80(a)(2) (pre-trade risk control threshold requirements);
- b. § 1.80(a)(3) (natural person monitors must be alerted when thresholds are breached);
- c. § 1.80(d) (notification to DCM and clearing member FCM that AT Person will use Algorithmic Trading);

d. § 1.80(e) (self-trade prevention tools); and

e. § 1.80(f) (periodic review of pre-trade risk controls and other measures for sufficiency and effectiveness).

124. The Commission welcomes comment on the estimated costs of the pre-trade risk controls proposed in § 1.80 as compared to the annual industry expenditure on technology, risk mitigation and/or technology compliance systems.

125. Please comment on the costs to AT Persons and clearing member FCMs of complying with DCM rules requiring retention and production of records relating to §§ 1.80, 1.81, and 1.82 compliance, pursuant to § 40.22(d), including without limitation on the extent to which AT Persons and clearing member FCMs already have policies, procedures, staffing and technological infrastructure in place to retain such records and produce them upon DCM request.

126. The Commission anticipates that Regulation AT may promote confidence among market participants and reduce market risk, consequently reducing transaction costs, but has not estimated this reduction in transaction costs. The Commission welcomes comment on the extent to which Regulation AT may impact transaction costs and effects on liquidity provision more generally.

#### *AT Person Membership in RFA; RFA Standards for Automated Trading and Algorithmic Trading Systems*

127. The Commission estimates that the costs of membership in an RFA associated with proposed § 170.18 will encompass certain costs, such as those associated with NFA membership dues. Has the Commission correctly identified the costs associated with membership in an RFA?

128. The Commission expects that entities that will be required to become members of an RFA would not incur any additional compliance costs as a result of their membership in an RFA. The Commission requests comment on the accuracy of this expectation. What additional compliance costs, if any, would a registrant face as a result of being required to become a member of an RFA pursuant to proposed § 170.18?

129. Has the Commission accurately estimated that approximately 100 entities will be affected by the membership requirements of § 170.18?

130. The Commission invites estimates on the cost to an RFA to establish and maintain the program required by § 170.19, and the amount of that cost that will be passed along to individual categories of AT Person members in the RFA.

*Development, Testing, and Supervision of Algorithmic Systems*

131. Proposed § 1.81(a) establishes principles-based standards for the development and testing of Algorithmic Trading systems and procedures, including requirements for AT Persons to test all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation. AT Persons would also be required to maintain a source code repository to manage source code access, persistence, copies of all code used in the production environment, and changes to such code, among other requirements. Are any of the requirements of § 1.81(a) not already followed by the majority of market participants that would be subject to § 1.81(a) (or some particular segment of market participants), and if so, how much will it cost for a market participant to comply with such requirement(s)?

132. Proposed § 1.81(b) requires that an AT Person's Algorithmic Trading is subject to continuous real-time monitoring and supervision by knowledgeable and qualified staff at all times while Algorithmic Trading is occurring. Proposed § 1.81(b) also requires automated alerts when an Algorithmic Trading system's AT Order Message behavior breaches design parameters, upon loss of network connectivity or data feeds, or when market conditions approach the boundaries within which the ATS is intended to operate, to the extent applicable, among other monitoring requirements. Are any of the requirements of § 1.81(b) not already followed by the majority of market participants that would be subject to § 1.81(b), and if so, how much will it cost for a market participant to comply with such requirement(s)?

133. Proposed § 1.81(c) requires that AT Persons implement policies designed to ensure that Algorithmic Trading operates in a manner that complies with the CEA and the rules and regulations thereunder. Among other controls, the policies should include a plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design, changes, testing, and controls. Are any of the requirements of § 1.81(c) not already followed by the majority of market participants that would be subject to § 1.81(c), and if so, how much will it cost for a market participant to comply with such requirement(s)?

134. Proposed § 1.81(d) requires that AT Persons implement policies to designate and train their staff responsible for Algorithmic Trading, which policies should include procedures for designating and training all staff involved in designing, testing and monitoring Algorithmic Trading. Are any of the requirements of § 1.81(d) not already followed by the majority of market participants that would be subject to § 1.81(d), and if so, how much will it cost for a market participant to comply with such requirement(s)?

*AT Person and FCM Compliance Reports*

135. Please comment on whether any of the alternatives discussed above regarding compliance reports would provide a superior cost-benefit profile relative to the Commission's proposal.

*DCM Test Environments*

136. Do any DCMs not currently offer a test environment that simulates production trading to their market participants, as would be required by proposed § 40.21? If so, how much would it cost a DCM to implement a test environment that would comply with the requirements of § 40.21?

*DCM Review of Compliance Reports*

137. Please comment on the cost estimates provided above with respect to DCMs' review of compliance reports provided under § 40.22 and related review requirements, including the estimated cost for DCMs to: Establish the review program required by § 40.22; review the reports provided by AT Persons and clearing member FCMs; communicate remediation instructions to a subset of AT Persons and clearing member FCMs; and review and evaluate, as necessary, books and records of AT Persons and clearing member FCMs as contemplated by proposed § 40.22(e).

*Section 15(a) Considerations*

138. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

139. Are the compliance costs associated with the proposed rules of sufficient magnitude to potentially cause smaller market participants, FCMs, or DCMs to cease or scale back operations? Do these costs create significant barriers to entry?

*Registration—§ 1.3(x)(3)*

140. The Commission estimates that the costs of registration will encompass direct costs (those associated with NFA

membership, and reporting and recordkeeping with the Commission), and indirect costs (e.g. those associated to risk control requirements placed on all registered entities). Has the Commission correctly identified the costs associated with the new registration category? What firm characteristics would change the level of direct and indirect costs associated with the registration?

141. Has the Commission accurately estimated that approximately 100 currently unregistered entities will be captured by the new registration requirement in proposed § 1.3(x)(3).

142. Has the Commission accurately estimated that each currently unregistered entity captured by the new registration requirement in proposed § 1.3(x)(3) will have approximately 10 persons required to file Form 8-R?

143. As defined, the new floor trader category restricts the registration requirement to those who make use of Direct Electronic Access. Is this requirement overly restrictive or unduly broad from a cost-benefit perspective? Are there alternate, or additional, characteristics of trading activity to determine registration status that would be preferable from a cost-benefit standpoint? For example, should persons with trading volume or message volume below a specified threshold be exempted from registration?

144. Will any currently unregistered entities change their business model or exit the market in order to avoid the proposed registration requirement?

145. The Commission believes that the risk control protocols required of registered entities, specifically those under the new registration category, will provide a general benefit to the safety and soundness of market activity and price formation. Has the Commission correctly identified the type and level of benefits which arise from placing these requirements on a new set of significant market participants?

146. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

*Transparency in Exchange Trade Matching Systems*

147. The Commission anticipates that costs associated with the transparency requirement would come from some additional testing of platform systems and from drafting and publishing descriptions of any relevant attributes of the platform. What new costs would be associated with providing descriptions of attributes of electronic matching

platforms that affect market participant orders and quotes?

148. Please compare the costs and benefits of the alternative of applying the transparency requirement only with respect to latencies within a platform and how a self-trade prevention tool determines whether to cancel an order with the costs and benefits of the proposed rule.

149. What benefits might market participants receive through increased transparency into the operation of electronic matching platforms, particularly for those market participants without direct electronic access who may not be able to accurately measure latencies or other metrics of market efficiency?

150. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

#### *Self-Trade Prevention*

151. Please comment on the cost estimates described above for DCMs and market participants to comply with the requirements of § 40.23. The Commission is interested in commenter opinion on all aspects of its analysis, including its estimate of the number of entities impacted by the proposed regulation and the amount of costs such entities may incur to comply with the regulation.

152. Please comment on the benefits described above. Do you agree with the Commission's position that self-trade prevention requirements will result in more accurate indications of the level of market interest on both sides of the market and help ensure arms-length transactions that promote effective price discovery? Are there additional benefits to regulatory self-trade prevention requirements not articulated above?

153. Are there any DCMs that neither internalize and apply self-trade prevention tools, nor provide self-trade prevention tools to their market participants? If so, please provide an estimate of the cost to such a DCM to comply with the requirement under § 40.23(a) to apply, or provide and require the use of, self-trade prevention tools.

154. Would any DCMs that currently offer self-trade prevention tools need to update their tools to meet the requirements of § 40.23? If so, please provide an estimate of the cost to such a DCM to comply with the requirements of § 40.23.

155. What percentage of market participants do not currently make use of exchange-provided self-trade prevention tools, when active on a DCM

that provides, but does not require such tools? Please provide an estimate of the cost to such a market participant to initially calibrate and use exchange-provided self-trade prevention tools, in accordance with § 40.23. Please also comment on any other direct or indirect costs to a market participant that does not currently use self-trade prevention tools arising from the proposed requirement to implement such tools.

156. The Commission estimates above that the number of market participants that will submit the approval requests described by § 40.23(c) is approximately equivalent to the number of AT Persons. Please comment on whether the estimate of the number of market participants submitting such approval requests should be higher or lower. For example, should the estimate be raised to account for proprietary algorithmic traders that will not be AT Persons, because they do not use Direct Electronic Access and therefore will not be required to register as floor traders?

157. Proposed § 40.23 provides that DCMs may comply with the requirement to apply, or provide and require the use of, self-trade prevention tools by requiring market participants to identify to the DCM which accounts should be prohibited from trading with each other. With respect to this account identification process, the Commission's principal goal is to prevent unintentional self-trading; the Commission does not have a specific interest in regulating the manner by which market participants identify to DCMs the account that should be prohibited from trading from each other, so long as this goal is met. Should any other identification methods be permitted in § 40.23? For example, please comment on whether the opposite approach is preferable: Market participants would identify to DCMs the accounts that should be permitted to trade with each other (as opposed to those accounts that should be prevented from trading with each other). In particular, please comment on whether this approach or other identification methods would reduce costs for market participants or be easier for both market participants and DCMs to administer.

158. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

#### *Market-Maker and Trading Incentive Programs*

159. The Commission requests comment on the accuracy of its cost estimates.

160. To what extent are the costs imposed on the DCMs by the proposed rule already incurred pursuant to existing rules?

161. To what extent are the benefits of the proposed rule currently being realized?

162. Do DCM Web sites currently provide adequate information regarding market-maker and trading incentive programs, and is such information easily located?

163. To what extent do DCMs currently make payments for self-trades pursuant to market-maker and trading incentive programs?

164. The Commission requests comment on its discussion of the effects of the proposed rules on the considerations in Section 15(a) of the CEA.

#### **List of Subjects**

##### *17 CFR Part 1*

Commodity futures, Commodity pool operators, Commodity trading advisors, Definitions, Designated contract markets, Floor brokers, Futures commission merchants, Introducing brokers, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

##### *17 CFR Part 38*

Commodity futures, Designated contract markets, Reporting and recordkeeping requirements.

##### *17 CFR Part 40*

Commodity futures, Definitions, Designated contract markets, Reporting and recordkeeping requirements.

##### *17 CFR Part 170*

Commodity futures, Commodity pool operators, Commodity trading advisors, Floor brokers, Futures commission merchants, Introducing brokers, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR chapter I as follows:

#### **PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT**

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a-1, 7a-2, 7b, 7b-3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. In § 1.3, add paragraphs (x)(3), (tttt), (uuuu), (vvvv), (wwww), (xxxx), (yyyy), and (zzzz) to read as follows:

**§ 1.3 Definitions.**

\* \* \* \* \*

(x) \* \* \*

(3)(i) Who, in or surrounding any other place provided by a contract market for the meeting of persons similarly engaged purchases or sells solely for such person's own account—

(A) Any commodity for future delivery, security futures product, or swap; or

(B) Any commodity option authorized under section 4c of the Act; and

(ii) Who uses Direct Electronic Access as defined in paragraph (yyyy) of this section, in whole or in part, to access such other place for Algorithmic Trading; and

(iii) Who is not registered with the Commission as a futures commission merchant, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker.

\* \* \* \* \*

(tttt) *Algorithmic Trading Compliance Issue*. This term means an event at an AT Person that has caused any Algorithmic Trading of such entity to operate in a manner that does not comply with the Commodity Exchange Act or the rules and regulations thereunder, the rules of any designated contract market to which such AT Person submits orders through Algorithmic Trading, the rules of any registered futures association of which such AT Person is a member, the AT Person's own internal requirements, or the requirements of the AT Person's clearing member, in each case as applicable.

(uuuu) *Algorithmic Trading Disruption*. This term means an event originating with an AT Person that disrupts, or materially degrades—

(1) The Algorithmic Trading of such AT Person,

(2) The operation of the designated contract market on which such AT Person is trading, or

(3) The ability of other market participants to trade on the designated contract market on which such AT Person is trading.

(vvvv) *Algorithmic Trading Event*. This term means an event at an AT Person that constitutes—

(1) An Algorithmic Trading Compliance Issue; or

(2) An Algorithmic Trading Disruption.

(wwww) *AT Order Message*. This term means each new order or quote submitted through Algorithmic Trading

to a designated contract market by an AT Person and each change or deletion submitted through Algorithmic Trading by an AT Person with respect to such an order or quote.

(xxxx) *AT Person*. This term means any person registered or required to be registered as a—

(1) Futures commission merchant, floor broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, or introducing broker that engages in Algorithmic Trading on or subject to the rules of a designated contract market; or

(2) Floor trader as defined in paragraph (x)(3) of this section.

(yyyy) *Direct Electronic Access*. This term means an arrangement where a person electronically transmits an order to a designated contract market, without the order first being routed through a separate person who is a member of a derivatives clearing organization to which the designated contract market submits transactions for clearing.

(zzzz) *Algorithmic Trading*. This term means trading in any commodity interest as defined in paragraph (yy) of this section on or subject to the rules of a designated contract market, where:

(1) One or more computer algorithms or systems determines whether to initiate, modify, or cancel an order, or otherwise makes determinations with respect to an order, including but not limited to: The product to be traded; the venue where the order will be placed; the type of order to be placed; the timing of the order; whether to place the order; the sequencing of the order in relation to other orders; the price of the order; the quantity of the order; the partition of the order into smaller components for submission; the number of orders to be placed; or how to manage the order after submission; and

(2) Such order, modification or order cancellation is electronically submitted for processing on or subject to the rules of a designated contract market; provided, however, that Algorithmic Trading does not include an order, modification, or order cancellation whose every parameter or attribute is manually entered into a front-end system by a natural person, with no further discretion by any computer system or algorithm, prior to its electronic submission for processing on or subject to the rules of a designated contract market.

■ 3. Add subpart A to read as follows:

**Subpart A—Requirements for Algorithmic Trading**

Sec.

1.80 Pre-trade risk controls for AT Persons.

1.81 Standards for the development, monitoring, and compliance of Algorithmic Trading systems.

1.82 Clearing futures commission merchant risk management.

1.83 AT Person and clearing member futures commission merchant reports and recordkeeping.

**Subpart A—Requirements for Algorithmic Trading**

**§ 1.80 Pre-trade risk controls for AT Persons.**

For all AT Order Messages, an AT Person shall implement pre-trade risk controls and other measures reasonably designed to prevent an Algorithmic Trading Event, including but not limited to:

(a) *Pre-Trade Risk Controls*. (1) The pre-trade risk controls shall include, at a minimum, the following:

(i) Maximum AT Order Message frequency per unit time and maximum execution frequency per unit time; and

(ii) Order price parameters and maximum order size limits.

(2) Pre-trade risk controls shall be set at the level of each AT Person, or such other more granular level as the AT Person may determine, including but not limited to, by product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message.

(3) Natural person monitors at the AT Person shall be promptly alerted when pre-trade risk control parameters established pursuant to this section are breached.

(b) *Order Cancellation Systems*. (1) Systems that have the ability to:

(i) Immediately disengage Algorithmic Trading;

(ii) Cancel selected or up to all resting orders when system or market conditions require it; and

(iii) Prevent submission of new AT Order Messages.

(2) Prior to an AT Person's initial use of Algorithmic Trading to submit a message or order to a designated contract market's trading platform, such AT Person must notify the designated contract market on which it conducts Algorithmic Trading whether all of its resting orders should be cancelled or suspended in the event that the AT Person's Algorithmic Trading system disconnects with the trading platform.

(c) *System Connectivity*. AT Persons with Direct Electronic Access as defined in § 1.3(yyyy) shall implement systems to indicate on an ongoing basis whether they have proper connectivity with the trading platform and any systems used by a designated contract market to provide the AT Person with market data.

(d) *Notification of Algorithmic Trading.* Prior to an AT Person's initial use of Algorithmic Trading to submit a message or order to a designated contract market's trading platform, such AT Person shall notify its clearing member and the designated contract market on which it will be trading that it will engage in Algorithmic Trading.

(e) *Self-Trade Prevention Tools.* To the extent that implementation of a designated contract market's self-trade prevention tools requires calibration or other action by an AT Person, such AT Person shall calibrate or take such other action as is necessary to apply such tools.

(f) *Periodic Review for Sufficiency and Effectiveness.* Each AT Person shall periodically review its compliance with this section to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event. Each AT Person shall take prompt action to remedy any deficiencies it identifies.

**§ 1.81 Standards for the development, monitoring, and compliance of Algorithmic Trading systems.**

(a) *Development and testing of Algorithmic Trading Systems.* (1) Each AT Person shall implement written policies and procedures for the development and testing of its Algorithmic Trading systems. Such policies and procedures shall at a minimum include the following:

(i) Maintaining a development environment that is adequately isolated from the production trading environment. The development environment may include computers, networks, and databases, and should be used by software engineers while developing, modifying, and testing source code.

(ii) Testing of all Algorithmic Trading code and related systems and any changes to such code and systems prior to their implementation, including testing to identify circumstances that may contribute to future Algorithmic Trading Events. Such testing must be conducted both internally within the AT Person and on each designated contract market on which Algorithmic Trading will occur.

(iii) Regular back-testing of Algorithmic Trading using historical transaction, order, and message data to identify circumstances that may contribute to future Algorithmic Trading Events.

(iv) Regular stress tests of Algorithmic Trading systems to verify their ability to operate in the manner intended under a variety of market conditions.

(v) Procedures for documenting the strategy and design of proprietary Algorithmic Trading software used by an AT Person, as well as any changes to such software if such changes are implemented in a production environment.

(vi) Maintaining a source code repository to manage source code access, persistence, copies of all code used in the production environment, and changes to such code. Such source code repository must include an audit trail of material changes to source code that would allow the AT Person to determine, for each such material change: who made it; when they made it; and the coding purpose of the change. Each AT Person shall keep such source code repository, and make it available for inspection, in accordance with § 1.31.

(2) Each AT Person shall periodically review the effectiveness of the policies and procedures required by this paragraph (a), and take prompt action to document and remedy deficiencies in such policies and procedures.

(b) *Monitoring of Algorithmic Trading Systems.* (1) Each AT Person shall implement written policies and procedures reasonably designed to ensure that each of its Algorithmic Trading systems is subject to continuous real-time monitoring by knowledgeable and qualified staff while such Algorithmic Trading system is engaged in trading. Such policies and procedures shall at a minimum include the following:

(i) Continuous real-time monitoring of Algorithmic Trading to identify potential Algorithmic Trading Events.

(ii) Automated alerts when an Algorithmic Trading system's AT Order Message behavior breaches design parameters, upon loss of network connectivity or data feeds, or when market conditions approach the boundaries within which the Algorithmic Trading system is intended to operate, to the extent applicable.

(iii) Monitoring staff of the AT Person shall have the ability and authority to disengage an Algorithmic Trading system and to cancel resting orders when system or market conditions require it, including the ability to contact staff of the applicable designated contract market and clearing firm, as applicable, to seek information and cancel orders. Such monitoring staff must also have dashboards and control panels to monitor and interact with the Algorithmic Trading systems for which they are responsible.

(iv) Procedures that will enable AT Persons to track which monitoring staff

is responsible for an Algorithmic Trading system during trading hours. (2) Each AT Person shall periodically review the effectiveness of the policies and procedures required by this paragraph (b), and take prompt action to document and remedy deficiencies in such policies and procedures.

(c) *Compliance of Algorithmic Trading Systems.* (1) Each AT Person shall implement written policies and procedures reasonably designed to ensure that each of its Algorithmic Trading systems operates in a manner that complies with the Commodity Exchange Act and the rules and regulations thereunder.

(2) Each AT Person shall implement written policies and procedures requiring:

(i) Staff of the AT Person to review Algorithmic Trading systems in order to detect potential Algorithmic Trading Compliance Issues. Procedures shall indicate that such staff shall include staff of the AT Person familiar with the Commodity Exchange Act and the rules and regulations thereunder, the rules of any designated contract market to which such AT Person submits AT Order Messages, the rules of any registered futures association of which such AT Person is a member, the AT Person's own internal requirements, and the requirements of the AT Person's clearing member, in each case as applicable.

(ii) A plan of internal coordination and communication between compliance staff of the AT Person and staff of the AT Person responsible for Algorithmic Trading regarding Algorithmic Trading design, changes, testing, and controls, which plan should be designed to detect and prevent Algorithmic Trading Compliance Issues.

(3) Each AT Person shall periodically review the effectiveness of the policies and procedures required by this paragraph (c), and take prompt action to document and remedy deficiencies in such policies and procedures.

(d) *Designation and training of Algorithmic Trading staff.* (1) Each AT Person shall implement written policies and procedures to designate and train its staff responsible for Algorithmic Trading. Such policies and procedures shall at a minimum include the following:

(i) Procedures for designating and training all staff involved in designing, testing and monitoring Algorithmic Trading, and documenting training events. Training must, at a minimum, cover design and testing standards, Algorithmic Trading Event communication procedures, and requirements for notifying staff of the



applicable designated contract market when Algorithmic Trading Events occur.

(ii) Training policies reasonably designed to ensure that natural person monitors are adequately trained for each Algorithmic Trading system or strategy (or material change to such system or strategy) for which such monitors are responsible. Training must include, at a minimum, the trading strategy for the Algorithmic Trading as well as the automated and non-automated risk controls that are applicable to the Algorithmic Trading.

(iii) Escalation procedures to inform senior staff of the AT Person as soon as Algorithmic Trading Events are identified.

(2) Each AT Person shall periodically review the effectiveness of the policies and procedures required by this paragraph (d), and take prompt action to document and remedy deficiencies in such policies and procedures.

**§ 1.82 Clearing member futures commission merchant risk management.**

(a) For all AT Order Messages originating with an AT Person, the futures commission merchant that is the clearing member for such AT Person shall comply with the following requirements:

(1) Make use of pre-trade risk controls reasonably designed to prevent or mitigate an Algorithmic Trading Disruption, including at a minimum, those pre-trade risk controls described in § 1.80(a)(1).

(2) Pre-trade risk controls must be set at the level of each AT Person, or such other more granular level as the clearing futures commission merchant may determine, including but not limited to, by product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message.

(3) The futures commission merchant shall have policies and procedures reasonably designed to ensure that natural person monitors at the clearing futures commission merchant are promptly alerted when pre-trade risk control parameters established pursuant to this section are breached.

(4) Make use of the order cancellation systems described in § 1.80(b)(1).

(b) *Direct Electronic Access orders.* For all AT Order Messages originating with an AT Person submitted to a trading platform through Direct Electronic Access as defined in § 1.3(yyyy), the futures commission merchant that is the clearing member for the AT Person shall comply with the requirements of paragraphs (a)(1), (2), and (4) of this section by implementing

the pre-trade risk controls and order cancellation systems provided by designated contract markets pursuant to § 38.255(b) and (c) of this chapter.

(c) *Non-Direct Electronic Access orders.* For all AT Order Messages originating with an AT Person that are not submitted to a trading platform through Direct Electronic Access as defined in § 1.3(yyyy), the futures commission merchant that is the clearing member for the AT Person shall comply with the requirements of paragraphs (a)(1), (2), and (4) of this section by itself establishing and maintaining the pre-trade risk controls and order cancellation systems described therein.

**§ 1.83 AT Person and clearing member futures commission merchant reports and recordkeeping.**

(a) *AT Person Reports.* Each AT Person shall annually prepare a report and submit such report by June 30 to each designated contract market on which such AT Person engaged in Algorithmic Trading. Together with the annual report, each AT Person shall submit copies of the written policies and procedures developed to comply with § 1.81(a) and (c). Such report shall cover the time period from May 1 of the previous year to April 30 of the year such report is submitted. The report shall include the following:

(1) A description of the pre-trade risk controls required by § 1.80(a), including a description of each item enumerated in § 1.80(a) and a description of all parameters and the specific quantitative settings used by the AT Person for such pre-trade risk controls; and

(2) A certification by the chief executive officer or chief compliance officer of the AT Person that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

(b) *Clearing member futures commission merchant reports.* Each futures commission merchant that is a clearing member for one or more AT Person(s) shall annually prepare and submit a report by June 30 to each designated contract market on which such AT Person(s) engaged in Algorithmic Trading. Such report shall cover the time period from May 1 of the previous year to April 30 of the year such report is submitted. The report shall include the following:

(1) A description of the clearing member futures commission merchant's program for establishing and maintaining the pre-trade risk controls required by § 1.82(a)(1) for its AT Persons at the designated contract market; and

(2) A certification by the chief executive officer or chief compliance officer of the futures commission merchant that, to the best of his or her knowledge and reasonable belief, the information contained in the report is accurate and complete.

(c) *AT Person recordkeeping.* Each AT Person shall keep, and provide upon request to each designated contract market on which such AT Person engages in Algorithmic Trading, books and records regarding such AT Person's compliance with all requirements pursuant to §§ 1.80 and 1.81.

(d) *Clearing member futures commission merchant recordkeeping.* Each futures commission merchant that is a clearing member for an AT Person shall keep, and provide upon request to each designated contract market on which such AT Person engages in Algorithmic Trading, books and records regarding such clearing member futures commission merchant's compliance with all requirements pursuant to § 1.82.

**PART 38—DESIGNATED CONTRACT MARKETS**

■ 4. The authority citation for part 38 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 5. Revise § 38.255 to read as follows:

**§ 38.255 Risk controls for trading.**

(a) The designated contract market must establish and maintain risk control mechanisms to prevent and reduce the potential risk of price distortions and market disruptions, including, but not limited to, market restrictions that pause or halt trading in market conditions prescribed by the designated contract market.

(b) For all AT Order Messages originating with an AT Person that are submitted to a designated contract market through Direct Electronic Access as defined in § 1.3(yyyy) of this chapter, the designated contract market shall make available to the clearing member futures commission merchant for such AT Person effective systems and controls, reasonably designed to facilitate the items enumerated below:

(1) The clearing member futures commission merchant's management of the risks, pursuant to § 1.82(a)(1) and (2) of this chapter, that may arise from such AT Person's Algorithmic Trading using Direct Electronic Access.

(i) Such systems and controls shall include, at a minimum, the pre-trade

risk controls described in § 1.80(a)(1) of this chapter.

(ii) Such systems shall, at a minimum, enable the clearing member futures commission merchant to set the pre-trade risk controls at the level of each such AT Person, product, account number or designation, and one or more identifiers of natural persons associated with an AT Order Message. Designated contract market rules should permit clearing member futures commission merchants to choose the level at which they place control, so long as clearing member futures commission merchants use at least one of the levels.

(2) The clearing member future commission merchant's ability, pursuant to § 1.82(a)(4) of this chapter, to make use of the order cancellation systems described in § 1.80(b)(1) of this chapter. The designated contract market shall enable the clearing member future commission merchant to apply such order cancellation systems to orders from each such AT Person, product, account number or designation, or one or more identifiers of natural persons associated with an AT Order Message.

(c) A designated contract market that permits Direct Electronic Access as defined in § 1.3(yyyy) of this chapter shall also require clearing member futures commission merchants to use the systems and controls described in paragraph (b) of this section with respect to all AT Order Messages originating with an AT Person that are submitted through Direct Electronic Access.

■ 6. Amend § 38.401 as follows:

- a. Revise paragraph (a)(1)(iii);
- b. Add paragraph (a)(1)(iv);
- c. Revise paragraph (a)(2); and
- d. Add paragraph (c)(3).

■ The revisions and additions read as follows:

**§ 38.401 General requirements.**

(a) \* \* \* (1) \* \* \*

(iii) Rules and specifications pertaining to the operation of the electronic matching platform or trade execution facility, including but not limited to those pertaining to the operation of its electronic matching platform that materially affect the time, priority, price, or quantity of execution, or the ability to cancel, modify, or limit display of market participant orders.

(iv) Any known attributes of the electronic matching platform, other than those already disclosed in rules or specifications under paragraph (a)(1)(iii) of this section, that materially affect the time, priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or

the dissemination of real-time market data to market participants, including but not limited to latencies or other variability in the electronic matching platform and the transmission of message acknowledgements, order confirmations, or trade confirmations, or dissemination of market data.

(2) Through the procedures, arrangements and resources required in paragraph (a) of this section, the designated contract market must ensure public dissemination of information pertaining to new product listings, new rules, rule amendments, rules pertaining to the operation of the electronic matching platform or trade execution facility, known attributes of its electronic trading platform under paragraph (a)(1)(iv) of this section, or other changes to previously-disclosed information, in accordance with the timeline provided in paragraph (c) of this section.

\* \* \* \* \*

(c) \* \* \*

(3) A designated contract market, in making available on its Web site information pursuant to paragraphs (a)(1)(iii) and (iv) of this section, shall place such information and submissions on its Web site within a reasonable time, but no later than 10 business days, following the identification of or changes to such attributes. Such information shall be disclosed prominently and clearly in plain English.

\* \* \* \* \*

■ 7. In Appendix B to part 38, in the paragraph with the subject heading *Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION*, revise paragraph (b)(5) to read as follows:

**Appendix B to Part 38—Guidance on, and Acceptable Practices in, Compliance With Core Principles**

\* \* \* \* \*

*Core Principle 4 of section 5(d) of the Act: PREVENTION OF MARKET DISRUPTION*

\* \* \* \* \*

(b) \* \* \*

(5) *Risk controls for trading.* An acceptable program for preventing market disruptions must demonstrate appropriate trade risk controls, in addition to pauses and halts. Such controls must be adapted to the unique characteristics of the markets to which they apply and must be designed to avoid market disruptions without unduly interfering with that market's price discovery function. The designated contract market must employ the pre-trade risk controls specified in the Commission's regulations (including applicable regulations contained in part 40 of this chapter), and may employ additional controls that the designated contract market believes are appropriate to its market. Within

the specific array of controls that are selected, the designated contract market also must set the parameters for those controls, so long as the types of controls and their specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions, or as they are otherwise required to be designed pursuant to Commission regulation. If a contract is linked to, or is a substitute for, other contracts, either listed on its market or on other trading venues, the designated contract market must, to the extent practicable, coordinate its risk controls with any similar controls placed on those other contracts. If a contract is based on the price of an equity security or the level of an equity index, such risk controls must, to the extent practicable, be coordinated with any similar controls placed on national security exchanges.

\* \* \* \* \*

**PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES**

■ 8. The authority citation for part 40 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

■ 9. Revise § 40.1(i) to read as follows:

**§ 40.1 Definitions.**

\* \* \* \* \*

(i) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, market maker or trading incentive program, trading protocol (including but not limited to any operation of an electronic matching platform that materially affects the time, priority, price, or quantity of execution of market participant orders, the ability to cancel, modify, or limit display of market participant orders, or the dissemination of real-time market data to market participants), agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.

\* \* \* \* \*

**§§ 40.13 through 40.19 [Reserved]**

■ 10. Add reserved §§ 40.13 through 40.19.

■ 11. Add §§ 40.20 through 40.23 to read as follows:

**§ 40.20 Risk controls for trading.**

A designated contract market shall implement pre-trade and other risk

controls reasonably designed to prevent an Algorithmic Trading Disruption (or, pursuant to paragraph (d) of this section, similar disruption resulting from orders that originate from manual order entry or other non-Algorithmic Trading) or an Algorithmic Trading Compliance Issue, including at a minimum all of the following:

(a) *Pre-trade risk controls.* Pre-trade risk controls reasonably designed to address the risks from Algorithmic Trading on a designated contract market.

(1) The pre-trade risk controls to be established and used by a designated contract market shall include, at a minimum, those described in § 1.80(a)(1) of this chapter.

(2) At a minimum, the pre-trade risk controls established and used pursuant to this section shall be set at the level of each AT Person. Designated contract markets must also evaluate whether to establish pre-trade risk controls at a more granular level, including at a minimum, by product or one or more identifiers of natural persons associated with an AT Order Message. Where deemed appropriate by the designated contract market, pre-trade risk controls should be set at such more granular levels.

(3) A designated contract market shall have policies and procedures reasonably designed to ensure that natural person monitors at such designated contract market are promptly alerted when pre-trade risk control parameters established pursuant to this section are breached.

(b) *Order cancellation systems.* (1) Order cancellation systems that have the ability to:

(i) Perform the actions described in § 1.80(b)(1) of this chapter with respect to orders from AT Persons; and

(ii) Cancel or suspend all resting orders from AT Persons in the event of disconnect with the trading platform.

(2) [Reserved]

(c) *System connectivity.* (1) Systems that enable the systems of an AT Person with Direct Electronic Access as defined in § 1.3(yyyy) of this chapter to indicate to the AT Person on an ongoing basis whether the AT Person has proper connectivity with—

(i) The designated contract market's trading platform, and

(ii) Any systems used by the designated contract market to provide the AT Person with market data.

(2) [Reserved]

(d) *Risk control mechanisms for manual order entry and other non-Algorithmic Trading.* (1) A designated contract market shall implement the risk control mechanisms described in paragraphs (a) and (b)(1)(i) of this

section for orders that do not originate from Algorithmic Trading, after making any adjustments to the mechanisms that the designated contract market determines are appropriate for such orders.

(2) [Reserved]

#### § 40.21 DCM test environments.

(a) A designated contract market shall provide a test environment that will enable AT Persons to simulate production trading. Such test environment shall provide access to historical transaction, order and message data and shall also enable AT Persons to conduct conformance testing of their Algorithmic Trading systems to verify compliance with the requirements of §§ 1.80(a) through (c) and 1.81(a)(1)(ii) through (iv) and (c)(1) of this chapter.

(b) [Reserved]

#### § 40.22 DCM review of compliance reports; maintenance of books and records.

A designated contract market shall comply with the following:

(a) *Review of reports.* Implement rules that require each AT Person that trades on the designated contract market, and each futures commission merchant that is a clearing member of a derivatives clearing organization for such AT Person, to submit the reports described in § 1.83(a) and (b), respectively, of this chapter;

(b) *Submission date.* Require the submission of such reports by June 30th of each year;

(c) *Review program.* Establish a program for effective periodic review and evaluation of reports described in paragraph (a) of this section, and of the measures described therein. An effective program shall include measures by the designated contract market reasonably designed to identify and remediate any insufficient mechanisms, policies and procedures described in such reports, including identification and remediation of any inadequate quantitative settings or calibrations of pre-trade risk controls required of AT Persons pursuant to § 1.80(a) of this chapter;

(d) *Maintenance of books and records.* Implement rules that require each AT Person to keep and provide to the designated contract market books and records regarding such AT Person's compliance with all requirements pursuant to §§ 1.80 and 1.81 of this chapter, and require each clearing member futures commission merchant to keep and provide to the designated contract market books and records regarding such clearing member futures commission merchant's compliance

with all requirements pursuant to § 1.82 of this chapter; and

(e) Review and evaluate, as necessary, books and records required to be kept pursuant to paragraph (d) of this section, and the measures described therein. An appropriate review shall include measures by the designated contract market reasonably designed to identify and remediate any insufficient mechanisms, policies, and procedures described in such books and records.

#### § 40.23 Self-trade prevention tools.

(a) A designated contract market shall implement rules reasonably designed to prevent self-trading by market participants, except as specified in paragraph (b) of this section. "Self-trading" is defined for purposes of this section as the matching of orders for accounts that have common beneficial ownership or are under common control. A designated contract market shall either apply, or provide and require the use of, self-trade prevention tools that are reasonably designed to prevent self-trading and are applicable to all orders on its electronic trade matching platform. For purposes of complying with this requirement, a designated contract market may either determine for itself which accounts should be prohibited from trading with each other, or require market participants to identify to the designated contract market which accounts should be prohibited from trading with each other.

(b) Notwithstanding the foregoing, a designated contract market may, in its discretion, implement rules that permit self-trading described in paragraphs (b)(1) or (b)(2) of this section to occur, in each case subject to the requirements of paragraph (c) of this section:

(1) A self-trade resulting from the matching of orders for accounts with common beneficial ownership where such orders are initiated by independent decision makers. A designated contract market may through its rules further define for its market participants "independent decision makers."

(2) A self-trade resulting from the matching of orders for accounts under common control where such orders comply with the designated contract market's cross-trade, minimum exposure requirements or similar rules, and are for accounts that are not under common beneficial ownership.

(c) A designated contract market may permit self-trading described in paragraph (b) of this section only if the designated contract market:

(1) Requires market participants to request approval from the designated contract market that self-trade

prevention tools not be applied with respect to specific accounts under common beneficial ownership or control, on the basis that they meet the criteria of paragraph (b) of this section. The designated contract market must require that such approval request be provided to it by a compliance officer or senior officer of the market participant; and

(2) Requires market participants to withdraw or amend an approval request if any change occurs that would cause the information provided in such approval request to be no longer accurate or complete.

(d) For each product and expiration month traded on a designated contract market in the previous quarter, the designated contract market must prominently display on its Web site the following information:

(1) The percentage of trades in such product including all expiration months that represent self-trading approved (pursuant to paragraph (c) of this section) by the designated contract market, expressed as a percentage of all trades in such product and expiration month;

(2) The percentage of volume of trading in such product including all expiration months that represents self-trading approved (pursuant to paragraph (c) of this section) by the designated contract market, expressed as a percentage of all volume in such product and expiration month; and

(3) The ratio of orders in such product and expiration month whose matching was prevented by the self-trade prevention tools described in paragraph (a) of this section, expressed as a ratio of all trades in such product and expiration month.

#### § 40.24 [Reserved]

■ 12. Add reserved § 40.24.

■ 13. Add §§ 40.25 through 40.28 to read as follows:

#### § 40.25 Additional public information required for market maker and trading incentive programs.

(a) When submitting a Rule regarding a market maker or trading incentive program pursuant to § 40.5 or § 40.6, a designated contract market shall, in addition to information required by such sections, include the following information in its public Rule filing:

(1) The name of the market maker program or trading incentive program, the date on which it is scheduled to begin, and the date on which it is scheduled to terminate (if applicable);

(2) An explanation of the specific purpose for the market maker or trading incentive program;

(3) A list of all products or services to which the market maker or trading incentive program applies;

(4) A description of any eligibility criteria or categories of market participants defining who may participate in the market maker or trading incentive program;

(5) For any market maker or trading incentive program that is not open to all market participants, an explanation of why such program is limited to the chosen eligibility criteria or categories of market participants, and an explanation of how such limitation complies with the impartial access and comparable fee structure requirements of § 38.151(b) of this chapter for designated contract markets;

(6) An explanation of how persons eligible for the market maker or trading incentive program may apply to participate, and how eligibility will be evaluated by the designated contract market;

(7) A description of any payments, incentives, discounts, considerations, inducements or other benefits that market maker or trading incentive program participants may receive, including any non-financial incentives; and

(8) A description of the obligations, benchmarks, or other measures that a participant in a market maker or trading incentive program must meet to receive the benefits described in paragraph (a)(7) of this section.

(9) A description of any legal affiliation between the designated contract market and any entity acting as a market maker or participating in a market maker program.

(b) In addition to any public notice required pursuant to this part (including without limitation the requirements of §§ 40.5(a)(6) and 40.6(a)(2)) of this chapter a designated contract market shall ensure that the information required by paragraphs (a)(1) through (a)(8) of this section is easily located on its public Web site from the time that such designated contract market begins accepting participants in the market maker or trading incentive program through the time that it ceases operation of the market maker or trading incentive program.

(c) A designated contract market shall notify the Commission upon the termination of a market maker or trading incentive program prior to the termination date previously notified to the Commission; any extension or renewal of a market maker or trading incentive program beyond its original termination date shall require a new Rule filing pursuant to this part.

#### § 40.26 Information requests from the Commission or the Director of the Division of Market Oversight.

(a) Upon request by the Commission or the Director of the Division of Market Oversight, a designated contract market shall provide such information and data as may be requested regarding participation in market maker or trading incentive programs offered by the designated contract market, including but not limited to, individual program agreements, names of program participants, benchmarks achieved by program participants, and payments or other benefits conferred upon program participants.

(b) [Reserved]

#### § 40.27 Payment for trades with no change in ownership prohibited.

(a) A designated contract market shall implement policies and procedures reasonably designed to prevent the payment of market maker or trading incentive program benefits, including but not limited to payments, discounts, or other considerations, for trades between accounts that are:

(1) Identified to such designated contract market as under common beneficial ownership pursuant to the approval process described in § 40.23(c); or

(2) Otherwise known to the designated contract market as under common ownership.

(b) [Reserved]

#### § 40.28 Surveillance of market maker and trading incentive programs.

(a) A designated contract market, consistent with its obligations pursuant to subpart C of part 38 of this chapter, shall review all benefits accorded to participants in market maker and trading incentive programs, including but not limited to payments, discounts, or other considerations, to ensure that such benefits are not earned through abusive practices.

(b) [Reserved]

### PART 170—REGISTERED FUTURES ASSOCIATIONS

■ 14. The authority citation for part 170 continues to read as follows:

**Authority:** 7 U.S.C. 6d, 6m, 6p, 6s, 12a, and 21.

■ 15. Add § 170.18 to subpart C to read as follows:

#### § 170.18 AT Persons.

Each registrant, as defined in § 1.3(oooo) of this chapter, that is an AT Person, as defined in § 1.3(xxxx) of this chapter, that is not otherwise required to be a member of a futures association that is registered under Section 17 of the

Act pursuant to §§ 170.15, 170.16, or 170.17 of this chapter must become and remain a member of at least one futures association that is registered under Section 17 of the Act and that provides for the membership therein of such registrant, unless no such futures association is so registered.

■ 16. Add subpart D, consisting of § 170.19, to read as follows:

#### **Subpart D—Standards for Automated Trading and Algorithmic Trading Systems**

##### **§ 170.19 RFA Standards for Automated Trading and Algorithmic Trading Systems.**

(a) A registered futures association must establish and maintain a program for the prevention of fraudulent and manipulative acts and practices, the protection of the public interest, and perfecting the mechanisms of trading on designated contract markets by adopting rules for each category of member, as deemed appropriate by the registered futures association, requiring:

- (1) Pre-trade risk controls and other measures for algorithmic trading systems;
- (2) Standards for the development, testing, monitoring, and compliance of algorithmic trading systems;
- (3) Designation and training of algorithmic trading staff; and
- (4) Operational risk management standards for clearing member futures commission merchants with respect to customer orders originating with algorithmic trading systems.

(b) [Reserved]

Issued in Washington, DC, on November 27, 2015, by the Commission.

**Christopher J. Kirkpatrick,**  
*Secretary of the Commission.*

**Note:** The following appendices will not appear in the Code of Federal Regulations.

#### **Appendices to Regulation Automated Trading—Commission Voting Summary, Chairman’s Statement, and Commissioners’ Statements**

##### **Appendix 1—Commission Voting Summary**

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

##### **Appendix 2—Statement of Chairman Timothy G. Massad**

Today, the Commission has approved a proposal that addresses the increased use of automated trading in our markets. I strongly support this important action. In the futures markets, today almost all trading is electronic in some form. And over the last few years, more than 70 percent of all trading has become automated.

Automated trading has brought many benefits to market participants. These include more efficient execution, lower spreads and greater transparency. But its extensive use also raises important policy and supervisory questions and concerns.

The Commission has already taken a number of steps to respond to the development of automated trading in our markets. Following the 2010 “Flash Crash,” the CFTC worked with the SEC to establish certain controls to minimize the risk of market disruptions. The Commission has also required clearing members to implement policies and procedures governing the use of automated trading programs. We have also required automatic screening of orders for compliance with risk limits if they are automatically executed.

But as markets continue to evolve, it is important to continue looking at this issue. Therefore, in September 2013, the Commission issued a Concept Release that requested public comment on the necessity and operation of a variety of risk controls and measures. The Commission received many written comments and also held a meeting of its Technological Advisory to discuss the issues raised. It served as a very useful way to understand existing industry practices and discuss what further actions might make sense.

The proposal approved today addresses several areas discussed in the Concept Release, and incorporates much of that public input. It focuses on minimizing the potential for disruptions and other operational problems that may arise from the automation of order origination, transmission or execution. They may come about due to malfunctioning algorithms, inadequate testing of algorithms, errors and similar problems.

No set of rules can prevent all such problems. But that doesn’t discharge us from our duty to take reasonable measures to minimize these risks. It is our responsibility as regulators to create a framework that promotes the integrity of these markets. And I believe this proposed rule helps do that.

Our futures market infrastructure is already very strong. Our regulatory framework—and the controls and measures that exist at the exchange and clearing member level in particular—have helped create the best futures markets in the world. Our proposal seeks to maintain that strength as our markets evolve further.

We have proposed a number of measures that largely reflect what are industry best practices to minimize the risk of disruptions and similar problems. We have tried to be principles-based. We have set forth requirements for certain controls, but we have avoided prescribing the parameters or levels at which they should be set. The proposed risk controls will apply regardless of whether the automated trading is high- or low-frequency. The proposal does not define high frequency trading.

A key principal of this proposed rule is to have risk controls at three levels—the exchange level, clearing member level and trading firm level. Market participants generally supported this multi-level approach in response to the Concept Release,

and I believe it is important to achieving a sound framework. But in doing so, we must seek efficiency, and avoid conflicting or unnecessary requirements at multiple levels.

In order to make the multi-level approach effective, we are proposing to require the registration of proprietary traders who engage in algorithmic trading on our regulated exchanges via “direct electronic access.” Today, our staff estimates that roughly 35 percent of the futures trading in our markets is done by traders who use direct electronic access and are not registered with us. A registration requirement will ensure that all those with direct electronic access to our markets are complying with pre-trade risk controls, testing and other requirements. And it would enhance the Commission’s ability to carry out its oversight responsibilities.

While we believe a registration requirement is appropriate, we have also invited market participants to comment on whether there are alternatives that can achieve the proposal’s underlying objectives. We have also asked whether the registration requirement should be limited to trading firms meeting certain volume, order or message levels—or be based on other characteristics. Further, we are seeking comment on whether all firms trading through direct electronic access should be required to register, even if they are not using algorithmic trading.

We believe that many of the requirements we are proposing for trading firms represent the best practices already followed by many larger firms. However, we know that a faulty algorithm at a single firm, regardless of size, can potentially cause a significant problem. As a result, we have proposed standards that are applicable regardless of the size or similar attributes of a trading firm. We also are cognizant of the importance of establishing effective standards without creating barriers to entry for small firms. So we welcome comment on whether these requirements should vary in any way depending on the size or activity level of the trading firm.

We have also proposed certain risk controls for clearing member futures commission merchants (FCMs) with respect to their customers engaged in algorithmic trading. FCMs play a critical role in overall risk management. As I noted earlier, they have implemented measures already to require order limits and screening of orders. We believe the requirements we are proposing today help achieve an effective multi-layered approach.

We have asked for public comment on whether there are any aspects of the required controls that may pose an undue burden on clearing member FCMs or that are unnecessary for reducing the risks associated with algorithmic trading. We’ve also asked about what technological development would be required by clearing members to comply with some requirements of this proposal.

I’ve said frequently that it’s very important that we have a robust clearing member industry and that all customers—particularly smaller ones—are able to access the markets effectively and efficiently. We want to make sure this proposal is consistent with achieving that objective.

We have also included measures on some additional topics not covered in the Concept Release. These include provisions to increase transparency for exchanges' electronic trade matching platforms, as well as for market maker and trading incentive programs, which have become more significant as automated trading has increased.

There are concerns that have been raised with respect to automated trading that also go beyond the scope of this proposal. These include whether our markets are best served by this speed, and what are its impacts on volatility and liquidity? These are important topics for market participants and the Commission to continue to study and discuss.

This proposal provides some common-sense risk controls that I believe embrace the benefits that automated trading has brought to our markets, while also protecting against the increased possibility of breakdowns and disruptions that come with it. We encourage—and welcome—public comment, which will carefully be taken into account before we take any final action.

### Appendix 3—Concurring Statement of Commissioner Sharon Y. Bowen

I want to thank the Commission staff for the time they have devoted to the proposed rule on automated trading. It is a timely topic.

As I have previously said, our markets have seen immense technological change over the last fifteen years.<sup>1</sup> Futures trading used to involve “throng[s] of traders with jackets and badges using hand-gestures” to purchase futures and options.<sup>2</sup> That trading structure has largely disappeared, with even CME closing the vast majority of its futures pits this summer. Meanwhile, algorithmic trading has substantially increased. Algo trading comprised less than 10% of futures volume at the turn of the millennium.<sup>3</sup> Yet, “per CFTC staff’s estimates, for the most liquid U.S. futures contracts which account for over 75% of total trading volume, more than 90 percent of all trades make use of algorithms or some other form of automation.”<sup>4</sup> Of course, these estimates are just that, estimates. We still do not have comprehensive, precise data on the percentage of trades created or entered by algorithms in many product classes. Clearly, further research and work remain for all stakeholders, from regulators, to industry participants, to academics and advocates of financial reform.

Yet, I do not believe this lack of information requires that regulators passively wait for this information to emerge. Simply waiting for that kind of data to materialize could allow problems to emerge in the interim that harm investors and the broader financial system. Given the current state of our economy and a global financial system still recovering from the 2008 financial crisis,

that is a risk that I believe we must not take. Recent events have raised important questions about the impact and role of algorithmic trading in our markets. As I said earlier, this fall, “Even though the amount of algorithmic trading and definitions of these various terms are not crystal clear, what is clear is trades involving algorithms make up a substantial portion of our markets, and algorithms can and do malfunction at times, with negative effects on the markets. As a result, I believe we are obligated to consider if it is prudent to establish some regulations on algorithmic trading in our markets.”<sup>5</sup>

Today, we begin the process of potentially establishing those regulations. From what I have seen, I believe we now owe it to market participants, investors, and ordinary consumers to ensure that a reasonable level of regulation exists over this new trading technology. I have said such regulation should include requirements that entities utilizing algorithms to trade must use risk management strategies, be required to disclose information to regulators, and have people who understand the Commodity Exchange Act and our regulations involved in the creation and maintenance of their algorithms. I think this proposed regulation meets that standard and does so in a way that allows for innovation and continued development of this nascent technology.

Having said what I think lies at the core of this regulation, let me also be clear about what this regulation is not. The rule before us today should not substantially change how many firms utilize algorithms. If, as I hope, a firm already uses risk management strategies, has various protections against malfunctions in place, and retains the services of talented attorneys, this new regulation will not create significant new burdens for that firm. In effect, this rulemaking largely formalizes and mandates firms involved in algorithmic trading to engage in a variety of practices that they should already be doing for their own protection.

I expect that some observers will have issues with this regulation for not doing more to constrain the growth and use of algorithmic trading, and I expect there will be further debate. I do not regard this regulation as the final word on regulation of algorithmic trading. If there is clear evidence that more precise regulations are needed on this technology to protect investors or ward off systemic risk, I would support further regulatory action. And I am sure that, given the ferocious rate of change of this technology, we will need to update this regulation regularly to account for those changes. In many ways, this regulation is merely the first step in a process, it’s a starter home rather than a two-story. But we have to start somewhere, and starting with something that formalizes best practices and increases disclosure is an excellent place to start.

I have said numerous times that I support smart regulation, regulation that works. That goal is especially critical when it comes to regulation of such a nascent, significant, and widespread technology as algorithmic

trading. I therefore hope we’ll get comments on this proposal from a wide swath of stakeholders, from industry experts, to end-users being impacted by this technology, to even ordinary investors and consumers concerned about the potential effects of algorithmic trading on commodity prices. I do not expect that everyone will have the same views on this subject or that there will be unanimity of opinion on any part of this rule. Even though I’ve only been in Washington for a year and a half, I’m experienced enough to know that people have different opinions on high-visibility issues like this one. However, I do encourage people to comment so that we can get a full and fair read of popular opinion on both this proposal and the topic in general. And if people have concrete evidence that algorithmic trading is distorting markets and needs to be curtailed, please submit it via a comment.

There are a few sections of this rule on which I think public comment would be particularly helpful. First, the proposal’s sixth and seventh questions ask about the nature of our proposed definition of algorithmic trading, including whether we should expand “the definition of Algorithmic Trading to encompass orders that are generated using algorithmic methods . . . but are then manually entered into a front-end system by a natural person. . . .” The definition of algorithmic trading is at the heart of this proposal, and we need comments on this point. If there is evidence that a form of algorithmic trading poses systemic risks but is not captured by this definition, we should expand the definition to expand to cover that form of trading.

Second, section 1.83(a) of the proposal requires that persons engaged in algorithmic trading and registered as such with the Commission must prepare and submit an annual report to the Commission. These persons are required to include in their reports a description of the pre-trade risk controls in place, copies of policies crafted to comply with requirements regarding the testing and development of algorithmic trading systems and how their algorithmic trading systems comply with the Commodity Exchange Act and our regulations, and a certification by their chief executive officer or chief compliance officer that the information in the report is accurate and complete.

I think the current 1.83(a) does not ask registrants for enough information. Now, we don’t want to require each registered algorithmic trader to submit a tome of several thousand pages each year that lays out every arcane factoid about their trading systems. Such a requirement would bury our staff in paper and create significant expense for registrants. Yet, having already asked each registered algorithmic trader to submit an annual report, I believe we should ask for more information in the report. After all, at the point a company has to file an annual report, it should already be doing a comprehensive review of its policies. As a result, asking for one or two more pieces of information to be included in the annual report should not be a substantial additional cost to registrants. I therefore hope that

<sup>1</sup> Keynote Address by Commissioner Sharon Y. Bowen before ISDA North America Conference, CFTC (Sep. 17, 2015), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opabowen-6>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

commenters will let us know what additional information registrants should be required to submit in their annual reports. For instance, should we require registrants to submit information about how they train and monitor the staff responsible for handling algorithmic trading or about their order cancellation systems?

Finally, the proposal prohibits designated contract markets (DCMs) from paying market maker incentive program benefits for trades between accounts under common ownership. I think that's a good change and worthy of being formalized in rule text. These programs serve a critical purpose of encouraging liquidity, but we don't get increased liquidity by increasing the amount of trades a person does with herself.

However, I wonder whether this prohibition should not go further. Perhaps we should also prohibit DCMs from paying these program benefits for trades in which the benefits are, on a per trade basis, greater than the fees charged by the relevant DCM and affiliated derivatives clearing organization (DCO). Paying benefits for such trades seems tantamount to giving a subsidy to un-economic trades and thereby potentially risks distorting the overall market. I would therefore welcome comments about whether this section is adequate as is or whether we should also prohibit DCMs from giving benefits to such seemingly non-economic trades.

In closing, let me stress again that I want this rule to be both effective and workable. No one benefits from rules that work in the abstract but are confusing, impossible to implement as written, or full of gaps that prompt stakeholders to engage in widespread regulatory arbitrage. I believe this automated trading proposal is a commonsense effort at establishing reasonable regulation on a nascent technology, but if there are flaws with it, if it goes too far or not far enough, I want to know that now, before it is finalized. Thank you.

## Appendix 4—Statement of Commissioner J. Christopher Giancarlo

### Introduction

The electronification of trading over the past 30 to 40 years and the advent of exponential digital technologies have transformed financial businesses, markets and entire economies, with dramatic implications for capital formation and risk transfer. In U.S. futures markets, we see this change most presently in the area of algorithmic or automated trading that now constitutes up to seventy percent of regulated futures markets. Automated trading can lower transaction costs while increasing trader productivity through greater transaction speed, precision and sophistication. For many markets, automated trading brings trading liquidity, broader market access, enhanced transparency and greater competition.

At the same time, automated trading presents a host of potential new challenges. They include increased risk of sudden spikes in market volatility and "phantom" liquidity arising from the sheer speed of execution, potentially flawed algorithms and position crowding. They also include the risk of data

misinterpretation by computerized analysis and mathematical models that increasingly replace human thought and deliberation. Legal scholars raise important questions about the viability of traditional market regulation in automated trading markets.

How markets and market regulators adjust to this change from human to automated trading will be extremely important. It requires delicate balancing. To ensure vibrant, accessible and durable markets, we must cultivate and embrace new technologies without harming innovation. Without a doubt, there must be effective safeguards of market integrity and credibility, but those safeguards should not bar promising innovation and continuous market development.

In turning to Regulation Automated Trading ("Regulation AT"), I acknowledge that my staff and I had dozens of issues and concerns that we brought to the attention of the Division of Market Oversight. While they were responsive to a few small topics, many other issues require much further attention and consideration that I will summarize in this statement.

Still, after reading through the almost five hundred pages of this proposal, I am left with one major question that I still cannot answer.

That question is: does this proposal sufficiently benefit the safety and soundness of America's futures markets so as to outweigh its additional costs and burdens?

I wish the answer was clearer.

I have three main concerns with Regulation AT. First, some of the requirements of the proposal appear to be window dressing. That is especially the case in its requirement for development and implementation of risk controls and related testing standards that the industry has already widely adopted.

Second, I am concerned about the high costs and burdens of this proposal, especially on small market participants. I am especially concerned about its requirement that registrants hold their proprietary source code in data repositories available for inspection by the Commission or the U.S. Department of Justice at any time for any reason.

Third, I question the regulatory inconsistencies regarding the market participants that must comply with this rulemaking.

For these reasons and others, I have serious doubts about today's proposed rulemaking.

Last November, I delivered a speech at the U.S. Chamber of Commerce where I set forth six principles that I would follow as I evaluate financial market regulations.<sup>1</sup> As part of those principles, I proposed the "SMART REG" standard to help analyze whether CFTC rules actually solve for real problems and promote the U.S. economy and the American markets.<sup>2</sup> I struggle to see how

<sup>1</sup> Remarks of CFTC Commissioner J. Christopher Giancarlo before the U.S. Chamber of Commerce, Re-Balancing Reform: Principles for U.S. Financial Market Regulation In Service to the American Economy, Nov. 20, 2014, <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-2>.

<sup>2</sup> *Id.* The "SMART REG" standard follows whether new CFTC regulations S—Solve for real problems, not anecdotes of bad behavior; M—Measure success through a rigorous cost benefit analysis; A—Advance innovation and competition

Regulation AT passes the SMART REG standard.

Nevertheless, I want to hear the views of market participants on this proposal. I will evaluate any final rule based on the SMART REG standard and thereafter determine whether to support or reject it.

I will explain my areas of concern.

### I. Necessity of Regulation AT

It is hard to identify exactly what issue in automated trading Regulation AT is designed to address. The agency is basically playing catch-up to an industry that has already developed and implemented risk controls and related testing standards for automated trading. Regulation AT describes the extensive best practices and recommendations for automated trading issued by industry organizations and notes that the majority of industry participants are following such best practices. Regulation AT simply codifies industry best practices in many respects, but does not go as far as current industry efforts. As such, the Commission admits that many of the benefits of this proposal are already being realized in the marketplace. In reality, current industry standards on automated trading have well surpassed Regulation AT in many areas.

It is clear that the industry has long been at the forefront of creating market solutions for risk controls in automated trading well before any regulatory mandate. As I recently stated, I favor this type of ongoing bottom-up market-driven approach to risk controls for automated trading.<sup>3</sup> Given the industry's leadership role and the fact that Regulation AT simply codifies a small subset of industry best practices, while adding heavy compliance burdens, I question the necessity and value-add of this proposal.

The staff partly justifies the proposal as necessary to ensure market integrity given the risks of automated trading. As support, Regulation AT illustrates examples of recent disruptive events in automated trading. However, the dearth of incidents in the futures market seems to indicate that current industry solutions are working well. Regulation AT only cites three U.S. disruptive automated trading events in the past five and a half years and two of those events occurred in the equities market, obviously outside of our jurisdiction. In addition, the equities market events occurred despite the Securities and Exchange Commission ("SEC") having implemented some reforms related to automated trading.<sup>4</sup> Thus, I question whether Regulation AT will

through flexible rules; R—Represent the best approach among alternative courses of action; T—Take into account evidence, rather than assumptions; R—Realistically set compliance deadlines; E—Encourage employment of American workers; and are G—Grounded in law.

<sup>3</sup> Keynote Address of CFTC Commissioner J. Christopher Giancarlo before the 2015 ISDA Annual Asia Pacific Conference, Top-Down Financial Market Regulation: Disease Mislabeled as Cure, Oct. 26, 2015, <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-10>.

<sup>4</sup> See Regulation AT Preamble, Section II.C.1.: "Background on Regulatory Responses to Automated Trading."

in fact reduce future disruptive events and enhance market integrity.

As further support for market integrity, the preamble asserts that the proposal may limit a “race to the bottom,” in which certain entities sacrifice effective risk controls in order to minimize costs or increase the speed of trading. In this, the proposal betrays a naive misunderstanding of elementary micro-economics. Market participants have every economic incentive to implement effective risk controls to prevent the loss of their capital and being forced out of business. That is why the industry has been a leader in best practices for automated trading, including development of risk controls and related testing standards. This ongoing bottom-up market-driven approach to risk controls for automated trading has raised, not lowered, the standards.

Several commenters cited in Regulation AT supported a principles-based approach to regulation citing the need for flexibility because each market and the participants in those markets are different.<sup>5</sup> These commenters also noted that the Commission already has robust regulations in place to address the risks of automated trading.<sup>6</sup> Tweaking the Commission’s existing regulations<sup>7</sup> in line with a principles-based approach may be a better way to build upon ongoing industry efforts regarding automated trading, while reducing the compliance burdens of Regulation AT.

I invite comment on the necessity of Regulation AT and on other approaches to automated trading that support—rather than burden—ongoing industry efforts.

## II. Costs of Regulation AT Versus the Benefits

I am concerned about the costs of Regulation AT, especially on small market participants. The Commission tries to downplay the costs of this proposal because in many respects it simply codifies industry best practices and many market participants are already following such practices.<sup>8</sup> The proposal also repeatedly asserts that the rules are flexible seemingly in an effort to highlight its low burdens. However, in reality, Regulation AT adds compliance, reporting and registration requirements, and establishes designated contract market (“DCM”) and registered futures association (“RFA”) review programs. These additional requirements will certainly increase costs to all market participants engaged in Algorithmic Trading that are subject to this proposal.

### A. Small Market Participants

The costs of this proposal may disproportionately impact small market participants. While Regulation AT raises this

concern and asks questions in this regard, at the same time, the proposal dismisses the possibility that it will capture many small entities. I am not so sure that will be the case as the definition of Algorithmic Trading is very broad and would appear to capture market participants using off-the-shelf type automated systems or simple excel spreadsheets to automate trading.<sup>9</sup> If that is the case, then this proposal could capture, for example, a small proprietary trading firm, a small commodity trading advisor (“CTA”) or a rural grain elevator company that uses simple automation.

Regulation AT would add numerous costs to small market participants and raise barriers to entry. Small market participants may be less likely to employ risk controls consistent with Regulation AT so they would incur costs to develop or purchase such risk controls. They would also incur costs to hire additional employees to develop and implement policies and procedures for the development, testing, monitoring and compliance of their Algorithmic Trading systems. Small market participants would have to hire additional employees to continuously monitor their Algorithmic Trading systems on a real-time basis. They would incur costs to annually prepare and submit a pre-trade risk control compliance report to each DCM on which they trade. Furthermore, the proposal would add costs to small market participants given the required registration with the Commission and an RFA. That sounds like a whole lot of extra costs to me for a “principles-based” non-prescriptive rule.

The proposed rule admits that the Commission does not know how many small entities this proposal will affect—unfortunately, a common theme for CFTC rules when discussing costs and burdens on the marketplace. I am disappointed that the Commission did not get a better sense of the potential universe of small market participants that may be impacted by Regulation AT. To this point, I am very interested to hear estimates of costs Regulation AT will impose on smaller market participants and how it will impact their ability to conduct business.

Interestingly, the proposed rule also asserts that a technological malfunction or error in a very small proprietary trading firm’s algorithm could have a significant, detrimental impact on the market despite providing no evidence to support this claim.<sup>10</sup> I invite commenters to weigh in on this issue. I am also interested to hear comments on whether the proposed rules make sense for those market participants using off-the-shelf type automated systems or simple excel spreadsheets to automate trading, especially the rules around development, testing, monitoring and compliance of Algorithmic Trading systems.

### B. Overlapping Requirements and Duplicative Costs

Regulation AT contains a potential overlap in some requirements and duplicative costs

in that it requires AT Persons to register with an RFA and, at the same time, to be subject to reviews by DCMs. The National Futures Association (“NFA”), the only RFA at this time, will need to hire additional employees to establish and maintain a program for Algorithmic Trading systems. The preamble to Regulation AT also contemplates that NFA would conduct routine examinations of its members to ensure that they are complying with NFA rules. This requirement translates into additional costs that will be passed down to NFA’s members. Regulation AT notes that NFA is the frontline regulator and is well-positioned to address rules and issues related to Algorithmic Trading as market conditions and technology develops.

However, it seems that DCMs have the most intimate knowledge of the markets and their participants trading in those markets. DCMs have been at the forefront of creating market solutions for risk controls in automated trading, along with testing and certification of automated systems.<sup>11</sup> In this regard, Regulation AT requires AT Persons<sup>12</sup> and their clearing member futures commission merchants (“FCMs”) to submit annual reports and policies and procedures regarding their Algorithmic Trading to all DCMs on which they trade. DCMs must establish a program to review these reports and procedures and provide feedback, including any deficiencies in participants’ pre-trade risk control settings or calibrations.<sup>13</sup> AT Persons and their clearing member FCMs must also keep, and provide upon request to DCMs, books and records regarding compliance with the proposed rules. DCMs must review these books and records as necessary.

Although the preamble states that the NFA and DCM requirements are not intended to create conflicting obligations, I am afraid that the lack of clarity provides a potential to subject AT Persons to some duplication. As noted above, DCMs already have standards for risk controls, testing and certification of automated systems, but Regulation AT requires NFA to address these topics in its program. Regulation AT also discusses reviews for both NFA and DCMs. Duplicative requirements would add unnecessary costs that would be especially harmful to small market participants.

I am interested to hear from market participants if Regulation AT provides enough clarity on this issue or if the Commission should provide further detail. I am particularly interested to hear comments on the requirement for market participants to register with NFA and to be subject to NFA’s program for Algorithmic Trading systems. In light of DCMs’ existing efforts on risk controls and testing, is such a requirement necessary or are DCMs already serving as the frontline regulator? Would NFA serve a

<sup>5</sup> ICE Comment Letter at 1–3 (Jan. 17, 2014); Katten Muchin Rosenmann Comment Letter on behalf of Gelber Group at 5, 20 and 22–24 (Dec. 9, 2013).

<sup>6</sup> *Id.*

<sup>7</sup> See e.g., Commission regulations 1.11(e)(3)(ii), 1.73, 23.600(d)(9), 23.609, 38.255 and 38.607.

<sup>8</sup> I also note that the Commission uses old compensation data from 2012 in calculating the costs of Regulation AT, which underreports these costs estimates.

<sup>9</sup> See definition of Algorithmic Trading in proposed Commission regulation 1.3(zzzz).

<sup>10</sup> See Regulatory Flexibility Act section of Regulation AT.

<sup>11</sup> E.g., CME Comment Letter at 25–26 (Dec. 11, 2013) (discussing CME’s two testing environments for its users and its certification requirement).

<sup>12</sup> AT Person is defined in proposed Commission regulation 1.3(xxxx) and captures the persons subject to Regulation AT, including existing Commission registrants engaged in Algorithmic Trading and the newly expanded definition of floor trader.

<sup>13</sup> Proposed Commission regulation 40.22(c).



useful role in setting consistent standards across all markets or do DCMs need flexibility in setting rules because each market and the participants in those markets are different?<sup>14</sup> I also invite comment on alternatives to the requirement that AT Persons and their clearing member FCMs prepare and submit annual reports to DCMs and DCM reviews of those reports. One possibility is to require AT Persons and their clearing member FCMs to conduct self-assessments (like FINRA requires) and only require submission to DCMs upon request.

### C. Source Code Repository and Commission Regulation 1.31

Source code is the intellectual property of AT Persons representing their current and future trading strategies. Source code of AT firms is unlike traditional trading firm information in that it reveals not what positions are held in the past or present, but what positions the firm intends to buy or sell in the future upon specified market events.

I am particularly concerned that Regulation AT requires that each market participant keep a source code repository for algorithms and make it available for inspection to any representative of the Commission or the U.S. Department of Justice for any reason.<sup>15</sup> Currently, the federal government may only obtain such sensitive information through a subpoena. Regulation AT dramatically lowers the bar for the federal government to obtain this information.

I am unaware of any other industry where the federal government has such easy access to a firm's intellectual property and future business strategies. Other than possibly in the area of national defense and security, I question whether the federal government has similarly unfettered access to the future business strategy of any American industrial sector. Does the SEC require such access from its registrants? Do other agencies in the federal government have ready access to businesses' intellectual property and business strategies?

I am unclear why either the Commission or the U.S. Department of Justice needs access to source code information without a subpoena, especially the Justice Department, whose only use for such information would be in criminal proceedings. Does today's rule proposal presume that the use of automated trading technology makes a trading firm more likely to engage in criminal behavior than a manual trading operation?

There is strong reason for concern about maintaining the confidentiality of this source code. As we all know, the federal government has a poor track record of keeping sensitive information secure from cyberattacks and other data breaches. Any data breach of this information would be devastating for such entities and, potentially, for the safety and orderly operation of U.S. markets. Imagine the harm that could be caused to U.S. financial markets, if cyber terrorists or other

belligerents were able to get their hands on this technology the same way some of the U.S.' most important industrial, military and other sensitive data have been hacked. I question the need for this new requirement and request commenter feedback on this issue.

In addition to my concerns above, I previously expressed reservations about Commission regulation 1.31 in the proposed rulemaking on Records of Commodity Interest and Related Cash or Forward Transactions.<sup>16</sup> Commenters to that proposed rulemaking stated that Commission regulation 1.31 is technologically outdated and compliance with the rule is overly burdensome, infeasible and costly.<sup>17</sup> Managed Funds Association, the Investment Adviser Association and the Alternative Investment Management Association even petitioned the Commission to amend Rule 1.31 back on July 21, 2014.<sup>18</sup> Unfortunately, the Commission has not acted on this request.

Regulation AT's requirement that source code repositories must be kept and made available for inspection pursuant to Commission regulation 1.31 will impose unnecessary costs and burdens on AT Persons. Given the voluminous comments that the staff has received on the unworkability of Rule 1.31, I am surprised that Regulation AT would subject source codes to this rule. As an alternative, the Commission should consider allowing AT Persons to keep source code repositories in accordance with their own reasonable and secure internal recordkeeping procedures. I welcome comments on the costs of Commission regulation 1.31 in this regard.

Finally, I would like to note that currently unregistered market participants who will now be required to register under the revised floor trader definition may be subject to heightened record keeping requirements under proposed Commission regulation 1.35.<sup>19</sup> Proposed Rule 1.35 states that a member of a DCM that is not registered or required to be registered with the Commission in any capacity would not have to keep (i) records of transactions in a manner that is searchable or allows for identification of a particular transaction<sup>20</sup> and (ii) text messages related to those transactions.<sup>21</sup> If the Commission finalizes Rule 1.35 as proposed, Regulation AT's registration requirement would increase the burdens under that rule. I invite

<sup>16</sup> Records of Commodity Interest and Related Cash or Forward Transactions, 79 FR 68140, 68148 (proposed Nov. 14, 2014).

<sup>17</sup> Managed Funds Association Comment Letter at 4–7 (Jan. 13, 2015); Commodity Markets Council Comment Letter at 5 (Jan. 13, 2015); SIFMA AMG Comment Letter 5–6 (Jan. 13, 2015).

<sup>18</sup> Managed Funds Association, the Investment Adviser Association and the Alternative Investment Management Association, Petition for Rulemaking to Amend CFTC Regulations 1.31, 4.7(b) and (c), 4.23 and 4.33 (Jul. 21, 2014).

<sup>19</sup> Records of Commodity Interest and Related Cash or Forward Transactions, 79 FR 68140 (proposed Nov. 14, 2014).

<sup>20</sup> *Id.* at 68146, Proposed Commission regulation 1.35(a)(3)(i).

<sup>21</sup> 79 FR at 68146, Proposed Commission regulation 1.35(a)(3)(ii).

commenters to provide feedback on the intersection of Regulation AT and Rule 1.35.

### D. Other Costs

I would also like to obtain industry input on the following costs of Regulation AT:

1. The costs on FCMs under proposed Rules 1.82 and 1.83, especially the requirement that an FCM prevent or mitigate an Algorithmic Trading Disruption for its AT Persons.<sup>22</sup> I have previously expressed concerns about the harm caused to the FCM industry by the heightened cost of regulation, so I am especially interested to hear comments in this regard.<sup>23</sup>

2. The costs to DCMs to establish and maintain a program for the review and evaluation of compliance reports and books and records of each AT Person and their clearing member FCMs trading on the DCMs, as required under proposed Rule 40.22.

3. The ease and costs for DCMs to generate and publish self-trading statistics, as required under proposed Rule 40.23(d).

### E. Costs Versus Benefits

Based on all the costs described above, Regulation AT does not seem to be a non-prescriptive, low-burden rule that simply codifies industry best practices as the proposal asserts. It goes much further and, I fear, does greater harm. While Regulation AT does recognize industry best practices with respect to several risk controls, it adds prescriptive compliance, reporting and registration requirements and establishes overlapping and duplicative DCM and RFA review programs of questionable value. Given the industry's extensive efforts to date, I question whether the costs of Regulation AT actually justify the benefits. The principles-based approach that I discussed above may be as effective and less costly than Regulation AT's approach. I invite commenters to provide feedback regarding the costs and benefits of Regulation AT and the specific points I raised above.

### III. Regulatory Inconsistency of Regulation AT

I would like to note three regulatory inconsistencies in Regulation AT. The staff proposes to amend the definition of floor trader<sup>24</sup> in order to register currently unregistered persons using direct electronic access for algorithmic trading on DCMs.<sup>25</sup> The preamble to Regulation AT states that in 1993, when the Commission finalized rules regarding the definition and registration of floor traders, the Commission decided to include as floor traders only those traders operating on the trading floor of an exchange. However, in that 1993 rulemaking, the Commission stated that certain traders using electronic trading systems come within the floor trader definition. Back then, the

<sup>22</sup> Proposed Commission regulation 1.82(a)(1).

<sup>23</sup> Statement of Commissioner J. Christopher Giancarlo for the Market Risk Advisory Committee Meeting, Jun. 1, 2015; <http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement060115>.

<sup>24</sup> 17 CFR 1.3(x).

<sup>25</sup> Another requirement is that the person must be trading for their own account.

<sup>14</sup> See *supra* note 5.

<sup>15</sup> Under Regulation AT, in accordance with Commission Regulation 1.31 (17 CFR 1.31), AT Persons would have to make their source code repository available for inspection to any representative of the CFTC, in addition to the U.S. Department of Justice.

Commission took a technological approach to the definition of floor trader.

Today, Regulation AT is taking that same approach and is proposing to register persons using direct electronic access for algorithmic trading, but not those using manual means. I am not clear on the rationale for this technology driven distinction to registration (as the preamble does not articulate one) when the proposal acknowledges that manual trading also poses risks. Several commenters cited in Regulation AT also noted the importance of risk controls for manual and automated trading systems.<sup>26</sup> I invite industry comments on this issue, notwithstanding my above concerns about the registration requirement.

Another regulatory inconsistency is that Regulation AT only captures floor traders who use direct electronic access for algorithmic trading, but it captures all existing registrants, such as FCMs, swap dealers and CTAs regardless of whether they use direct electronic access for algorithmic trading. Again, Regulation AT does not articulate a reason for this inconsistency and I question its logic. I invite comment on this issue, including whether, for existing registrants, the proposal should only capture those using direct electronic access.

Finally, Regulation AT only applies to trading on DCMs and not on SEFs. Regulation AT justifies this distinction by stating that compared to DCMs, SEFs and SEF markets are newer and less liquid and have less automated trading. However, DCMs can also list swaps and Regulation AT applies to that trading. In this regard, Regulation AT may disadvantage DCMs who list swaps as compared to SEFs. I welcome

comments on this competitive disadvantage, including whether Regulation AT should exclude from its scope swaps listed on DCMs.

#### IV. Other Comments on Regulation AT

I also invite industry comment on the following issues:

1. Whether the Algorithmic Trading Compliance Issue definition in proposed Commission regulation 1.3(tttt) is necessary. If a major reason for Regulation AT is market integrity then it seems the Algorithmic Trading Disruption definition is sufficient. Furthermore, if an AT Person violates a rule or regulation it will be liable so the Algorithmic Trading Compliance Issue definition appears unnecessary.

2. Whether the definition of Direct Electronic Access in proposed Commission regulation 1.3(yyyy) should be harmonized with the definition in Rule 38.607.<sup>27</sup>

3. Whether several of the proposed rules that require periodic review of compliance measures or regular testing of Algorithmic Trading systems open up AT Persons to liability risk. For example, proposed Commission regulation 1.80(f)<sup>28</sup> requires each AT Person to *periodically review* its compliance with the pre-trade risk control requirements to determine whether it has effectively implemented sufficient measures reasonably designed to prevent an Algorithmic Trading Event. What happens if market conditions change rapidly between periodic reviews and the AT Person's risk controls are no longer sufficient to prevent an Algorithmic Trading Event? Is the AT Person now liable for a violation of Commission

rules? Will this periodic review become a continuous review in order to avoid liability?

#### Conclusion

While I am pleased that Regulation AT provides flexibility in setting risk control parameters and does not require the pre-approval or pre-testing of algorithms, the proposal appears to add many burdensome compliance costs and does not adequately take into account small market participants or the work of the industry in developing algorithmic trading risk controls and related testing requirements. Rather than duplicating their efforts and adding additional burdens, the Commission should look to support and enhance ongoing industry progress. On the other hand, I am highly concerned about Regulation AT's several significant inconsistencies and its extraordinary requirement that AT source codes be placed in government accessible repositories.

Overall, I have a great many concerns with Regulation AT. Most principally, I struggle to figure out if it will benefit the safety and soundness of America's futures markets enough to outweigh its additional costs and burdens. Its purpose must not be to allow a Federal regulator to say that it has "done something" about computerized trading in response to media headlines, best-selling books or political campaign agendas. The development of automated trading is too complicated and too important to be addressed with such superficiality.

For my part, I will carefully review thoughtful comments from market participants and the public. I will measure my support for any final rule against the SMART REG standard.

[FR Doc. 2015-30533 Filed 12-16-15; 8:45 am]

**BILLING CODE 6351-01-P**

<sup>26</sup> E.g., CME Comment Letter at 43, 44 (Dec. 11, 2013).

<sup>27</sup> 17 CFR 38.607.

<sup>28</sup> See also proposed Commission regulations 1.81(a)(1)(iii), (a)(1)(iv), (a)(2) and (c)(2)(i) for further examples.



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Part III

Department of the Interior

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Fish and Wildlife Service

50 CFR Part 92

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for  
Migratory Birds in Alaska During the 2016 Season; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 92**

[Docket No. FWS-R7-MB-2015-0158;  
FF09M21200-156-FXMB1231099BPP0]

RIN 1018-BB10

**Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2016 Season**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is proposing migratory bird subsistence harvest regulations in Alaska for the 2016 season. These proposed regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes region-specific regulations that would go into effect on April 2, 2016, and expire on August 31, 2016.

**DATES:** We will accept comments received or postmarked on or before February 16, 2016. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 1, 2016.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R7-MB-2015-0158.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R7-MB-2015-0158; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Place, MS: BPHC; Falls Church, VA 22041-3803.

We will not accept email or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comment Procedures section, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786-3499.

**SUPPLEMENTARY INFORMATION:****Public Comment Procedures**

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the Web site. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

- (1) You can view them on <http://www.regulations.gov>. Search for FWS-R7-MB-2015-0158, which is the docket number for this rulemaking.
- (2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird

Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041-3803; (703) 358-1714.

**Public Availability of Comments**

As stated above in more detail, 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.

**Why is this rulemaking necessary?**

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rulemaking proposes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2016. This proposed rule also sets forth a list of migratory bird season openings and closures in Alaska by region.

**How do I find the history of these regulations?**

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, were originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on February 23, 2015 (80 FR 9392).

Recent **Federal Register** documents and all final rules setting forth the annual harvest regulations are available at <http://www.fws.gov/alaska/ambcc/regulations.htm> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

**What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?**

The U.S. Fish and Wildlife Service (Service or we) is proposing migratory bird subsistence harvest regulations in Alaska for the 2016 season. These proposed regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process

involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2016 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 13, 2015 (80 FR 19852), to amend 50 CFR part 20. While that proposed rule primarily addressed the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2016 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 13, 2015, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 8–9, 2015, to develop recommendations for changes that would take effect during the 2016 harvest season. Changes were recommended for the permanent regulations in subparts A and C of 50 CFR part 92, and the consent agenda package of carry-over regulations was amended to request a limited emperor goose harvest for 2016; these recommended changes were presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the committee's meeting on July 31, 2015.

#### **Who is eligible to hunt under these regulations?**

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham,

Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hyدابurg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and the hunting of waterfowl during spring. This request resulted in a new, limited harvest of spring waterfowl and gull eggs starting in 2014.

#### **What is different in the regulations for 2016?**

##### *Subpart A*

Under subpart A, General Provisions, we are proposing to amend § 92.4 by adding a new definition for “Edible meat” and revising the definition for “Nonwasteful taking.” These changes were requested in 2014 by the Bristol Bay Regional Council, which recommended that all edible parts of migratory waterfowl must be salvaged when harvested. The topic was originally brought up by the Association of Village Council Presidents after an incident in their region where tundra swans were only breasted and the remainder of the bird was discarded. The concern was that “indigenous inhabitants” harvesters come from a variety of different cultures, and it was expressed that subsistence should involve retaining the whole bird for food and other uses.

##### *Subpart C*

Under subpart C, General Regulations Governing Subsistence Harvest, we are proposing to amend § 92.22, the list of birds open to subsistence harvest, by updating scientific names for six species and clarifying the nomenclature for Canada goose subspecies. These nomenclature updates come from the Service and the Alaska Department of Fish and Game.

##### *Subpart D*

The regulations we are proposing for subpart D, Annual Regulations Governing Subsistence Harvest, are the same as the 2015 regulations. While we are not proposing any changes to the 2015 regulations for subpart D in this 2016 proposal, we provide information below on potential changes to the proposed regulations for this subpart in the 2017 migratory bird subsistence harvest regulations in Alaska.

The Co-management Council proposed a new emperor goose (*Chen canagica*) limited subsistence hunt for the 2016 season. Since 2012, the Co-management Council has received regulatory proposals from the Sun'aq Tribe of Kodiak, the Kodiak-Aleutians Subsistence Regional Advisory Council, the Yaquillrit Keutisti Council (Bristol Bay), and the Bering Strait/Norton Sound Migratory Bird Council (Kawerak) to open the harvest of emperor geese for the subsistence season. Since the hunting season has been closed since 1987 for emperor geese, the Co-management Council created a subcommittee to address these proposals. The emperor goose harvest is guided by the 2006 Pacific Flyway Management Plan and the 2005–2006 Yukon-Kuskokwim Delta Goose Management Plan. Over 95 percent of the emperor goose population breeds on the Yukon-Kuskowim Delta of Alaska, and most emperor geese winter in remote western Alaska with the remainder wintering in Russia. The Pacific Flyway Council recognizes the 3-year average abundance estimate derived from the emperor goose spring population survey on the Alaska Peninsula as the management index to guide harvest management decisions. The Pacific Flyway Council's Emperor Goose Management Plan and the Yukon-Kuskokwim Delta Goose Management Plan indicate that a harvest can be considered when the 3-year average abundance index is at least 80,000 birds. This threshold has not been reached since 1984, and Alaska Natives have questioned the survey methods used to determine the population index.

In addition, two studies are being conducted concurrently by the Service and the Alaska Department of Fish and Game. The first study is designed to provide a comprehensive evaluation of all available emperor goose survey data and assess harvest potential of the population. The second study is designed to develop a Bayesian state space population model to improve estimates of population size by integrating current population assessment methods using all available

data sets. The model provides a framework from which to make inferences about survival rates, age structure, and population size. The results of these studies will assist in amending the management plans.

The Service conducted the spring emperor goose survey April 25–28, 2015, and results indicated that the 2015 spring index (98,155) was 23 percent above the 2014 count (79,883), and 49 percent higher than the long-term (1981–2014) average (65,923). The most recent 3-year average count (2012, 2014, 2015) is 81,875 geese and the highest on record since 1984. Further, it is above the threshold for consideration of an open hunting season on emperor geese as specified in the Yukon-Kuskokwim Delta Goose Management Plan and the Pacific Flyway Council Management Plan for emperor geese.

As a result of this new information, the Co-management Council amended their motion of the consent agenda and proposed to add an allowance for a limited emperor goose harvest in 2016.

The Pacific Flyway Council met in July 2015, and supported the Co-management Council's recommendation to work with the State of Alaska and the Service to develop harvest regulations and monitoring for a limited emperor goose harvest in 2016. On July 31, 2015, the SRC supported the Co-management Council's proposed limited harvest of emperor geese for the 2016 Alaska spring and summer subsistence season. However, the approval was provisional based upon the following:

(1) A limited harvest of 3,500 emperor geese to ensure that population growth continues toward the Flyway management plan objective;

(2) A harvest allocation (e.g., an individual, family, or Village quota or permit hunt) that ensures harvest does not exceed 3,500;

(3) Agreement on a monitoring program to index abundance of the emperor goose population; and

(4) A revised Pacific Flyway Emperor Goose Management Plan including harvest allocation among all parties (including spring/summer and fall/winter), population objective, population monitoring, and thresholds for season restriction or closure.

The harvest allocation design and harvest monitoring plan are to be completed by November 1, 2015. Additionally, there was an explicit statement that the limited, legalized harvest of 3,500 birds was not in addition to existing subsistence harvest (approximately 3,200 emperor geese). The 3,500 bird allowable harvest is to be allocated to subsistence users during the spring and summer subsistence season.

The SRC suggested that the allowable harvest should be monitored to ensure it does not exceed 3,500 birds.

On August 13–14, and September 21, 2015, the Co-management Council Native Caucus met separately and with all partners to discuss options available to limit and monitor the harvest, as well as options to allocate the 3,500 birds across the six regions where emperor geese occur. Given the limited time provided to address the four conditions placed on this new harvest by the SRC, all partners agreed that the best course of action would be to spend additional time working together to develop a culturally sensitive framework tailored to each participating region that conserves the population and adequately addresses the data needs of all partners. In support of this recommendation, the Co-management Council took action to: Postpone an emperor goose harvest until 2017; work with all partners to develop the harvest framework; and work with their Emperor Goose Subcommittee and the Pacific Flyway Council on updating the Pacific Flyway Emperor Goose Management Plan.

**How will the Service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?**

We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon—Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

*Spectacled and Steller's Eiders*

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that regulations continue to

protect threatened species, measures to address documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual objectives in mind, the Service, working with North Slope partners, developed measures in 2009, to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; and (2) continued enforcement of the migratory bird regulations that are protective of listed eiders.

This proposed rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The proposed regulations pertaining to bag checks and possession of illegal birds are deemed necessary to monitor the number of closed eider species taken during the subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot from 2009 through 2012; however, one Steller's eider and one spectacled eider were found shot during the summer of 2013, and one Steller's eider was found shot in 2014. In 2015, one spectacled eider was found dead, and it appeared to have been shot by a hunter. The Service acknowledges progress made with the other eider conservation measures, including partnering with the North Slope Migratory Bird Task Force, for increased waterfowl hunter awareness and

continued enforcement of the regulations. To reduce the threat of shooting mortality of threatened eiders, we continue to work with North Slope partners to conduct education and outreach. Conservation measures are being continued by the Service, with the amount of effort and emphasis being based on regulatory adherence. In addition, the emergency closure authority provides another level of assurance if an unexpected number of Steller's eiders are killed by shooting (50 CFR 92.21 and 50 CFR 92.32).

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the proposed regulation at 50 CFR 92.32, carried over from the past 5 years, clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. When and if mortality of threatened eiders is documented, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

#### Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to "review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and to "insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. \* \* \*" Prior to issuance of annual spring and summer subsistence regulations, we would consult under section 7 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), to ensure that the 2016 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual

subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

#### Required Determinations

##### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

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

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that, if adopted, this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This

proposed rule would legalize a pre-existing subsistence activity, and the resources harvested will be consumed.

##### *Small Business Regulatory Enforcement Fairness Act*

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Would not have an annual effect on the economy of \$100 million or more. It would legalize and regulate a traditional subsistence activity. It would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this proposed rule are migratory birds. This proposed rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this proposed rule would derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this proposed rule would lead to a disproportionate distribution of benefits.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

##### *Unfunded Mandates Reform Act*

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule would not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-

management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

#### *Takings (Executive Order 12630)*

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

#### *Federalism (Executive Order 13132)*

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this proposed rule on the State of Alaska in the Unfunded Mandates Reform Act section above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

#### *Civil Justice Reform (Executive Order 12988)*

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Government-to-Government Relations With Native American Tribal Governments*

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), "Consultation and Coordination with Indian Tribal Governments," and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452; as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we will be sending letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2016 migratory bird subsistence harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

#### *Paperwork Reduction Act of 1995 (PRA)*

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved our collection of information associated with:

- Voluntary annual household surveys that we use to determine levels of subsistence take (OMB Control Number 1018-0124, expires June 30, 2016).

- Permits associated with subsistence hunting (OMB Control Number 1018-0075, expires February 29, 2016).

#### *National Environmental Policy Act Consideration (42 U.S.C. 4321 *et seq.*)*

The annual regulations and options are considered in a October 2016 environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2016 Spring/Summer Harvest," dated October 9, 2015. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov>.

#### *Energy Supply, Distribution, or Use (Executive Order 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

#### **List of Subjects in 50 CFR Part 92**

Hunting, Treaties, Wildlife.

#### **Proposed Regulation Promulgation**

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

#### **PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA**

■ 1. The authority citation for part 92 continues to read as follows:

**Authority:** 16 U.S.C. 703-712.

#### **Subpart A—General Provisions**

■ 2. Amend § 92.4 by adding, in alphabetical order, a definition for "Edible meat" and revising the definition for "Nonwasteful taking" to read as follows:

#### **§ 92.4 Definitions.**

\* \* \* \* \*

*Edible meat* means the meat from the breast, back, thighs, legs, wings, gizzard, and heart. The head, neck, feet, other



internal organs, and skin are considered inedible byproducts, and not edible meat, for all provisions of this part.

\* \* \* \* \*

*Nonwasteful taking* means making a reasonable effort to retrieve all birds killed or wounded, and retaining all edible meat until the birds have been transported to the location where they will be consumed, processed, or preserved as human food.

\* \* \* \* \*

### Subpart C—General Regulations Governing Subsistence Harvest

■ 3. Amend § 92.22 by:

■ a. Revising paragraph (a)(3);

■ b. Removing and reserving paragraph (a)(4); and

■ c. Revising paragraphs (a)(5) and (6), (i)(3), (13), and (15), (j)(4) and (15), and (l)(2).

The revisions read as follows:

#### § 92.22 Subsistence migratory bird species.

\* \* \* \* \*

(a)(3) Canada goose (*Branta canadensis*).

\* \* \* \* \*

(a)(5) Canada goose, subspecies Aleutian goose—except in the Semidi Islands.

(a)(6) Canada goose, subspecies cackling goose—except no egg gathering is permitted.

\* \* \* \* \*

(i)(3) Spotted sandpiper (*Actitis macularius*).

\* \* \* \* \*

(i)(13) Wilson's snipe (*Gallinago delicata*).

\* \* \* \* \*

(i)(15) Red phalarope (*Phalaropus fulicarius*).

\* \* \* \* \*

(j)(4) Bonaparte's gull (*Chroicocephalus philadelphia*).

\* \* \* \* \*

(j)(15) Aleutian tern (*Onychoprion aleuticus*).

\* \* \* \* \*

(l)(2) Snowy owl (*Bubo scandiacus*).

### Subpart D—Annual Regulations Governing Subsistence Harvest

■ 4. Amend subpart D by adding § 92.31 to read as follows:

#### § 92.31 Region-specific regulations.

The 2016 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region*.

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleutian Region's eastern boundary on the Alaska

Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in Game Management Units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region*.

(1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region*. (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region*. (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region*, except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and

waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region*. (1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region*. (1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30' W. and south of the latitude line 70°45' N. to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45' N. between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30' W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30' W. and north of the latitude line 70°45' N. to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45' N. between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region*. (1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell). (1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Game Management Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region*. (1) Prince William Sound Area West (Harvest area: Game Management Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Game Management Units

6[B]and [C]—Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: Greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U.S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Game Management Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: Portions of Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Game Management Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska*. (1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations

on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR part 100.3(a)):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay):

(i) Season: Glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 5. Amend subpart D by adding § 92.32 to read as follows:

**§ 92.32 Emergency regulations to protect Steller's eiders.**

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders (*Polysticta stelleri*), the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: December 8, 2015.

**Karen Hyun,**

*Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

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# Reader Aids

Federal Register

Vol. 80, No. 242

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<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6064</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>

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## FEDERAL REGISTER PAGES AND DATE, DECEMBER

74965-75418.....	1
75419-75630.....	2
75631-75784.....	3
75785-75920.....	4
75921-76200.....	7
76201-76354.....	8
76355-76628.....	9
76629-76854.....	10
76855-77230.....	11
77231-77566.....	14
77567-78116.....	15
78117-78648.....	16
78649-78956.....	17

## CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

<b>2 CFR</b>	539.....	75590
540.....	75590	
541.....	75590	
544.....	75590	
548.....	75590	
550.....	75590	
552.....	75590	
555.....	75590	
557.....	75590	
559.....	75590	
560.....	75590	
561.....	75590	
<b>3 CFR</b>		
<b>Proclamations:</b>		
9373.....	75781	
9374.....	75783	
9375.....	76197	
9376.....	76199	
9377.....	76353	
9378.....	76625	
9379.....	76627	
9380.....	77565	
<b>Executive Orders:</b>		
13713.....	78117	
<b>Administrative Orders:</b>		
Presidential		
<b>Determinations:</b>		
No. 2016-03 of		
November 18,		
2015.....	75921	
No. 2016-04 of		
December 2, 2015.....	77567	
Memorandums:		
Memorandum of		
December 2, 2015.....	76195	
<b>5 CFR</b>		
337.....	75785	
531.....	76629	
576.....	75785	
792.....	75785	
831.....	75785	
842.....	75785	
<b>7 CFR</b>		
205.....	77231	
504.....	74966	
761.....	74966	
769.....	74966	
958.....	75787	
1400.....	78119	
<b>Proposed Rules:</b>		
205.....	78150	
930.....	78677	
983.....	77277	
1205.....	76873	
<b>8 CFR</b>		
100.....	75631	
<b>9 CFR</b>		
300.....	75590	
441.....	75590	
530.....	75590	
531.....	75590	
532.....	75590	
533.....	75590	
534.....	75590	
537.....	75590	
539.....	75590	
540.....	75590	
541.....	75590	
544.....	75590	
548.....	75590	
550.....	75590	
552.....	75590	
555.....	75590	
557.....	75590	
559.....	75590	
560.....	75590	
561.....	75590	
<b>Proposed Rules:</b>		
50.....	78462	
51.....	78462	
71.....	78462	
76.....	78462	
77.....	78462	
78.....	78462	
86.....	78462	
93.....	78462	
161.....	78462	
<b>10 CFR</b>		
1.....	74974	
2.....	74974	
4.....	74974	
7.....	74974	
9.....	74974	
11.....	74974	
15.....	74974	
19.....	74974	
20.....	74974	
21.....	74974	
25.....	74974	
26.....	74974	
30.....	74974	
32.....	74974	
37.....	74974	
40.....	74974	
50.....	74974	
51.....	74974	
52.....	74974	
55.....	74974	
60.....	74974	
61.....	74974	
62.....	74974	
63.....	74974	
70.....	74974	
71.....	74974	
72.....	74974	
73.....	74974	
74.....	74974	
76.....	74974	
81.....	74974	
95.....	74974	
100.....	74974	
110.....	74974	
140.....	74974	
150.....	74974	
170.....	74974	
171.....	74974	
431.....	76355	

<b>Proposed Rules:</b>	806.....76855	<b>30 CFR</b>	78.....75024, 75706
26.....76394		250.....75806	82.....78705
50.....75009	<b>19 CFR</b>	925.....78657	97.....75024, 75706, 77591
430.....77589	10.....76629		141.....76897
<b>12 CFR</b>	<b>21 CFR</b>	<b>31 CFR</b>	180.....75442, 75449
217.....76374	73.....76859	33.....78131	
225.....75419	510.....76384	34.....77239	<b>42 CFR</b>
252.....75419	520.....76384, 76387		433.....75817
603.....78649	522.....76384	<b>Proposed Rules:</b>	
652.....78650	524.....76384	538.....75957	<b>44 CFR</b>
747.....78650	558.....76384, 76387	560.....75957	64.....76391
	1308.....78657	605.....76647	67.....76644
<b>Proposed Rules:</b>		<b>32 CFR</b>	
30.....78681	<b>22 CFR</b>	88.....76206	<b>45 CFR</b>
249.....75010	102.....76630	251.....76631	95.....75817
701.....76748	121.....78130	505.....74987	155.....78131
995.....78689	<b>Proposed Rules:</b>	roposed Rules:	170.....76868
1201.....78689	171.....78704	75.....76881	<b>Proposed Rules:</b>
1268.....78689		632.....76889	144.....75488
<b>14 CFR</b>	<b>24 CFR</b>		146.....75488
1.....78594	4.....75931	<b>33 CFR</b>	147.....75488
21.....78650	5.....75931	100.....76206, 76860	153.....75488
23.....76379	91.....75791	117.....75636, 75811, 76637,	154.....75488
39.....74982, 75788, 76201,	92.....75931	76860, 77252	155.....75488
76381	115.....75931	165.....76206, 76209, 77570,	156.....75488
45.....78594, 78650	125.....75931	77573	158.....75488
47.....78594	135.....75931	334.....75947	1604.....75847
48.....78594	200.....75931	<b>Proposed Rules:</b>	1609.....75847
71.....77234	202.....75931	110.....75020	1611.....75847
91.....78594	214.....75931		1614.....75847
97.....75923, 75924, 75926,	236.....75931	<b>36 CFR</b>	1626.....75847
75928	242.....75931	7.....74988	1635.....75847
375.....78594	248.....75931	<b>Proposed Rules:</b>	
<b>Proposed Rules:</b>	266.....75931	7.....75022	<b>47 CFR</b>
39.....75952, 76398, 76400,	401.....75931	230.....76251	1.....75431
76402, 76875, 76878, 77279,	570.....75931		73.....75431
78699, 78702	573.....75931	<b>37 CFR</b>	<b>Proposed Rules:</b>
71.....77283	574.....75931	<b>Proposed Rules:</b>	1.....76649
382.....75953	576.....75931	11.....78155	10.....77289
	578.....75791, 75931		11.....77289
<b>15 CFR</b>	582.....75931	<b>38 CFR</b>	12.....78160
730.....76383	583.....75931	17.....74991	20.....75042, 76649
734.....76383	700.....75931	41.....74965	27.....76649
736.....76383	761.....75931	43.....74965	63.....76923
738.....75633, 76629	880.....75931		73.....76649
740.....75633	881.....75931	<b>40 CFR</b>	Ch. V.....77592
742.....76383	882.....75931	1.....77575	
743.....75633	883.....75931	7.....77575	<b>48 CFR</b>
744.....76383	884.....75931	9.....75812	Ch. I.....75902, 75918
745.....76383	886.....75931	24.....77575	1.....75903, 75907, 75908,
762.....78651	891.....75931	45.....77575	75915, 75918
772.....75633, 78651	902.....75931	52.....75636, 76211, 76219,	3.....75911
774.....75633, 76629	905.....75931	76222, 76225, 76230, 76232,	4.....75903, 75913
922.....74985, 77569	943.....75931	76637, 76861, 76863, 76865,	9.....75903
<b>Proposed Rules:</b>	963.....75931	77253, 77578, 78135	12.....75903
701.....75438	964.....75931	60.....75178	22.....75907, 75908, 75915
<b>16 CFR</b>	965.....75931	63.....75178, 75817, 76152	52.....75903, 75907, 75908,
310.....77519	970.....75931	80.....77420	75911, 75915
1251.....78651	982.....75931	81.....76232, 76865	1501.....75948
<b>Proposed Rules:</b>	990.....75931	180.....75426 75430, 76388,	1502.....75948
Ch. II.....76955, 77591	1000.....75931	76640, 77255, 77260, 78141,	1852.....75843
433.....75018	1003.....75931	78143, 78146	
1028.....75020	1006.....75931	241.....77575	<b>49 CFR</b>
1408.....75639	<b>26 CFR</b>	310.....77575	18.....78649
<b>17 CFR</b>	1.....75946, 76205	721.....75812	19.....78649
<b>Proposed Rules:</b>	<b>Proposed Rules:</b>	761.....77575	238.....76118
1.....78824	1.....75956	1800.....77580, 77585	385.....78292
38.....78824		<b>Proposed Rules:</b>	386.....78292
40.....78824	<b>29 CFR</b>	7.....77284	390.....78292
170.....78824	102.....77236	9.....77284	395.....78292
<b>18 CFR</b>	4022.....77569	52.....75024, 75442, 75444,	571.....78664
35.....76855	4044.....74986	75706, 75845, 76257, 76258,	830.....77586
	<b>Proposed Rules:</b>	76403, 76893, 78159	<b>Proposed Rules:</b>
	1635.....75956	62.....76894	392.....76649
		63.....75025	571.....78418

672.....75639	635 .....74997, 74999, 75436,	77275, 78675	92.....78950
Ch. X.....77311	77264	<b>Proposed Rules:</b>	223.....76068
<b>50 CFR</b>	648.....75008	17.....77598	224.....76068
17.....76235	660.....77267	20.....77088	648.....77312
622 .....75432, 77588, 78670	665.....75437	28.....77200	660.....76924
	679 .....75843, 76249, 76250,	29.....77200	679 .....76405, 76425, 78705

---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List December 16, 2015

---

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